

From: Paul Bigioni
Director, Corporate

Subject: City Centre Project Master Agreement Issues
- File: D-1000-003-18

Recommendation:

1. That Report LEG 19-21 be received;
 2. That should Council wish to proceed with the City Centre Project, staff be directed to finalize the Master Agreement: (i) without any provisions for profit-sharing; and (ii) without any additional provisions addressing restrictive covenants;
 3. That appropriate City of Pickering officials be authorized to take the actions necessary to implement the recommendations in this report.
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Executive Summary: Recommendation 4 of Report FIN 15-21 was adopted by Council on October 21, 2021. That Recommendation consisted of Council's endorsement of the material content of the draft Master Agreement for the Pickering City Centre Project (Attachment 2). Council's endorsement of that Recommendation was qualified to the extent that it was subject to the satisfaction of staff's concerns about: (i) the unwillingness of OPB Realty Inc. ("OPB") to include a profit-sharing provision in the Master Agreement, and (ii) certain restrictive covenants registered against title to the lands being transferred to the City and which would limit certain uses to be made of the new City facilities.

Unfortunately, OPB is unwilling to include a profit-sharing provision in the Master Agreement, and will not proceed with the City Centre project unless the City agrees to forego the profit-sharing provision. The Director, Corporate Services & City Solicitor cannot recommend, from a legal perspective, that the City proceed without the protection of the cost-sharing provision. In addition, the restrictive covenants registered on title to OPB's lands could limit the City's ability to present certain pre-recorded content in its new facilities. Council must consider this as well as the anticipated social and economic benefits of the project, and must decide to either: (i) direct staff to finalize the Master Agreement without any provisions for profit-sharing and without any additional provisions addressing restrictive covenants; or (ii) make no further Resolution or Direction, and risk OPB's withdrawal from negotiations and the likely end of the City Centre project.

Financial Implications: As set out in Report FIN 15-21.

Discussion: On October 21, 2021, Council adopted Recommendation 4 of Report FIN 15-21 (Resolution 700/21). Report FIN 15-21 (without attachments) is Attachment 1 to this Report. Recommendation 4 reads as follows:

4. That, in the event Council approves the actions set out in Recommendation 3 above, the material content of the provisions contained in the draft Master Agreement and related Memorandum (Attachment 2) are endorsed, and will be contained within a final Master Agreement to be executed by the City and OPB Realty Inc. (or an affiliate of OPB Realty Inc.), subject to the satisfaction of the concerns more particularly set out within this report regarding: (i) profit sharing on any future sale of the South Esplanade Block and (ii) certain restrictions on title to OPB's lands;

Since October 21st, OPB has confirmed that it will not agree to any profit-sharing provision in the Master Agreement. Council must therefore decide to either: (a) direct staff to finalize the Master Agreement without any provisions for profit-sharing and without any additional provisions addressing restrictive covenants; or (b) make no further Resolution or Direction, and risk OPB's withdrawal from negotiations and the likely end of the City Centre project.

Information regarding the profit-sharing provision and the restrictive covenants is set out below.

The Profit-sharing Provision:

The Master Agreement (and previously the non-binding Memorandum of Understanding) contemplates residential condominium development on the South Esplanade Block. To enable this development, OPB intends to transfer the South Esplanade Block to a developer experienced in residential condominium development. This aspect of the Project is of significant value to OPB, and it is also important to the City, because the development will result in assessment growth and an increase in property tax revenues that will help defray the City's project costs. If development of the South Esplanade Block does not occur, the expected assessment growth will not materialize.

In an effort to protect the City from that possibility, staff have sought the agreement of OPB and its transferee that, if development does not occur, and instead the South Esplanade Block (or any part of it) is sold within five years, the City would be entitled to a 50 percent share of the net profit realized on such sale. This commitment (referred to as a "Participation Covenant") was requested to deter land banking (i.e. the developer simply electing not to construct the residential condominium development) and land speculation (i.e. a subsequent 'flip' of the undeveloped South Esplanade Block for a purchase price significantly in excess of that attributed to the lands as part of the land swap arrangements with OPB). This commitment would also serve as a prudent protection from the reputational harm that could result if the South Esplanade Block was sold on to a third party at a large profit. Considering this from a legal perspective, the Director, Corporate Services & City Solicitor recommends that the profit-sharing provision be included as a protection for the City. Council should consider that together with the social and economic benefits of the project that are set out in Report FIN 15-21.

It is important to understand that the profit-sharing provision would apply only if the lands are sold without being developed as residential condominiums. If the South Esplanade Block is

developed by OPB or its transferee as residential condominiums (as contemplated by the MOU and the Master Agreement), then the City would not claim any share of the profits. In any event, OPB has clearly stated that it is unwilling to agree to any profit-sharing provision in the Master Agreement.

The Restrictive Covenants:

The City is aware of certain restrictive covenants which affect the OPB lands which the City will be acquiring. These restrictive covenants appear in certain leases with tenants of the Pickering Town Centre Shopping Centre. The City is currently aware of two restrictions in particular, in favour of Farm Boy and Cineplex, which as it currently stands, have a material impact on the proposed operation of the new City Facilities. These restrictions will limit the ability of the City to hold a farmers' market in the new public square, and will also prevent the City from showing videos or films in any of the new City Facilities. These restrictions will need to be removed or amended to enable the City to fully use the new City Facilities for their intended purpose. Discussions are ongoing with OPB as to how these restrictions will be addressed, but any resolution will require the agreement of both Farm Boy (Sobeys) and Cineplex. There may be other restrictions which become apparent as further due diligence is conducted on the OPB lands by the City.

It must be noted that the draft Master Agreement (Attachment 2) calls for the City to receive title to the lands for the new City Facilities "free and clear" of such encumbrances, however, the risk remains that OPB may not be able to obtain the agreement of its tenants to remove or amend in a satisfactory manner, these restrictive covenants. Because the City will in no way enter into commercial competition with Farm Boy or Cineplex, staff have some confidence that Farm Boy and Cineplex will amend their restrictive covenants so that the use of City facilities is unrestricted, however, that cannot be guaranteed.

Attachments:

1. Report FIN 15-21 (without attachments)
 2. Attachment 2 of Report FIN 15-2
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Prepared/Endorsed By:

Original Signed By:

Paul Bigioni
Director, Corporate Services & City Solicitor

PB:ks

Recommended for the consideration
of Pickering City Council

Original Signed By:

Marisa Carpino, M.A.
Chief Administrative Officer



Report to Council

Report Number: FIN 15-21

Date: October 21, 2021

From: Stan Karwowski
Director, Finance & Treasurer

Subject: City Centre Financial and Legal Implications
- File: F-1200-001

Recommendation:

1. That Report FIN 15-21 of the Director, Finance & Treasurer be received;
2. That Council receive for information the "5-Year Capital & Operating Financial Plan" prepared by Watson & Associates Economists Ltd., dated October 14, 2021;
3. That should Council wish to proceed with the City Centre Project, that the following actions related to the Project be approved:
 - a. That the City Centre project's fixed cost ceiling be established at \$207.70 million, that is funded from reserves of \$3.6 million, that results in the preliminary estimated total new debt borrowing of \$204.13 allocated between Development Charge Funded Debt of \$110.13 million and City Share Debt of \$94.00 million (to be funded from future casino revenues), and to reduce the financial stress and strain this total amount of debt (DC and City) would cause in both the short and medium term, that City staff be directed to explore all revenue options including grants and partnerships and that to manage the City's debt structure below the Provincial Annual Repayment Limit (ARL), all debt financed projects related to Seaton and the Pickering Museum Village be placed on a "medium term pause" (post 2028) and that other future debt financed capital projects be measured against the recommended guideline that they proceed, only if the project is required for the health and safety of residents and/or staff;
 - b. That, in order for staff to meet the April 2022 timeline of awarding of the construction contract for the Pickering City Centre, Council approve the following investments (expenditures) from October 22, 2021 to April 30, 2022:
 - i That Council approve \$6,449,000 million (net of HST) to be awarded to architects-Alliance for the preparation of construction drawings and tender documents for the City Centre project excluding the City parking garage;
 - ii That Council approve \$345,000 (net of HST) to Cushman & Wakefield Asset Services LLC on account of its development management fees related to the Senior & Youth Centre, Bridge Link and for the relocation of site services;

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- iii That Council approve \$627,000 (net of HST) to twopointO Partners Inc. on account of its development management fees related to the Library, Public Square/Public Realm and Performing Arts Centre;
 - iv That Council approve \$512,870 (net of HST) to SKA for works related to the design and drawings for the relocation of services;
 - v That Council approve \$175,900 (net of HST) to Deloitte LLP for construction project management services to be funded from current budget operating account 2121.2392 and funded 100 percent from the casino reserve in accordance with Purchasing Policy 10.03 (c);
 - vi That Council approve \$432,480 (net of HST) to Torys LLP to complete all of the legal agreements necessary for the execution of contracts to be approved at the April 2022 meeting;
 - vii That Council approve \$40,700 (net of HST) for soil/environmental testing and related works as part of the due diligence process related to the land transaction and to be funded from the 2019 Capital Budget account;
 - viii That IBI Group be retained to undertake a parking strategy for the new proposed underground parking garage at a cost not to exceed \$50,000 (net of HST) and to be funded from 2019 Capital Budget account;
 - ix That Council approve \$941,000 (net of HST) to OPB Realty Inc. for reimbursement of work for the City portion of the underground parking garage design and development expenses;
 - x That Deloitte LLP be retained to undertake and develop a debt financing strategy for the City Centre project at a cost not to exceed \$45,800 (net of HST);
 - xi That the Director, Finance & Treasurer be authorized to allocate the above approved expenditures and prior approved and prior year's City Centre expenditures to the various capital accounts and to maximize the use of development charge funding; and
 - xii That Council approve \$92,284 (plus HST) to be awarded to EllisDon Corporation for General Contractor Services consulting contract related to preconstruction work for the City Centre project under RFP2021-3 and this cost be funded from the 2019 Capital Budget account.
4. That, in the event Council approves the actions set out in Recommendation 3 above, the material content of the provisions contained in the draft Master Agreement and related Memorandum (Attachment 2) are endorsed, and will be contained within a final Master Agreement to be executed by the City and OPB Realty Inc. (or an affiliate of OPB Realty Inc.), subject to the satisfaction of the concerns more particularly set out within this report regarding: (i) profit sharing on any future sale of the South Esplanade Block and (ii) certain restrictions on title to OPB's lands;

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5. That, in the event Council approves the actions set out in Recommendation 3 above, the form of Contract for Architectural Services (Attachment 7) be approved for use in respect of the design and construction of each of the new City facilities included in the City Centre project, and that the Mayor and City Clerk be authorized to execute such contracts in conformity with the budget parameters established in this report by the Director, Finance & Treasurer and subject to minor revisions acceptable to the Chief Administrative Officer and the Director, Corporate Services & City Solicitor;
 6. That, in the event Council approves the actions set out in Recommendation 3 above, the final form of Master Agreement, and all project contracts referred to within it, be brought before Council for approval as they are negotiated, but no later than April, 2022; and
 7. That the appropriate City of Pickering officials be authorized to take the necessary actions as indicated in this report.
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Executive Summary: The 2021 budget report (FIN 05-21), included a discussion on the need to undertake a “5-Year Capital & Operating Plan” (5YCOP) due to the City Centre project and ambitious capital plan for the years 2022 up to and including 2026. The building blocks of the financial plan are:

- Asset Management Plan or AMP (approved in principle for financial planning purposes, Resolution #683/21);
- 2022 Preliminary Draft Capital Budget & Four Year Forecast (approved in principle for financial planning purposes, Resolution #661/21);
- Revised cost estimate for the City Centre project as developed by Turner & Townsend.

After many months of work, and leveraging the expertise of consultants Watson & Associates Economists Ltd, the results of the analysis is reflected in this report and set out in Attachment 1.

The City Centre project represents a multi-generational opportunity that will transform the City’s downtown core. The 2022 draft capital budget and four year forecast includes capital projects that will generate long-term community benefits. The purpose of the 5CYOP is not to debate the merits and/or community benefits of these projects but to answer the fundamental financial question of affordability, risk and the impact of these projects on the City’s finances. Complicating the analysis is the pandemic and its possible negative and short and long term impact of the local and national economies. It should be noted that the approval for the construction of the City Centre project occurred in a pre-pandemic environment. In addition, to the core financial analysis, staff have also investigated other matters related to the City Centre project such as parking, naming rights revenues and preliminary estimates for the operating costs of the City Centre project. The information, presented in this report, represents the best available information and/or expert opinions at this current date and can change over time.

The 5CYOP was developed by Watson & Associates Economists Ltd. and the City Centre DC funding reflected in the document is based on their expertise in this area. To prepare the 5CYOP, assumptions had to be made in order to develop financial plans and options. The results of the analysis indicates that the City is hitting the Annual Repayment Limit or ARL if it plans to undertake all of the capital construction projects (City Centre and capital forecast). The issue of the ARL was identified by the Treasurer in the 2020 and 2021 budget reports. To reduce the financial pressure and strain, a second option was developed whereby the Pickering Heritage Community Centre & Library and Seaton Recreation & Library Community Centre are deferred. Even after employing this option, and while recognizing that the financial stress level is reduced, it is still financially uncomfortable. Therefore, from a financial lens only, the Treasurer does not recommend adopting recommendation 3. a and b. However, if there are new revenue sources (such as senior government grants) and depending upon the dollar level of new revenues, the Treasurer's recommendation could be reversed. Whatever course of action Council approves, the City should continue with its current business practice as it relates to its finance management of prudent and conservative fiscal management that has served the City well.

In the event that Council decides to proceed with the City Centre project, it will be necessary to enter into a Master Agreement with OPB Realty Inc. to define the many elements of the project and the roles and responsibilities of the City and OPB with respect to the design, construction, operation and maintenance of the project. Subject to the specific concerns set out in this report regarding (i) profit sharing on any sale of the South Esplanade Block and (ii) restrictions on title to OPB's lands, it is recommended that Council endorse the material content of the attached draft Master Agreement and related Memorandum, for inclusion in the final form of Master Agreement to be brought to Council for subsequent approval, together with the other project contracts referred to in the Master Agreement.

In the event that Council decides to proceed with the City Centre project, it is further recommended that the attached template Contract for Architectural Services be approved, and that contracts with architectsAlliance be approved and executed on the same terms for each of the City facilities comprising the project.

Financial Implications: The "5-Year Capital & Operating Plan" (5YCOP) is a framework for Council and senior staff to consider the future financial challenges and opportunities through financial forecasting, scenarios and analysis with the goal of trying to achieve short and long term financial sustainability. The 5YCOP is the process of projecting revenues and expenditures (including capital expenditures) over the five year period while using assumptions relevant to the municipality. The development of the 5YCOP is complex and contains several inter-related decision making factors. It is recommended to Council that the 5YCOP be refreshed every two years in order to identify and highlight both positive and potential "bumps in the road". With each update to the 5YCOP, the data and information will be more refined to reflect the current financial environment and the corresponding challenges and opportunities that the City may leverage and or develop appropriate strategies.

The 5YCOP, as developed by Watson & Associates, is based on Council approved inputs for the following two major components: 2022 Preliminary Draft Capital Budget & Four Year Forecast (FIN 13-21) and Asset Management Plan (FIN 14-21). Another key building block of the 5YCOP is future anticipated development and the consultant used the City’s 2020 and 2021 year-to-date building permit activity and growth data from the City’s 2017 DC Background Study. The growth data is important due to the fact it develops the calculation for assessment growth and corresponding taxation revenue for the five year time period.

City Centre Project – Financial Summary and Discussion

**Table One
City Centre Project Expenditure Ceiling
April 2022**

Line #	Capital - (Alphabetical Order)	Col. A	Col. B		Col. C
		Expenditures (Net of HST 1.76%)	Funding Sources		DC
			DC's	City Share	Fund. %
1	Bridge Link	\$ 1,234,017	\$ 895,720	\$ 338,297	72.60%
2	Library	47,017,879	22,360,092	24,657,787	47.60%
3	Performing Arts Centre (PAC)	69,550,000	15,251,204	54,298,797	21.90%
4	Phase 1 Service Relocations	7,489,001	4,390,798	3,098,203	58.60%
5	Public Realm (City Lands)	6,861,816	450,000	6,411,816	6.60%
6	Public Square	5,948,814	3,379,510	2,569,304	56.80%
7	Senior & Youth Centre (S&Y)	43,038,550	41,871,070	1,167,481	97.30%
8	Underground Parking (350 Stalls)	26,529,470	21,981,205	4,548,265	82.90%
9	Total City Expenditure Ceiling	<u>\$ 207,669,547</u>	<u>\$ 110,579,599</u>	<u>\$ 97,089,950</u>	53.25%

The Bridge Link costs as shown above are substantially lower than previous estimates. The decrease in the cost is mainly due to the original concept of the bridge link was first treated as an add-on and therefore, Poole Construction Limited (PCL) had placed a premium on the bridge and support structure. The other factor is that the current design of the bridge link is integrated into the SYC and Library buildings and therefore, the support structure of the bridge budget is being carried in each of those budgets.

As the above table indicates, the expenditure ceiling for this project from a City perspective is \$207.7 million with Development Charge (DC) funding providing 53.2 percent of the total project costs. It should be noted that there is the potential for some of the Public Realm costs to be funded through a “Community Benefit Charge (CBC)”. As stated in the 2021 budget presentation, City staff have now started the Development Charge Study and Community Benefit Study process and where possible, staff will explore the opportunity to have these costs funded by the CBC. It is interesting to note that the Senior & Youth Centre DC funding component is almost funding the entire project’s capital cost. Table One excludes any future senior government grant funding opportunities. It is staff’s intent to apply for all grant opportunities even including smaller grants where there may be an opportunity to help fund energy efficient equipment and/or accessibility capital investments.

Table Two
City Centre Project Estimated Net Cost
April 2022

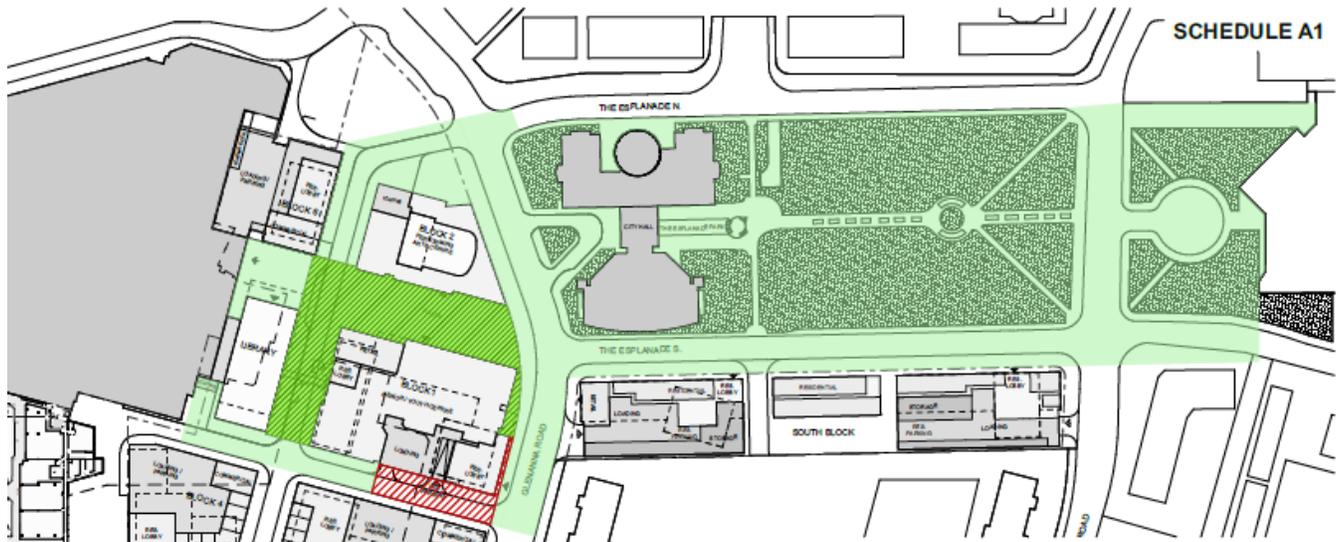
Total City Expenditure Ceiling	\$207,669,547
Less:	
PTC Refund	<u>(6,300,000)</u>
Estimated Net Project Cost	<u>\$201,369,547</u>

The Pickering Town Centre (PTC) Refund and timing of the payment is based on the City completing the “Public Realm” improvements. The goal is to have the Public Realm improvements completed when the City Centre is completed. Payment is received from PTC only when the entire public realm project area has been completed.

The Public Realm area consists of a new public urban square and will be constructed between the Performing Arts Centre and the Youth & Seniors Centre extending from the Central Library to Glenanna Road. In addition, a small secondary urban square is proposed immediately north of the new Central Library. These two park blocks will have a combined area of 2,403 square metres, and are intended to be conveyed to the City to satisfy the parkland dedication requirements under the *Planning Act* for the future redevelopment of the easterly portion of the PTC lands.

The Public Square blocks will feature a unique paving treatment with seating, planters, public art, water feature and landscaping in a design that connects the Central Library, Seniors & Youth Centre and Performing Arts Centre. This space will be used for outdoor experiences; from large events to small performances while providing access to the retail stores at the Pickering Town Centre. The proposed hardscape treatment is intended to extend through the new public road fronting the Central Library, and will continue through Esplanade South to the Chestnut Hill Developments Recreation Complex. The purpose of this extension of hardscape features is to provide a unified streetscape treatment from the Central Library to the Recreation Complex, that will connect all existing and new City facilities, as well as create a cohesive and defining identity for the City Centre neighbourhood. The area of the Public Realm improvements is shown in diagram one.

**Diagram One
Public Realm Area**



Notes:

The light green area represents Public Realm

The red crosshatched area is the responsibility of the residential tower owner

City Centre Debt Analysis & Watson Report

As stated earlier in the 2020 and 2021 budget reports, the Treasurer has raised the issue and expressed concerns regarding the level of debt as it relates to the planned future capital expenditures and its impact on the Annual Repayment Limit or ARL. The City Centre project and the City's capital forecast both add to the financial strain and stress referenced in recommendation 3. a.

A financial snapshot is presented in Table Three of the Council approved 2022 Preliminary Draft Capital Budget and Four Year Forecast.

**Table Three
2022 Preliminary Draft Capital Budget & Four Year Forecast (\$ Millions)**

	2022	2023	2024	2025	2026	Total
	Preliminary	Forecast	Forecast	Forecast	Forecast	
	Draft					
	Budget					
Major Project	Animal Shelter	Highway 401 Bridge	Seaton Community Centre Design	Civic Complex Renovations	Seaton Community Centre Construction	
Total Expenditures	\$ 41.3	\$ 117.3	\$ 66.8	\$ 50.7	\$ 134.8	\$ 410.7
Financing						
By Major Sources						
External Debt	3.1	24.2	18.3	27.6	19.5	92.7
Internal Loans	2.0	3.4	2.7	3.1	1.0	12.1
DC Debt	<u>6.9</u>	<u>11.1</u>	<u>18.5</u>	<u>0.0</u>	<u>88.3</u>	<u>124.7</u>
Sub Total	12.0	38.7	39.5	30.7	108.8	229.5
Prov/Fed Gov Grants	6.1	7.0	4.6	6.8	4.0	28.5
DC Funding	6.7	30.1	5.4	4.1	8.0	54.3
City Funded Reserves	10.9	14.6	12.1	6.8	11.0	55.3
Third Party Contributions	2.3	25.3	1.1	0.7	1.4	30.7
Other *	<u>3.3</u>	<u>1.7</u>	<u>4.2</u>	<u>1.6</u>	<u>1.6</u>	<u>12.3</u>
Total	<u>\$ 41.3</u>	<u>\$ 117.4</u>	<u>\$ 66.8</u>	<u>\$ 50.7</u>	<u>\$ 134.8</u>	<u>\$ 410.7</u>

Table Three **does not** include the City Centre project cost.

As shown in Table Three, the preliminary 2022 draft capital plan is substantially funded with debt. The Development Charges (DC) debt is the largest forecasted component and this debt is required to be issued due to the fact the City’s DC reserve funds do not have sufficient dollars to meet the growth related capital expenditures. The issue of the DC reserve funds having insufficient balances and, therefore, having to borrow funds was identified by the Treasurer in Report FIN 11-21.

**Table Four
Debt Summary (City Centre & 2022 Capital Budget & 4 Year Forecast)**

City Centre Debt		
DC Debt	\$110,129,598	
City Share Debt	<u>94,009,951</u>	\$204,139,549
2022 Budget & Forecast		<u>229,500,000</u>
Total Estimated New Debt		<u>\$433,639,549</u>

Table Four above only reflects new debt. The City currently has outstanding (issued) debt of \$30.6 million plus \$32.7 million of new debt to be issued from previously approved capital budgets, totaling 63.3 million. (The 2021 budget included the Pickering Heritage Community Centre of which \$11.4 million of the project's cost would be funded from debt). The estimated new debt represents an increase of 6.85 times over the revised debt of \$63.3 million.

What is the ARL?

The Municipal Act through Regulation 403/02 permits a maximum of 25 percent of net operating revenues to be used to fund principal and interest charges for debt. For Pickering, the net operating revenues consists of the following major items:

- Property tax revenue
- User fees and charges
- Fines, penalties and interest on taxes
- License fees, permit fees and rent
- Gaming and casino revenues

Every year, as the budget levy increases, the City's annual repayment limit increases that in turn results in a higher ARL. Over the last seven years, the City has maintained a steady course as it relates to debt use and has maintained its debt level below 5 percent of the maximum allowed of 25 percent. The financial strategy of being prudent and cautious has served the City well as it relates to its management of debt. With the addition of a new revenue source (casino revenue), the City can now proceed to consider, to a certain degree, to expand its use of debt.

Ontario Regulation 403/02 does permit municipalities to appeal to the Ontario Land Tribunal (OLT) to exceed the 25 percent limit. **The use of this path by municipalities is rare.** Staff are aware of one situation whereby a municipality requested an exemption to exceed the limit to borrow funds to install water and sewer infrastructure. Under this situation, the municipality could demonstrate that the additional debt costs could be accommodated through future water and sewer revenues. In other words, the higher capital costs were directly funded by corresponding water and sewer rates and this revenue stream has a low risk of default and or failure. In Pickering's situation, the City Centre capital program, when completed, results in higher net operating costs. In other words, the revenue stream from the City Centre project is inadequate to cover the debt costs.

To start the appeal process, the City's solicitor would have to write to the OLT asking for an increase to the debt ceiling. The following information would have to be provided to the Tribunal:

- i. Set out the current debt limit
- ii. Set out why the debt limit needs to be increased
- iii. Describe the extent of the increase
- iv. Describe what the increased funds would be used for
- v. Describe the costs of the project
- vi. Give the rationale for the project

vii. Describe the plan to return to balanced position

It is staff’s understanding that the “hearing” would be held by correspondence and the process is not subject to the current backlog of the OLT. Therefore, it appears that a decision could be rendered within a reasonable amount of time.

Watson & Associates Report Analysis

When reviewing the “5-Year Capital & Operating Financial Plan” prepared by Watson & Associates, the reader has to understand that certain assumptions were made in developing the various scenarios and options in consultation with finance staff. The key assumptions are: City Centre debt borrowing occurs over a three year period, rate stabilization reserve balance would be at 15 percent of net expenditures, population would increase by 1.8 percent per year translating into assessment growth and the goal is to build up the casino reserve balance to 2 years’ of annual debt financing costs to offset unpredictable events.

**Table Five
ARL Summary (Watson & Associates Report – Pages 22 to 27)**

Line #	Scenario's	Option A Capital All In 2027	Option B Deferral Seaton Rec & North Heritage 2027
A	#1 – Maintain Status Quo	26.5%	20.7%
B	#2 – Reflects AMP Strategy	24.6%	19.2%
C	Average	25.6%	20.0%

The above information on table five can be found on pages 22 to 27 of the attached Watson & Associates report.

Option A

Scenario 1 is based on the City’s current approach of moderate increases to the tax levy and includes all of the capital projects (City Centre and capital forecast) proceeding as currently forecasted. Under this scenario, **the City exceeds the ARL.**

Scenario 2 takes into the consideration the City’s Asset Management Plan (AMP) with corresponding levy increases with the identical capital construction build plan as scenario 1. The ARL is lower for scenario 2 due to the fact the annual property tax increases have been higher to reflect the AMP strategy (of increasing the tax levy to fund capital replacements) and therefore, creating more ARL room. If the City adopts a phase-in approach as reflected in Line C, the City is still above the ARL. For this reason, and only viewing from a financial lens, **the Treasurer strongly does not recommend Option A.**

Option B

The ARL figures represented in “Option B” represents the capital construction plan (City Centre), with a deferral of the Pickering Heritage Community Centre & Library (\$29.08 million) and the Seaton Recreation & Library Community Centre (\$110.10 million). By deferring these two major capital projects, the City reduces its ARL below the 25 percent limit. However, by adopting the “Average” AMP levy strategy, the City is still above average ARL as compared to the vast majority of municipalities in Ontario. There is still a sufficient level of risk associated with this approach such as: the willingness of Council to consider moderate increases in the tax levy to fund the AMP, uncertainty in a post pandemic economic environment, casino revenue streams and future assessment growth. The capital program (City Centre and forecast) is based on the principle of “growth”, that in-turn generates DC fees to pay for DC debt. A recession and/or other significant negative even that disrupts the “growth” model assumption translates into financial stress for the City. To partially mitigate this risk, the Treasurer recommends that a reserve be established with a target balance equivalent to two years of City Centre debt financing costs. However, it should be noted that there are other DC debt financed projects where a reduction in DC fees that results insufficient funds to meet the DC borrowing costs would have to be funded from other City sources.

The Treasurer is still recommending that the project not proceed under Option B even when considering the significant deferrals due to the fact the City is still relatively close to the ARL limit, the uncertainty of the pandemic and its impact on local economy and assessment growth. If and when other or additional revenue sources become available such as senior government grants, these additional revenues may reduce the financial stress and or the amount borrowed.

The fiscal challenge for any municipality while still operating in a pandemic is trying to manage the risk when undertaking such a large investment (City Centre & Capital Forecast). There are basically five options in managing the risk: defer projects over a longer period of time, decrease the number of projects, scale back the size of the capital projects (smaller buildings) find alternative or new sources of revenues or increase the size of the contingency or rainy day fund. Unfortunately, there is no mathematical formula that would develop the optimum strategy for managing the risk envelope of what the City is proposing. However, the guiding principle should be to be cautious and or risk adverse at the initial stage of the five year plan until some of the variables trend in a positive direction for the City.

It should be recognized that the City Centre project provides other community, socio-economic benefits described later in this report that when taken into consideration, Council may decide to move the project forward. The recommendations made in this report by the Treasurer are based only on financial inputs and/or considerations and do not take these other factors into account. From a financial lens and when considering Options A and B, B is preferred. However, from a financial perspective, the best option is not to proceed, unless there are other new revenue streams that would lower the ARL to a more moderate level.

Discussion:**Explanation of Key Recommendations****a) Hiring of architects-Alliance for preparing construction and tender documents – Recommendation 3. b. i**

architects-Alliance staff and their team of consulting engineers will be working with the development managers and the pre-construction general contractor to complete working drawings and progressively tender the City Centre project (excluding the City parking garage).

b) Engagement of Cushman & Wakefield (Development Managers) – Recommendation 3. b. ii

Staff from Cushman & Wakefield will be working with City staff, architects-Alliance staff as well as their team of consulting engineers on the following items: developing and reviewing the City Centre working drawings; working with the pre-construction General Contractor on the progressive tendering of the City Centre project; and obtaining all the necessary approvals from the City and other authorities having jurisdiction required for City Centre related to the Senior & Youth Centre, Bridge Link and for the relocation of site services

c) Employment of twopointO (Development Managers) – Recommendation 3.b. iii

The team from twopointO will be working with City staff and other project staff related to the following City Centre projects: Library, Public Square/Public Realm and Performing Arts Centre. The work performed will be similar as to the Cushman & Wakefield project work, however, the DM's work will be focused on different buildings and structures related to the City Centre.

d) Hiring of SKA for Relocation of Services – Recommendation 3. b. iv

The engineering consulting firm of Sabourin, Kimble & Associates Ltd. (SKA) was retained in March 2019 to provide project management services and undertake preliminary engineering services for the relocation of services associated with the City Centre Project. In July 2019, the scope of their assignment was expanded to include detail design, utility relocation coordination and transportation planning. The revised project cost for the assignment was \$880,000 (HST extra).

SKA worked on the assignment until the end of March 2020 after which the City Centre project was placed on "pause" due to economic uncertainty as a result of the COVID-19 pandemic. At that point SKA had completed approximately 60 percent of the assignment. Taking into account the 18 months that has passed since agencies have reviewed the first submission of the design, there is additional time, and effort required to get back to what is considered a 60 percent design submission.

SKA has submitted a proposal dated September 27, 2021 outlining the scope of work and cost estimate to complete the relocation of services design assignment which includes project management services, additional preliminary engineering services, detail design services

(discounted to reflect work completed), geotechnical work and utility locates. The estimated cost of their services is \$512,870 (net of HST) for the period of October 2021 to April 2022. It should be noted that this schedule is aggressive, but all efforts will be made to achieve full approvals by April 30, 2022.

It should also be mentioned that the previous and the proposed design assignments include costs related to both the Phase 1 relocation of services (benefiting the Performing Arts Centre, Library, Youth & Seniors Centre, residential tower and the underground parking garage) and Phase 2 relocation of services that solely benefits Ontario Pension Board's (OPB) proposed development on the Pickering Town Centre lands south of the Youth & Seniors Centre to Pickering Parkway. As such, some of the costs within the scope of the assignments are to be cost shared with OPB.

e) Contracting of Construction Project Management Services to Deloitte LLP – Recommendation 3. b. v

There is a need for the City to engage the services for construction project management to undertake several of the major development tasks related to the City Centre project. These tasks include the following such as perform reviews and provide recommendations to senior City staff on quality, tender document compliance including design/technical specifications, scheduling cost and change order processes.

f) Hiring of Torys LLP to Complete Legal Agreements – Recommendation 3. b. vi

The Master Agreement lists as schedules the various other contracts and documents which must be finalized in order to completely define all aspects of the Project. Provided that OPB and the City agree on the business terms as set out in the draft Master Agreement (Attachment 2), staff do not expect major disagreement between the parties on the terms of the other contracts and documents. That being said, a significant amount of work will be necessary to negotiate and finalize the other contracts and documents. Torys LLP has been advising the City with respect to the Project since 2019 and, since May of this year, has advised the City with respect to all the matters addressed within the draft Master Agreement.

g) Hiring of IBI Group to develop the strategy for New Underground Parking Garage – Recommendation 3. b. viii

As a follow up to the Civic Complex Parking Strategy, it is recommended that the City retain a consultant to conduct an operational review of the proposed underground parking garage that will service the City's Youth & Seniors Centre, Library and Performing Arts Centre. There is a need to determine strategies around parking space designation and allocation, technology to be used to control ingress/egress and parking, and an operating model to be used. It is important to have this determined early so that requirements for technologies and systems can be worked into the design drawings for the underground parking garage and three facilities.

Staff requested a scope of work and cost proposal from IBI Group who have expertise in this field of work. Staff is recommending that IBI Group be retained at a cost not to exceed \$50,000 to undertake this work.

h) Payment to Pickering Town Centre for Underground Parking Design – Recommendation 3. b ix

A key component of the project is the City Centre parking garage. The City has approximately 350 parking stalls on the P1 level of the garage that connects directly to the Library, Seniors & Youth Centre as well as the Performing Arts Centre. Due to the integrated nature of the parking facilities, the parties have agreed that the parking garage will be constructed by Pickering Town Centre and the City will reimburse PTC for their proportion share of the cost. The payment is to reimburse PTC for the City's share of the parking garage design related costs.

i) Hiring of Deloitte LLP to develop a Debt Financing Strategy – Recommendation 3. b. x

The City Centre project and four year capital forecast heavily rely on the use of external debt (City and DC) financing. In the past, the City would use external debt financing, however, the debt amount and its impact on the ARL was never an issue. With the City Centre project and other future planned debt financed capital projects, there is a need to seek outside expertise to develop a strategy that not only considers the historical low interest (borrowing) costs but also considers a blended borrowing approach (medium and long term debt) that would strike a balance between risk and cost. The work plan is to develop a debt financing strategy between November and March (2022) and present the strategy at the March 2022 budget meeting.

j) Maximizing DC Funding for City Centre Development Start-Up Costs – Recommendation 3. b. xi

The 2019 Capital Budget included \$2.0 million for City Centre start-up costs funded from the rate stabilization reserve. Many of these costs such as developing the legal agreements and consulting resources for the RFPQ and RFP could be considered as part of the projects over all cost. Any costs that are re-allocated as a capital cost, would result in being funded (in theory) at the 53.25 percent DC level resulting in a transfer and or increase to the rate stabilization reserve. Under this scenario, the City Centre cost ceiling approved by Council in Recommendation 3a, would be increased to match the transfer to the rate stabilization reserve.

k) Hiring of EllisDon Corporation to undertake consulting work related to preconstruction for the City Centre – Recommendation 3. b. xii

Between now and April 2022, the City will be utilizing the expertise and experience of its DM's and EllisDon Corporation staff as it relates to preconstruction activities. These activities includes tendering for the various building and construction components such as plumbing and electrical and also engaging in a value engineering exercise to control and potential reduce the overall project cost while maintaining program functionality.

l) The Master Agreement – Recommendation 4

The goal of Pickering's new City Centre project (the "Project") is to create a vibrant, connected, and bustling downtown, where municipal service delivery, shopping and retail, and residential

intensification come together as the heart of the City. Pursuant to report CAO 07-19 dated July 22, 2019 (Attachment 3), City Council endorsed the non-binding Memorandum of Understanding (“MOU”) outlining the main features of the Project and directed staff to negotiate binding agreements to govern all the issues set out in the MOU. Pursuant to report CAO 04-21 dated May 25, 2021 (Attachment 4), City Council approved, among other things, the retainer of external legal counsel to assist with the negotiation of the various contracts which define the Project. Consistent with both these reports, City staff have entered into negotiations with Dentons LLP, the solicitors for OPB, with respect to an overarching Master Agreement which, once finalized and signed, will contain binding obligations on both the City and OPB with respect to the land transfers and the construction of the various facilities and appurtenant services which will create the Project. City staff have been assisted in the negotiation of the Master Agreement by Torys LLP and Deloitte LLP. These negotiations have also involved Twopoint0 Partners Inc., the development manager for the City, and Cushman & Wakefield Asset Services ULC, the development manager for OPB, and for the City's new Seniors and Youth Centre.

The Master Agreement sets out all of the required agreements and obligations of the parties necessary for the construction, development and operation of the Project. It includes a series of land exchanges between OPB and the City and the construction on lands to be acquired from OPB of the following new City facilities (collectively, the “New City Facilities”):

- (i) New central library;
- (ii) New Seniors and Youth Centre (“SYC”);
- (iii) New Performing Arts Centre (“PAC”);
- (iv) Pedestrian public square physically and visually connecting City Hall with the new City facilities and the Pickering Town Centre Shopping Centre;
- (v) Public Realm improvements, inclusive of a visually unifying surface treatment, from the Public Square through Esplanade Park and Esplanade South to the Chestnut Hill Development Recreation Complex;
- (vi) underground parking with access to and from each of the New City Facilities and OPB’s new rental apartment building; and
- (vii) connecting roads, amenities and other improvements;

In addition, the Master Agreement addresses the construction by OPB (or an affiliate of OPB) of a 50 storey rental apartment building to be constructed by OPB above the SYC.

The location of these facilities, and their orientation around the new public square are depicted on the Master Plan (Attachment 5). This vision for the Project is consistent with Provincial recognition of the site as an Urban Growth Centre and Mobility Hub.

In exchange for the lands to be acquired by the City, OPB (or a third-party at OPB’s direction) will acquire from the City the South Esplanade Block, on which it is presently contemplated will be constructed a mixed use residential development including a six storey pedestal bisected by a public road and a pedestrian walkway, and two condominium towers, in conformity with the requirements of City Zoning By-law 7719/19;

The Master Agreement addresses the servicing needs of the new City Facilities as well as the new rental and condominium development, including sanitary sewer, storm sewer and water service capacity. To facilitate the location of the new City Facilities and the residential rental tower existing Regional water and sewer lines will be relocated from what is now the east parking lot of the Pickering Town Centre Shopping Centre to Glenanna Road.

Since late May of this year, City staff, with the assistance of Torys LLP and Deloitte LLP, have negotiated the terms of the Master Agreement with Dentons LLP (solicitors for OPB Realty Inc.). Since that time, the parties have reached consensus (subject to Council approval) on most of the significant business terms that define the role of each party in the Project. This includes the Master Agreement terms regarding the site plan for the new City facilities, rental tower and South Esplanade Block condominium development, the cost and operation of shared facilities and the land transfers between the City and OPB Realty Inc. Attachment 2 is the draft Master Agreement, together with a Memorandum from Torys LLP which sets out the positions of the parties (and their substantial agreement) on the terms of the land swap and the other main features of the Project. The Master Agreement is not yet finalized, but it is sufficiently complete to serve as a statement of the obligations of both parties with respect to the Project.

A key feature of the Master Agreement is the exchange of lands between the parties. It is important to note that staff have negotiated significant improvements to the terms of the land swap since they were first set out in the non-binding MOU approved by Council in July of 2019. Those improvements are summarized below:

1. **Library** – As of November, 2019, the expectation was that the City would receive a strata parcel of part of the OPB lands on which the new Library was to be built. No air rights or other interests were to be conveyed. As of September, 2021, OPB has agreed to convey fee simple (freehold) title to the City of the lands on which the Library will be situated, together with easements for access and support. This increases the value and long term usability of the Library lands.
2. **City Parking Structure** – As of November, 2019, the expectation was that the City would receive a 99 year lease of a subsurface strata parcel of part of the OPB lands on which the City's Parking Structure (Level P1) would be built. As of September, 2021, OPB has improved its proposal by agreeing to convey fee simple title to the City of a strata parcel of part of the PTC land on which the City's Parking Structure will be situated, together with easements for access and support. It must also be noted that the portion of the City Parking Structure lying below the Library will also be conveyed to the City in fee simple. These improvements increase the value and usability of the City Parking Structure.
3. **Public Square** – As of July, 2019, OPB proposed to give the City no interest whatsoever in the public square area of the Project. As of November, 2019, OPB was prepared to offer the City a 99 year lease of a strata parcel to accommodate the Public Square. As of September, 2021, OPB has agreed to convey fee simple title to the City of a strata parcel for the Public Square, together with easements for access and

support. This means that the City will, appropriately, remain the owner of its Public Square in perpetuity.

4. **Public Road** – Before September, 2021, OPB proposed that the new local road adjacent to the Library, Town Square and PAC would be a private road. As of September, 2021, staff have obtained the agreement of OPB to make this a public road, with ownership being transferred to the City. The transfer of this road to the City will be a combination of fee simple (freehold), and strata parcel (where the road sits atop the underground parking structure). Again, this improves the value and utility of the land being conveyed to the City.

Outstanding Issues in the Master Agreement

The negotiations of the Master Agreement terms since May of this year have resulted in resolution in principle of most of the fundamental business terms of the Project. That being said, there remain some areas of concern which must be brought to Council's attention:

1. **Participation Covenant:** The Master Agreement (and previously the non-binding MOU) contemplates residential condominium development on the South Esplanade Block. To enable this development, OPB intends to direct the transfer of the South Esplanade Block to a developer experienced in residential condominium development. This aspect of the Project is of significant value to OPB, and it is also important to the City, because the development will result in assessment growth and an increase in property tax revenues that will help defray the City's project costs. If development of the South Esplanade Block does not occur, the expected assessment growth will not materialize. In an effort to protect the City from that possibility, staff have sought the agreement of OPB and its transferee that, if development does not occur, and instead the South Esplanade Block (or any part of it) is sold within five years, the City would be entitled to a 50 percent share of the net profit realized on such sale. This commitment (referred to as a "participation covenant") was requested to deter land banking (i.e. the developer simply electing not to construct the residential condominium development) and land speculation (i.e. a subsequent 'flip' of the undeveloped South Esplanade Block for a purchase price significantly in excess of that attributed to the lands as part of the land swap arrangements with OPB). OPB is unwilling to make this commitment to the City.
2. **Restrictive Covenants:** The City is aware of certain restrictive covenants which affect the OPB lands which the City will be acquiring. These restrictive covenants appear in certain leases with tenants of the Pickering Town Centre Shopping Centre. The City is currently aware of two restrictions in particular, in favour of Farm Boy and Cineplex, which as it currently stands, have a material impact on the proposed operation of the new City Facilities. These restrictions will limit the ability of the City to hold a farmers' market in the new public square, and will also prevent the City from showing videos or films in any of the new City Facilities. These restrictions will need to be removed or amended to enable the City to fully use the new City Facilities for their intended purpose. Discussions are ongoing with OPB as to how these restrictions will be addressed, but any resolution will require the agreement of both Farm Boy (Sobeys) and Cineplex. There may be other restrictions which become apparent as further due

diligence is conducted on the OPB lands by the City. It must be noted that the draft Master Agreement (Attachment 2) calls for the City to receive title to the lands for the new City Facilities “free and clear” of such encumbrances, however, the risk remains that OPB may not be able to obtain the agreement of its tenants to remove or amend in a satisfactory manner, these restrictive covenants.

3. Environmental Condition of the South Esplanade Block: As part of the land swap terms, the City is required to deliver the South Esplanade Block to OPB without any material environmental contamination and following issuance of a Record of Site Condition (“RSC”) from the Ministry of the Environment sufficient to permit the residential development. The City has not yet undertaken environmental site assessments of the South Esplanade Block to identify what, if any, contamination exists. To the extent any such contamination does exist, the City will be required to remediate at its sole cost and expense to the satisfaction of the Ministry. In addition, the timing for obtaining the necessary RSC is unclear and could take upwards of four months from the time an application is submitted to the Ministry. It is therefore unlikely that the RSC will be available for the spring of 2022, when the closing of the land swap and commencement of construction of the Project is anticipated.

Architect’s Agreement – Recommendation 5

Attachment 7 is the template Contract for Architectural Services between the City and architects-Alliance. Architects-Alliance has provided architectural design and related services for the Project since 2019, and has also been engaged by OPB Realty Inc. to design the rental tower which will be located above the SYC. As Council may recall, the Project was put on hold in 2020 due to the COVID pandemic. If Council proceeds with the Project, it will be important to re-engage architects-Alliance to complete its design work, so that the parties can proceed to the construction phase. The attached template Contract for Architectural Services has been reviewed by City staff, the City’s Development Manager and Torys LLP, and contains terms satisfactory to City staff.

Project Contracts Contemplated by the Master Agreement – Recommendation 6

The Master Agreement lists as schedules the various other contracts and documents which must be finalized in order to completely define all aspects of the Project. These other contracts and documents include the following:

- (i) Agreement of Purchase and Sale from *PTC Ownership* to City;
- (ii) Agreement of Purchase and Sale from City to *PTC Ownership-South Esplanade Block*-substantially the same form as (i) above;
- (iii) Reciprocal Operating Agreements for Library, SYC, PAC, Public Square and City Parking Structure;
- (iv) Parking Garage Development Management Agreement;

- (v) Parking Management Agreement;
- (vi) City and Region of Durham standard development and servicing requirements;
- (vii) City Centre Master Plan;
- (viii) Draft Plan of Subdivision for the PTC Lands;
- (ix) Legal Description of the Performing Arts Centre Parcel;
- (x) Legal Description of the City Lands;
- (xi) Legal Description of the Library Parcel;
- (xii) Legal Description of the *PTC Ownership* Lands;
- (xiii) Legal Description of the PTC Lands;
- (xiv) Legal Description of the SYC Parcel;
- (xv) Legal Description of the South Block Lands;
- (xvi) Site Plan to be submitted under s.41 of the Planning Act;
- (xvii) Architect's agreements;
- (xviii) CCDC 2 construction contracts; and
- (xix) Shared Facilities Management Agreement.

Socio-economic Benefits of the Project

The capital expenditure by the City to construct the City Centre Project can be expected to generate economic activity at the Provincial, regional and local level, contributing to Ontario's GDP, creating and maintaining jobs and generating tax revenues. The City of Pickering has retained Deloitte LLP to provide a high level estimate of the potential economic contributions of the Project and to profile selected socio-economic benefits that can also be expected. Below is an excerpt of the quantitative analysis provided by Deloitte LLP. Additional details can be found in the Deloitte report, which is Attachment 6 to this report.

The total capital expenditure for the Project is estimated at \$207.7 million. It is estimated that the City of Pickering's capital expenditure during the construction period could yield the following economic contributions:

- \$0.96 of GDP for every dollar spent by the City of Pickering on the Project could be generated for the Ontario economy;
- \$199.5 million in GDP, as well as 1,779 jobs (FTEs) created or maintained

in Ontario;

- \$33.9 million in Provincial and municipal tax revenues, of which \$18.9 million is at the Provincial level and \$15 million is at the municipal level.

The aforementioned estimates account for direct, indirect and induced economic contributions from the construction of the project and are reported in 2021 Canadian dollars.

The table below provides more details:

Table 1 - Detailed estimated economic contributions

	Ontario (Total)	Direct	Indirect	Induced
 Gross Domestic Product (GDP)	\$199.5M	\$108.0M	\$48.5M	\$43.0M
 Labour Income	\$128.7M	\$77.1M	\$31.6M	\$20.0M
 Government Revenues	\$18.9M Provincial government	\$8.2M Provincial government	\$3.2M Provincial government	\$7.5M Provincial government
	\$15.0M Municipal government	\$10.7M Municipal government	\$1.1M Municipal government	\$3.1M Municipal government
 Employment (Full-Time Equivalents)	1,779 jobs created or sustained	984 jobs created or sustained	437 jobs created or sustained	358 jobs created or sustained

The totality of the City Centre project represents an important series of investments for the local economy and community. As summarized by Deloitte LLP in Attachment No. 6, a number of potentially lasting socio-economic benefits could be observed as a result of this major capital investment including but not limited to:

1. The immediate spike in economic activity that can be expected during construction, coupled with the longer-term benefits gained from new investments, could advance the standard of living of the community and help contribute to local economic competitiveness. The expected enhanced transportation networks (enhanced local road network) will help local businesses and lead to positive economic outcomes.
2. The addition of approximately 3,692 new residential units is aligned to national action on housing, and could help the Pickering increase available housing stock. Finally, the new Library, SYC, and PAC can help support positive learning, health, mental health and skills outcomes, and create new opportunities for the community to congregate and connect with one another, and create new business opportunities for Pickering.

Notes:

- While the construction of approximately 3,692 new residential units can be expected to generate economic contributions, they are not accounted for in Deloitte’s review.
- The economic contributions are estimated using an “Input-Output” methodology, which traces how spending associated with the City’s capital expenditures contributes to the economy by creating demand for goods and services across different industries.

h) Other Matters for Consideration

Civic Complex Parking Strategy

Pursuant to Recommendation 2. d of Report CAO 04-21 endorsed by Council on May 25, 2021, IBI Group was retained to undertake a parking strategy to review immediate and short term parking needs for the Pickering Civic Complex area.

During the relocation of municipal services onto Glenanna Road between Kingston Road and Pickering Parkway, the availability of parking on Glenanna Road and within the Esplanade South parking lot will be impacted. As such, there will be a requirement to find alternative parking for City staff and Civic Complex (Library and City Hall) patrons.

In order to determine existing and future parking demand, the consultant referenced the Institute of Transportation Engineers Parking Generation Manual in lieu of conducting parking utilization surveys given the on-going COVID-19 pandemic. Parking demand profiles were generated, allowing hourly parking demands to be estimated based on time-of-day distribution of parking demand.

Since peak utilization will increase above the 87 percent level with all parking available, there is a requirement to find alternative parking. Once the Glenanna Road relocation of services project commences, peak utilization will be 125 percent, therefore the requirement for alternative parking will occur early in the City Centre project.

It has been determined that the best source of alternative parking is the existing gravel overflow parking area that is located in the south east parking lot of the Chestnut Hill Developments Recreation Complex. This parking area will require upgrades including asphalt paving, line marking, lighting and security cameras in order to provide a safe environment and to maximize the number of parking spaces. The estimated cost to upgrade the parking area is \$400,000. A project cost of \$270,000 was approved in the 2020 Capital Budget and the funding source for this project is the casino reserve.

Risks & Opportunities

Stormwater Management

When the Pickering Town Centre Mall was being expanded in the 1980's, the requirement for storage of stormwater from major storms for the upstream drainage area was addressed by providing on-site parking lot storage as a stormwater management facility. The parking lot was designed and graded for approximately 7400 m³ of water to be detained on the surface until such time as downstream flows subsided.

The development of the south area of the Master Plan (Blocks 4, 6, 7 and 8) is in the area of the storm water storage area. The consulting firm of Sabourin Kimble and Associates (SKA), on behalf of Ontario Pension Board (OPB), have prepared a Preliminary Servicing and Stormwater Management Report to address both the interim and ultimate solution for the storage of stormwater on the site. SKA has determined that for Phase 1 of the Master Plan (Blocks 1-9), some of the stormwater can be stored in underground chambers while some

stormwater can remain as surface storage by regarding the parking lot. For the ultimate development of the site (Blocks 10-17 west of Phase 1), the storage of stormwater can be addressed as either a combination of underground and surface storage, or stored entirely in underground chambers. This issue may have financial implications for the City. If the project proceeds, staff will endeavor to investigate the possible financial liability and report back at a future date.

Transportation

In support of the City Centre Master Plan (Blocks 1-9 and the South Block), a report entitled "Pickering City Centre Master Plan Review Urban Transportation Considerations" was prepared by BA Consulting Group Ltd., and submitted to the Ministry of Transportation (MTO) for review and comment.

In discussions with MTO prior to submission of this report, their staff raised no significant concerns raised regarding the initial development consisting of the three City facilities, the residential tower and the South Block. MTO did request that a traffic impact study be undertaken. As such, City staff are not anticipating any significant requirements from MTO such as Highway 401 interchange improvements in order to proceed with the first phase of the Master Plan.

MTO is aware that the City will be issuing a Request for Proposals for a City Centre Transportation Master Plan that will consider not only full build out of the City Centre Master Plan, but also the transportation needs and impacts of other development projects either underway, such as Universal City, or proposed along Kingston Road. Future development projects could possibly trigger the need for improvements at critical Highway 401 interchanges such as Brock Road, Liverpool Road and Whites Road. The Terms of Reference for the City Centre Transportation Master Plan, which have been reviewed and accepted by MTO, include studying existing and future traffic demands at these interchanges

Tillings Road Land Sales

The City's Operations facility located at 2570 Tillings Road was vacated in July of 2019 when Public Works moved to the new Operations Centre at 1955 Clements Road. The area of the site used by Public Works at the Tillings Road site was the 10 acres immediately south of Scenic Lane Drive. All buildings and above grade structures were demolished and removed in 2020. The City is currently completing an environmental site assessment and submission to the Ministry of Environment prior to the final remediation and decommissioning of the site. The Durham District School Board have expressed the intent to acquire up to 8 acres of the site as the location of a future planned elementary school, once remediation is complete. Remediation is anticipated to be completed in 2022, subject to final approval from the Ministry of Environment.

The City intends to work with the Durham District School Board for the sale of land to accommodate the new school and the goal is to obtain fair market price for the land. At this time, it would be premature to attach a sales figure for the land, however, based on recent experiences, City staff estimate a land value of \$2.1 million of developable acre. Before the land is sold, however, the City would engage a certified property appraiser. The net proceeds

from the land sale would be transferred to the Rate Stabilization Reserve to offset and or reduce the dollar amount of identified debt financed capital projects. The remaining 2 acres at the west end of the property would be retained by the City and staff will recommend to Council re-purposing this land as a parkette amenity to provide passive green space in the neighborhood.

City Centre Net Operating Costs Estimated Forecast

The following tables provide an estimate of the 2026 and 2027 net costs (based on 2021 costs) to operate the three City Centre buildings, underground parking garage (City portion) and the Public Square based on an opening date of July 1, 2026. For 2026, the net operating costs include pre-opening costs for the first six months and net operating costs for the remaining six months of the year.

Naming Rights revenue has been included in each of the City buildings and the Public Square estimated revenues for 2026 and 2027. The City had earlier engaged Sponsorship Canada to value the naming rights for these assets. Sponsorship Canada provided the City with a 10 year pricing range (High, Mid and Low) for selling the naming rights of each facility and the Public Square. For this financial exercise, the mid-point naming rights pricing was used to estimate the naming rights revenue. There are also additional revenue opportunities available by obtaining naming rights revenue for internal large rooms/structures such as the Library Auditorium. The internal naming rights revenue is **not** included in the City Centre cost exercise.

Table Six
New Central Library Incremental Net Operating Costs

	2026	2027
Expenses	(July 1 opening date)	(full 12 months)
Salary & Benefits	\$816,320	\$1,019,365
Building & Equipment Maintenance	195,040	293,380
Library Materials & Program Supplies	43,250	57,500
General Administration & Technology	<u>374,395</u>	<u>351,630</u>
Total Expenses	\$1,429,005	\$1,721,875
Revenues		
Building Naming Rights	(\$50,000)	(\$100,000)
Other	<u>(22,625)</u>	<u>(42,250)</u>
Total Revenues	(\$72,625)	(\$142,250)
Net Incremental Operating Costs	<u>\$1,356,380</u>	<u>\$1,579,625</u>

Regarding the City Centre Library, incremental expenses and revenues for 2026 and 2027 have been identified that are in addition to the Central Library's current expenses and revenues and are based on a July 1, 2026 opening date and pre-opening costs.

The incremental cost to operate the City Centre Library is primarily for additional staffing (See Table 10) followed by increased costs for building utilities and maintenance, general

administration and technology. Building naming rights revenue is estimated at \$50,000 in 2026 (July 1st opening date) and \$100,000 in 2027.

Table Seven
Performing Arts Centre Net Operating Costs

Expenses	2026 (July 1 opening date)	2027 (full 12 months)
Salary & Benefits	\$1,426,825	\$1,873,155
Building & Equipment Maintenance	143,015	204,125
Marketing & Promotion	267,250	299,500
Programming	474,000	861,000
General Administration & Technology	<u>373,555</u>	<u>438,850</u>
Total Expenses	\$2,684,645	\$3,676,630
Revenues		
Ticket Sales	(\$646,500)	(\$1,293,000)
Rental Revenue	(255,600)	(511,200)
Other	(304,150)	(608,300)
Building Naming Rights	<u>(62,500)</u>	<u>(125,000)</u>
Total Revenues	(\$1,268,750)	(\$2,537,500)
Net Operating Costs	<u>\$1,415,895</u>	<u>\$1,139,130</u>

The largest driver of operating costs for PAC are salary and benefits followed by programming costs, and marketing and promotion costs. The PAC's operating costs are partially offset by Ticket Sales, rental revenues and grants and donations. Building naming rights revenue is estimated at \$62,500 in 2026 (July 1st opening date) and \$125,000 in 2027.

Table Eight
Public Square Net Operating Costs

Expenses	2026 (July 1 opening date)	2027 (full 12 months)
Salary & Benefits	\$128,965	\$236,080
Public Square & Equipment Maintenance	156,150	203,600
Programming	25,500	37,000
General Administration	<u>20,850</u>	<u>30,700</u>
Total Expenses	\$331,465	\$507,380
Revenues		
Square Naming Rights	<u>(\$30,000)</u>	<u>(\$60,000)</u>
Total Revenues	(\$30,000)	(\$60,000)
Net Operating Costs	<u>\$301,465</u>	<u>\$447,380</u>

The cost to operate the Public Square is largely due to salary and benefit costs (see table 10) to maintain the public square (during all seasons) and equipment maintenance costs. Public Square naming rights revenue is estimated at \$30,000 in 2026 (July 1st opening date) and \$60,000 in 2027.

Table Nine
Seniors & Youth Centre Net Operating Costs

Expenses	2026 (July 1 opening date)	2027 (full 12 months)
Salary & Benefits	\$977,745	\$1,563,770
Building & Equipment Maintenance	213,265	274,960
Marketing & Promotion	119,000	83,000
Programming	43,250	50,500
General Administration & Technology	<u>228,655</u>	<u>244,265</u>
Total Expenses	\$1,581,915	\$2,216,495
Revenues		
Programming	(297,500)	(595,000)
Other	(63,800)	(127,600)
Building Naming Rights	<u>(12,500)</u>	<u>(25,000)</u>
Total Revenues	(\$373,800)	(\$747,600)
Net Operating Costs	\$1,208,115	\$1,468,895
Less savings from ESCC closure	<u>(318,270)</u>	<u>(636,590)</u>
Net Incremental Operating Costs	<u>\$889,845</u>	<u>\$832,305</u>

Regarding the new Seniors and Youth Centre (SYC), the 2026 and 2027 net costs to operating the SYC have been calculated in the above table. Estimated savings from the closure of the ESCC (subject to Council approval) have then been deducted to arrive at the net incremental costs to operate the new SYC in 2026 and 2027.

The net cost to operate the SYC is largely due to salary and benefits costs for new staff including an enhanced corporate security staff team (See Table 10) followed by building utilities and maintenance costs, marketing and promotion costs for City programs and general and administrative expenses, partially offset by programming revenues. Building naming rights revenue is estimated at \$12,500 in 2026 (July 1st opening date) and \$50,000 in 2027.

Table Ten
Underground Parking Garage

Expenses	2026 (July 1 opening date)	2027 (full 12 months)
Salary & Benefits	\$158,785	\$213,895
Parking Garage & Equipment Maintenance	76,500	134,000
General Administration	<u>17,875</u>	<u>14,500</u>
Total Expenses	<u>\$253,160</u>	<u>\$362,395</u>
Net Operating Costs	<u>\$253,160</u>	<u>\$362,395</u>

The cost to operate the underground parking garage (City portion) is largely due to salary and benefit costs (see Table 10) and parking garage and equipment maintenance costs. Revenues

have not yet been estimated until the City has completed its external underground parking strategy.

**Table Eleven
Additional Staff**

Facility	Additional Staff (Full Time Equivalents or FTEs)			Total Additional FTEs
	2025	2026	2027	
Central Library	-	16.9	(0.7)	16.2
PAC	2	23.0	-	23.0
Public Square	-	3.5	0.4	3.9
SYC	-	20.4	-	20.4
Underground Garage	-	<u>2.8</u>	-	<u>2.8</u>
Total	2	66.6	(0.3)	68.3

The total Net City Centre Operating Costs will add \$4.5 million to the City's total 2026 operating expenditures which will increase the 2026 tax levy in the range of 4.5 percent to 5.5 percent. Usually, most municipalities construct and open one building. The City Centre project consists of three buildings, underground parking garage and public square. As the construction period comes to an end, there may be an opportunity to partially "Phase-in" the operating costs over a few years. The estimated tax levy range between 4.5 and 5.5 percent will be in addition to the City's estimated average annual 2.5 percent tax levy increase that was used for financial modelling purposes for this report.

Attachments:

1. 5-Year Capital and Operating Financial Plan dated October 14, 2021 by Watson & Associates Economists Ltd.
2. Draft Master Agreement
3. Report CAO 07-19
4. Report CAO 04-21
5. Master Plan Excerpts
6. Deloitte LLP Socio-economic Contributions Summary
7. Contract for Architectural Services

Prepared By:

Original Signed By:

James Halsall
Division Head, Finance

Approved/Endorsed By:

Original Signed By:

Paul Bigioni
Director, Corporate Services & City Solicitor

Approved/Endorsed By:

Original Signed By:

Stan Karwowski
Director, Finance & Treasurer

Recommended for the consideration
of Pickering City Council

Original Signed By:

Marisa Carpino, M.A.
Chief Administrative Officer

Attachment #2 to Report FIN 15-21

DRAFT AGREEMENT –FOR DISCUSSION PURPOSES ONLY

MASTER AGREEMENT

THIS AGREEMENT made as of the day of , 20,

B E T W E E N :

THE CORPORATION OF THE CITY OF PICKERING
(hereinafter called the "**City**")

- and -

PTC OWNERSHIP REALTY INC.
(hereinafter called "**PTC Ownership**")

WHEREAS:

- A. In 2018 the City and *PTC Ownership* announced a strategic partnership for the redevelopment of *PTC Ownership* lands on the east side of the Pickering Town Centre and for the redevelopment of City lands on the south side of Esplanade South, which redevelopment is known as the "**City Centre Joint Initiative**";
- B. The parties share the goal of creating a vibrant, connected, and bustling downtown, where municipal service delivery, shopping & retail, and residential intensification come together as the heart of the City;
- C. The vision for the City Centre Joint Initiative includes, among other things, a series of land exchanges between *PTC Ownership* and the City and the construction on lands to be acquired from *PTC Ownership* of a new:
 - (i) central library, and
 - (ii) seniors and youth centre, with a 50 storey rental apartment building to be constructed above it, and
 - (iii) performing arts centre, and
 - (iv) a pedestrian piazza connecting City Hall with the new City facilities and the Pickering Town Centre Shopping Centre, and
 - (v) public realm improvements from the Piazza through Esplanade Park and Esplanade South through to the Parks and Recreation Centre.

- (vi) underground parking with access to and from each of the new City facilities and residential building, and
 - (vii) connecting roads, amenities and other improvements;
- D. In exchange, *PTC Ownership* will acquire from the City certain lands which are referred to as the “South Block Lands” on which will constructed, on a future date, mixed use residential including two condominium point towers;
- E. The parties have agreed on a master plan (the “City Centre **Master Plan**”) that describes the development of the *PTC Ownership* lands and the City lands to be exchanged and developed in accordance with City Centre Plan;
- F. On July 22, 2019, Council endorsed a Memorandum of Understanding (“**MOU**”) dated July 16, 2019 between the City and *PTC Ownership* that formed the basis for negotiating the definitive agreements necessary to implement the Master Plan and City Centre 2023 Plan, and including, without limitation, this Agreement; **[NOTE: THE LAST EXECUTED MOU FILES IS DATED “AUGUST 6, 2019 UPDATED NOVEMBER 26, 2019”]**
- G. In 2019, the City initiated rezoning of the lands contemplated in the City Centre Master Plan and in accordance with the MOU, to support the development of the City Centre Joint Initiative and the development described herein;
- H. The proposed use and development of the *PTC Ownership* lands and the City lands as described in the City Centre Master Plan conforms with the City’s Zoning By-Law 7443/17;
- I. The City has determined that adequate sanitary, storm and water service capacity exists to permit the development of the South Block Lands as intended by *PTC Ownership* without delay, and **[NTD: 1) we should address that we are awaiting MTO’s consent - note MTO are reviewing the off ramp implications from Brock to Whites Rd in Pickering because of the overall City growth (presume and improvements will be part of the Levies?)]**
- J. The City and *PTC Ownership* have both actively engaged in and independently retained consultants to assist with conducting the necessary due diligence to move forward with the City Master Plan, , the contemplated land exchanges, and the definitive agreements necessary to implement the City Centre Master Plan and City Centre 2023 Plan;
- K. The affected lands are provincially recognized as an Urban Growth Centre and Mobility Hub, and
- L. The City and *PTC Ownership* have agreed to enter into this Agreement with respect to setting out the roles and responsibilities of each of them in all matters concerning the City Center Joint Initiative and including the contemplated land exchanges, the construction of infrastructure and new facilities and improvements, the entering into of the definitive agreements and all other matters related to and necessary for the build out of the City Centre Master Plan.

NOW THEREFORE this Agreement witnesses that in consideration of the covenants contained herein, as well as other good and valuable consideration and the sum of ten dollars (\$10.00) of lawful money of Canada, now paid to each of the parties by the other party (the receipt and sufficiency whereof are hereby acknowledged), the Parties hereby covenant, promise and agree with each other as follows:

ARTICLE 1

DEFINITIONS and INTERPRETATION

- 1.1 In this Agreement and the attached Schedules, the words and expressions listed in this Section shall have the meanings set out below:
- (a) **“Agreement”** means this executed master development agreement and its schedules, all of which are incorporated by reference into and form part of the Agreement, as follows:
[NOTE: WILL WE HAVE ACTUAL FINAL OPERATING AGREEMENTS AND LEASE TO ATTACH OR OUTLINE OF TERMS?]
- (i) Schedule “A” - Agreement of Purchase and Sale from *PTC Ownership* to City - Arts Centre Parcel
 - (ii) Schedule “B” - Agreement of Purchase and Sale from *PTC Ownership* to City - Library Parcel
 - (iii) Schedule “C” – Agreement of Purchase and Sale from *PTC Ownership* to City – S Y & C Parcel
 - (iv) Schedule “D” - Agreement of Purchase and Sale from City to *PTC Ownership*- South Block Lands
 - (v) Schedule “E” - Library Development Management Agreement
 - (vi) Schedule “F” – Library Reciprocal Operating Agreement
 - (vii) Schedule “G” – S & YC Development Management Agreement
 - (viii) Schedule “H” – S & YC Reciprocal Operating Agreement
 - (ix) Schedule “I” – Arts Centre Development Management Agreement
 - (x) Schedule “J” – Arts Centre Reciprocal Operating Agreement
 - (xi) Schedule “K” – Lease of Piazza and City Parking Structure
 - (xii) Schedule “L” – Piazza and City Parking Structure Reciprocal Operating Agreement
 - (xiii) Schedule “M” – Parking Garage Development Management Agreement
 - (xiv) Schedule “N” - Parking Management Agreement
 - (xv) Schedule “O” - City and Region of Durham standard development and servicing requirements
 - (xvi) Schedule “P” – City Centre Master Plan

- (xvii) Schedule "Q – Draft Plan of Subdivision for the PTC Lands **[NTD: change lettering on remainder of Schedules**
 - (xviii) Schedule "Q" – Legal Description of the Arts Centre Parcel
 - (xix) Schedule "R" – Legal Description of the City Lands
 - (xx) Schedule "S" – Legal Description of the Library Parcel
 - (xxi) Schedule "T" – Legal Description of the *PTC Ownership* Lands
 - (xxii) Schedule "U" – Legal Description of the PTC Lands
 - (xxiii) Schedule "V" – Legal Description of the S & YC Parcel
 - (xxiv) Schedule "W" – Legal Description of the South Block Lands
 - (xxv) Schedule "X" – Legal Description of ●
 - (xxvi) Schedule "Y" – Legal Description of ●
 - (xxvii) Schedule "Z" - Site Plan to be submitted under s.41 of the Planning Act **[NTD: single site plan or multiple and phased?]**
 - (xxviii) Schedule "AA" - Form of Architect's agreement
 - (xxix) Schedule "BB" – Form of CCDC 2 construction contract
 - (xxx) Schedule "CC" – Memorandum of Understanding
 - (xxxi) Schedule "DD" – Schedule A1 to the MOU
 - (xxxii) Schedule "EE"● **[NTD...Schedules to be confirmed]**
- (b) **"Architects"** means Architects Alliance including their subconsultants responsible for the design of the City Facilities, Parking Garage,
- (c) **"PAC"** means a 600 seat performing arts and concert hall to be built on the Arts Centre parcel and to be owned and operated, directly or indirectly, by the City.
- (d) **"PAC Parcel"** means the freehold parcel legally described on Schedule ● located at ● within the existing PTC Lands, and to be conveyed by *PTC Ownership* to the City, and upon which the PAC is to be situate, together with and subject to such support and access easements as may be necessary for the use and enjoyment of such freehold parcel and the adjoining improvements. **[NTD: do we include the triangle Parkette ? – yes make this part of Part 2]**
- (e) **"PAC PTC Common Area"** means ●**[NTD; there is no common area between PAC and PTC do not know where the definition will be used]**

- (f) **"PAC Development Management Agreement"** means the agreement attached as Schedule ● between the City and the City Development Manager to oversee the procurement, design and construction, fixturing and interior fit out of the PAC on behalf of the City.
- (g) **"City"** means the Corporation of the City of Pickering
- (h) City Centre means the City Facilities,
- (i) **"City Development Manager"** means twopointO,
- (j) **City Facilities** means the Library, PAC and SYC buildings
- (k) **"City Lands"** means the lands to be conveyed to the City by *PTC Ownership* in exchange for the South Block Lands to be conveyed to *PTC Ownership* by the City, and being specifically the PAC Parcel, Library Parcel, and SYC Parcel.
- (l) **"City Parking Structure"** means that portion of the Parking Garage located on the first level thereof to be leased to the City under the City Parking Structure and Piazza Lease.
- (m) **"City Parking Structure and Piazza Lease"** means the 99 year lease by which the subsurface strata parcel for the City Parking Structure and the at grade parcel for the Piazza are leased to the City, and which is attached as Schedule ●.
- (n) **City Public Realm Improvements** means the Public Realm improvements on Glenanna Rd through Esplanade Park, Esplanade South through to the Parks and Recreation Centre.
- (o) **"City Shared Facilities"** means the City facilities electrical vault and central plant that will be located in the S&YC Parcel
- (p) **"Credits"** *[NTD: do we need to define the development and cost-sharing credits that will accrue to PTC Ownership as a result of its contributions?]*
- (q) **"Commercial Space"** means commercial space within the Master Plan lands *[NTD: including the City facilities?]*.
- (r) **"Cushman & Wakefield"** means Cushman & Wakefield Asset Services ULC.
- (s) **"CW Development Manager"** means Cushman & Wakefield.
- (t) **"Draft Plan of Subdivision"** means
- (u) **"Definitive Agreements"** means each the following ●
- (v) **"Development Charges"** means ●
- (w) **"Effective Date"** means ●
- (x) **"Future Development Parcels"** means ●

- (y) **“General Contractor”** means • the General Contractor retained pursuant to Section 4.3
- (z) **“Governmental Authorities”** means the City acting in its regulatory capacity, Durham Region and *[NTD: is there a role for the conservation authority? Need to clarify any other government authorities Check with Planning – conservation authority is not an issue here. The City is storing upstream stormwater on the PTC site which we have developed an interim solution for – we can discuss this in more detail on our next call. We should add some reference about MTO as well.]*
- (aa) **“Library Development Management Agreement”** means the agreement attached as Schedule • between the City and the City Development Manager to oversee the procurement, design and construction, fixturing and interior fit out of the Library on behalf of the City.
- (bb) **“Library Parcel”** means the strata parcel legally described on Schedule • located at • within the existing PTC Lands, and to be conveyed by *PTC Ownership* to the City, and upon which the Library is to be situate, together with and subject to such support and access easements as may be necessary for the use and enjoyment of such strata parcel and the adjoining improvements.
- (cc) **“Library PTC Common Area”** means • *[NTD: there is no common area between Library and PTC]*
- (dd) **“Block Plan”** means the nine blocks of land as defined in the City Centre Master Plan and attached as Schedule •.
- (ee) **“Master Plan Lands”** means that portion of the PTC Lands which include Blocks 1 to 9 as shown in • on Schedule • that will be developed mutually with the City as part of the City Centre Master Plan.
- (ff) **“Parking Garage Development Management Agreement”** means the agreement attached as Schedule • between *PTC Ownership* and the C&W Development Manager to oversee the procurement, design, construction, fixturing and interior fit out of the Parking Garage.
- (gg) **“Parcels”** means •
- (hh) **“Parking Garage”** means a three-level underground parking garage structure to be constructed by *PTC Ownership*, which includes the City Parking Structure, the Rental Property Parking Structure and the Shared Facilities.
- (ii) **“Parking Management Agreement”** means the agreement attached as Schedule • to be entered into between the Parties regarding the operation and management of the City Parking Structure.
- (jj) **“Parking Structure PTC Common Area”** means •
- (kk) **“Parties”** means *PTC Ownership* and the City collectively, and **“Party”** means one of *PTC Ownership* or the City as the context determines.

- (ll) **"Piazza"** means the public exterior plaza to be located at grade over the City Parking Structure including all related facilities and services, as shown hatched in green on Schedule ●.
- (mm) **"PTC"** means the Pickering Town Centre shopping centre.
- (nn) **"PTC Ownership"** means the owner of PTC, who is *PTC Ownership Realty Inc* as of the date hereof.
- (oo) **"PTC Ownership Contribution"** means ●
- (pp) **"PTC Lands"** means the lands legally described on Schedule ●. ***[NTD: this is the definition for the existing shopping centre lands]***
- (qq) **"PTC Ownership Contribution"** means any financial cost-sharing as agreed to and documented in this Agreement as well as *PTC Ownership's* contributions to the sewage and water pipe realignment along Glenanna Rd to align with City Facility relocation and *PTC Ownership's* contribution towards the cost of constructing the Piazza.
- (rr) **"PTC Residential"** means the owner of the rental building to be constructed on the S&YC Parcel above the S&YC.
- (ss) **"Public Realm Improvements"** means the Piazza and City Public Realm Improvements as shown in Green on Schedule DD.
- (tt) **"Rental Building"** means the rental apartment building to be constructed on the S & YC Parcel above the S & YC and owned by PTC Residential.
- (uu) **"Rental Building Parking Structure"** means that portion of the Parking Garage located on the second and third level thereof.
- (vv) **"Shared Costs"** means ●.
- (ww) **"Shared Facilities"** in respect of the City and PTC Residential means the shared entry ramp to the first parking level, shared water / fire pump and telecom rooms, the storm water meter room and storage tank as well as the shared loading dock, as shown in ● on Schedule ●.
- (xx) **"SYC"** means the Seniors & Youth Centre and related facilities and improvements comprised of approximately 64,000 square feet and shown in ● on Schedule ●.
- (yy) **"SYC Parcel"** means the strata parcel legally described on Schedule ● located at ● within the existing PTC Lands, and to be conveyed by *PTC Ownership* to the City, and upon which the SYC is to be situate, together with and subject to such support and access easements as may be necessary for the use and enjoyment of such strata parcel and the adjoining improvements.
- (zz) **"SYC PTC Common Area"** means the lands outlined in ● on Schedule ● and adjacent to the SYC, to which the general public will have access the City Centre as will the tenants and patrons of PTC. ***[NTD: I believe this is intended to be the Piazza. Tenants and***

patrons of the shopping centre have access and egress (***do we need an easement for this?***) to the Piazza through the mall doors but this is the City's space

- (aaa) **"SYC Development Management Agreement"** means the agreement attached as Schedule ● between the City and the C&W Development Manager to oversee the procurement, design and construction of the SYC on behalf of the City.
 - (bbb) **"South Block Lands"** means the lands legally described on Schedule ●, to be conveyed to *PTC Ownership* by the City in exchange for the conveyance of the Library Parcel, PAC Parcel and the SYC Parcel to the City by *PTC Ownership*.
 - (ccc) **"South Block Plans"** means the plans attached as Schedule ● ***[NTD: these plans require a C of A approval]***
 - (ddd) **"twopoint0"** means twopoint0 partners inc.
- 1.2 The documents that comprise this Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.3 shall apply.
- 1.3 In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (a) the provisions of amendments in writing to this Agreement signed by the Parties including changes shall govern and take precedence only over those specific provisions of this Agreement expressly amended thereby;
 - (b) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (c) the body of this Agreement;
 - (d) the Dispute Resolution Procedure set out in Article 11.

[NTD.....need paramountcy language regarding schedules if there is a conflict among the schedules and this Agreement] NOTE: SCHEDULES WILL BE MORE DETAILED AND SPECIFIC AND THEREFORE I THINK SHOULD GOVERN IN THE EVENT OF CONFLICT

ARTICLE 2

RECITALS AND SCHEDULES

- 2.1 The Parties agree that the recitals hereinbefore set out are true in substance and in fact, and that the Recitals and Schedules form an integral part of this Agreement.

ARTICLE 3

CO-ORDINATION OF DEVELOPMENT AND USE OF THE PUBLIC FACILITIES

- 3.1 The City and *PTC Ownership* have jointly submitted the City Centre Master Plan and the South Block to the City's Director of City Development.. The City Centre Master Plan will be presented for the Planning Development Committee Approval on October 3rd 2021 and if approved there on to City Council approval on October ●, 2021
- 3.2 The City has made a preliminary site plan submission for the Library, PAC and SYC to the City's Director of City Development. The City Planning Department is in general satisfied with the site plan submissions subject to the satisfaction of the customary site conditions and formal sign off from the Authorities having jurisdiction. ***[NTD: the City Planning Department has NOT signed off to date but will have if the Parties sign this agreement]***
- 3.3 *PTC Ownership* has made a preliminary site plan submission for the Rental Building, Commercial Space and South Block to the City's Director of City Development. The City Planning Department is in general satisfied with the site plan submissions subject to the satisfaction of the customary list of site conditions and formal sign off from the Authorities having jurisdiction. ***[NTD: the City Planning Department has NOT signed off to date but will have if the Parties sign this agreement]***
- 3.4 *PTC Ownership* will submit a Draft Plan of Subdivision for the Master Plan Lands based on the City Centre Master Plan to the City's Director of City Development. Provided that the Draft Plan of Subdivision conforms with the City Centre Master Plan, the City will support *PTC Ownership* in this application.
- 3.5 The Parties will determine by the time an application for subdivision approval is submitted at the latest, which roads will be privately held and which roads will be assumed by the City as public roads.
- 3.6 The City shall have sole responsibility for programming and issuing permits for use of the Piazza, as well as for insuring it in regards to its use. The Parties agree that the City may temporarily close the Piazza to vehicular traffic from time to time as the City sees fit and to support programming.
- 3.7 The City will ●***[NTD...should we have a covenant obligating the parties to execute the Definitive Agreements? Should we have language obligating PTC Ownership to cause PTC Residential to execute agreements as applicable?] NOTE: I THINK A COVENANT TO EXECUTE OR CAUSE TO BE EXECUTED BY THE APPLICABLE PARCEL OWNERS WOULD BE APPROPRIATE***

ARTICLE 4

CONSTRUCTION OF CITY AND SHARED BUILDINGS

The Parties agree that to facilitate and support the development of the City Lands (including the Rental Building) and the future development of the South Block, reciprocal easements will be granted between each of the Parcels to ensure pedestrian and vehicular access, installation of servicing, construction

phasing and shared facilities. **[NTD...do we need language obligating the parties to consent the easements, etc?]**

- 4.1 The City and *PTC Ownership* have independently retained the Architect to develop an integrated design for the City and *PTC Ownership* buildings making up City Centre.
- 4.2 The City and *PTC Ownership* confirm that *PTC Ownership* has retained Cushman & Wakefield as development managers to oversee the design, development, and construction of the Parking Garage, SYC, Rental Building and the Commercial Space. The City and *PTC Ownership* confirm that twopointO has been retained by the City to oversee the design, development and construction of the Library, PAC and the Public Realm Space.
- 4.3 To benefit from cost efficiencies and to ensure optimal coordination of construction activity, the City and *PTC Ownership* have independently retained the same General Contractor using the same CCDC2 form of contract. The General Contractor will be responsible for the construction of all Building(s) **[NTD; add a definition for 'Building' from DoW]** save and except those to be constructed on the South Block.
- 4.4 The City is responsible for the construction of the Library, PAC, SYC and the Public Realm Space. *PTC Ownership* will be responsible for the construction of the Rental Building, Commercial Space, Parking Garage and PTC Public Realm Improvements. In addition, at the time of the demolition of the old PTC theatres, *PTC Ownership* shall construct the Library/PTC shared loading facility **[NTD: we need to pick up how the City reimburses PTC Ownership for their portion of this cost.]**

The work to be completed by each Building by the respective Party and the easements required through Adjacent Building(s) **[NTD: add a definition for 'Adjacent Building']** are detailed in the Delineation of Work (DoW) between the Parties as attached in Schedule • **[NTD: clarify any wording required in the DoW rather than attempting to restate the work in this Master Agreement as the DoW will be used by the Architects, Cost Consultants and General Contractor to define what goes in each Building]**

- 4.5 The General Contractor will have individual construction contract (and therefore take instructions only) from the City respecting the construction of each of the Library, PAC, SYC and Public Realm Improvements. The General Contractor will have individual construction contract (and therefore take instructions from *PTC Ownership*) respecting the construction of each of the Rental Building, Commercial Space, Parking Garage and PTC Public Realm Improvements **[NTD: need to add PTC Public Realm Improvements to the definitions].**
- 4.6 **[NTD: Add Cross-default provisions to protect the Parties in the event of a default by the General Contractor in any one of the buildings. Also, need to add wording to protect both Parties once the work proceeds - both Parties are depending on the performance of the other once the work commences]**
- 4.7 The Parking Garage, including the City Parking Structure, shall be constructed by *PTC Ownership*, subject to the reimbursement by the City to *PTC Ownership* for the City Parking Structure costs. The City Parking Structure will be designed and constructed in accordance with plans and specifications reviewed and approved by the City and *PTC Ownership*. *PTC Ownership* has enter into contracts with C&W Development Manager, the Architects, the General Contractor

respecting the design and construction of the Parking Garage (including the City Parking Structure). *PTC Ownership* and the City will approve in writing the Parking Garage Budget and....
[NTD: we need to articulate in this section how the Parties will approve the progress draw payments to the contractor (even though the City does not pay until the work is substantially complete)]

- 4.8 The shared City Centre vision contemplates common hard and soft landscaping treatment from the Piazza, Glendale Avenue, South Esplanade and Esplanade Park through to the Parks and Recreation Centre. The City shall be responsible for constructing the Public Realm Improvements with a \$6.3M contribution from *PTC Ownership*. The Parties have agreed to provide further definition as to the hard and soft landscaping materials to be used throughout the public realm space bench marked against the specification used to establish the *PTC Ownership* Contribution. The Parties have agreed that the Public Realm Improvements will be completed prior to occupancy of the City Facilities, and the City will use all commercially reasonable efforts to effect the completion of same to ensure timely occupancy of the City Facilities. The *PTC Ownership* payment for their portion of the Public Realm Improvements to the City will be made when the Public Realm Improvements are Substantially Complete (as defined in the CCDC 2 contract)
- 4.9 Prior to commencement of construction of the Parking Garage the City will be responsible for the Phase 1 relocation of the existing sanitary and storm sewers, and the existing watermain from the PTC Lands to Glenanna Road as well as the reinstatement of Glenanna Rd. *PTC Ownership* will be responsible for the Phase 2 relocation of the existing sanitary and storm sewers, and the existing watermain from the PTC Lands to Glenanna Road, including the reinstatement of Glenanna Rd. all as shown on Schedule ●. *PTC Ownership* may elect to complete the Phase 2 relocation concurrently with Phase 1 or at such later date as may be determined by *PTC Ownership* and agreed by the City. In the event *PTC Ownership* does not elect to commence the Phase 2 relocation concurrently, the City at its expense will tie the relocated Phase 1 services into the existing services on the PTC Lands. ***[NTD: The City has taken the lead on the relocation of services. Is the City going to oversee this work? Should we investigate converting PTC Ownership Phase 2 service relocates to cash in lieu?]***
- 4.10 ***[NTD: Overview of Service Capacity and Consent from Authorities Having Jurisdiction - City to confirm that there is adequate service capacity to complete the Master Plan. MTO capacity still to be determined if not available by the time this is signed what do we do? Confirm that City to carry out 'interim stormwater relocation' at such a time as Block 6, 7 and 8 are ready for development (PTC Ownership to provide access to the Bay South lot to make the necessary modifications). Lastly, need confirmation from the Region that a pumping station is not required]***
- 4.11 No work shall be commenced by either Party and/or its contractors until it has filed with the other Party a certificate of public liability insurance with reasonable coverages, in accordance with this Agreement and which are then acceptable with the City, acting as a municipality, or other applicable Governmental Authorities having jurisdiction and which insurance coverages and terms are mutually agreed upon by the Parties, acting reasonably. All costs related to such insurance shall be included in the Shared Costs.

ARTICLE 5

OPERATION OF MASTER PLAN FACILITIES

- 5.1 The City will be solely responsible for the maintenance and operation of the City Facilities, and PTC Residential will be solely responsible for the maintenance and operation of the Rental Building.
- 5.2 External common areas shall be operated and maintained by • ***[NTD each Party responsible for their own with the exception of snow removal which makes sense to be shared]***
- 5.3 The City Parking Structure shall be operated and maintained by the City. PTC Residential shall operate and maintain the Rental Building Apartment Structure and the Shared Facilities. The Shared Facilities will be maintained in accordance with the Shared Facilities Management Agreement.
- 5.4 The Parties have agreed that the roads shown in • on Schedule • will be private roads to be operated and maintained by *PTC Ownership*, and the roads shown in • on Schedule • will be assumed by the City as municipal roads to be operated and maintained by the City. ***[NTD: Lets look at this plan – there is a plan to have one road initially as an easement which would become a public road in the future.]***
- 5.5 *PTC Ownership* will develop the South Blocks independent of the City, except for its role as a regulator / Government Authority. ***[NTD: confirm that the City is generally satisfied with the South Block plans subject to customary site plan review. Confirm the public road and walkway over the South Block to CAPREIT lands. Confirm C of A support to plan changes as a result of CAPREIT settlement]***

ARTICLE 6

OWNERS' COMMITTEE

- 6.1 Final decisions on the matters set out in this Agreement, or any of the Definitive Agreements shall be made by the Committee, subject to ratification by City Council and *PTC Ownership*. It is the role of the Committee to advance the decision-making to a place where it can be presented to Council for final approval.
- 6.2
- (a) The Committee shall consist of:
- (i) representing the City, Paul Bigioni, • and
- (ii) representing *PTC Ownership*, • ***[NTD...do we need PTC Residential too?]***
- (b) The City and *PTC Ownership* agree that the following provisions apply to the Committee in carrying out its mandate:
- (c) The City and *PTC Ownership* may each have advisors present at Committee meetings.

- (d) All decisions shall be made by unanimous consent of the Committee.
- (e) The Committee shall be responsible to finalize drafts and make recommendations in respect of finalization of the architects agreement template, the template agreement with the General Contractor, the agreement of purchase and sale template, and any other related matters to be presented to Council for final approval.
- (f) Each of the parties agrees to be bound by, adopt and implement all of the decisions of the Committee, subject to any limitations on authority noted herein. The decision of a Committee Member with respect to a specific matter will be deemed to be the decision of the party who has appointed such Committee Member.
- (g) The Committee shall use their best efforts to prevent any deadlock in the decision-making process, and, in the event of a deadlock, the parties shall submit the matter for consideration by their respective senior management.
- (h) Either party shall be entitled at any time to remove any of its Committee Member by notice to such Committee Member and the other party, and nominate a successor who shall, effective upon removal of the existing Committee Member, be appointed a Committee Member to replace the Committee Member so removed.
- (i) The Committee shall endeavour to meet bi-weekly during the period until the agreements are approved by Council, and may choose to meet thereafter to assist in the development process. Any Committee Member may call a meeting of the Committee at any time on five (5) business days prior written notice to the other Committee Members. With respect to all meetings of the Committee, the Committee Member calling such meeting shall issue a written notice in respect of such meeting that indicates the time and place of the meeting and provides a summary of the matters to be considered.
- (j) A quorum for meetings of the Committee shall consist of four (4) members of the Committee, provided that at least two (2) Committee Member representing the City and two Committee Members representing *PTC Ownership* are present. Committee Members may attend meetings in person or by proxy, and they may also participate in the meeting by means of conference call or similar communications equipment that permits all Committee Members to hear each other. Any action required or permitted to be taken at any meeting of the Committee may be taken without a meeting if one or more written consents to such action shall be signed by a quorum of Committee Members or otherwise by or on behalf of the parties.

ARTICLE 7

COST SHARING

7.1 Subject to the provisions of this Agreement, costs not otherwise apportioned will be shared by the parties on the following basis:

- (a) in respect of the Parking Garage,

- (i) *PTC Ownership* shall pay 61.1 % of the total costs, including contract administration and subject to the further provisions of this section.
 - (ii) City shall pay 38.9 % of the total costs, including contract administration and subject to the further provisions of this section.
 - (iii) The City and *PTC Ownership* shall each be responsible for paying half the cost of the entry ramp to the P1 parking level.
 - (iv) *PTC Ownership* shall be responsible for paying 100% of the costs of ramp construction and gates or other security features related to the PTC Residential Parking.
 - (v) The City shall be responsible for the costs and necessary action to operate and maintain the City Parking Structure, and shall commission and provide to *PTC Ownership* copies of engineering certificates verifying appropriate maintenance has been carried out, every five years.
 - (vi) *PTC Ownership* shall be responsible for the costs and necessary action to maintain the Residential Parking Structure, being levels 2 and 3 of the Parking Structure, and shall commission and provide to the City copies of engineering certificates verifying appropriate maintenance has been carried out, every five years.
 - (vii) The City and *PTC Ownership* shall share equally all costs associated with the construction, operation and maintenance of the Shared Facilities. The Shared Facilities will be operated and maintained in accordance with the Shared Facilities Management Agreement.
- (b) in respect of the Piazza, *PTC Ownership* shall pay the total costs of construction, and the City will assume the Piazza as a municipal facility, and shall be responsible for the operation and maintenance and operations costs of the Piazza, including without limitation, all landscaping, lighting, walkways, driveways, furniture and other improvements within the Piazza. **[NTD: need to set out responsibility for landscaping, furniture, lighting, etc.]**
 - (c) the City shall be responsible for paying all costs of construction, maintenance and operations of the Library, to be provided for in the Library Development Management Agreement.
 - (d) the City shall be responsible for paying all costs of construction, maintenance and operations of the Arts Centre, to be provided in the Arts Centre Development Management Agreement.
 - (e) *PTC Ownership* shall be responsible for paying all costs of construction, maintenance and operation of the PTC Residential.
 - (f) The City shall be responsible for paying all costs of construction, maintenance and operation of the SYC.

- (g) the City and *PTC Ownership* shall share the cost of maintaining and operating shared external common areas as identified on Schedule • ***[NTD: who pays hard and soft landscaping, street furniture , lighting and drainage pipe and waterproofing over parking garage –not clear from dow]***
- (h) the City and *PTC Ownership* will each be responsible for paying any costs related to the Shared Facilities ***[NTD...see delineation of work document]***
- (i) the Parties agree that neither the City or *PTC Ownership* shall terminate, amend or otherwise modify the scope or the shared costs agreed to because to do so would materially and adversely affect the ability of the Parties to undertake the Master Plan development, and could increase the potential for liability.

[NTD: We assume that details respecting invoicing and payment of construction that is cost-shared, will be set out in the construction agreements. Please advise if it should be added here]
NOTE: SHOULD BE ADDED HERE. PARTIES TO THE CONSTRUCTION CONTRACTS MAY BE DIFFERENT THAN THE MASTER AGREEMENT?

[NTD: to what extent are the normal development and servicing requirements be included in this Agreement? I think it is important to cover them off to the greatest extent possible]

[NTD.....need language confirming that PTC Ownership has satisfied its parkland dedication obligations and no cash in lieu will be required]

ARTICLE 8

CITY FEES AND CHARGES, AND APPLICABLE CREDITS

- 8.1 *PTC Ownership* acknowledges that it will be responsible for the payment of all development levies, fees and charges that would normally apply from all Governmental Authorities when developing land within the City including but not limited to application fees, development charges, parkland cash in lieu, and community benefits charges and subject to credits that may apply. ***[NTD...to be confirmed]***
- 8.2 The City accepts responsibility for paying all applicable fees and charges that may apply from all Governmental Authorities in respect of the construction and operation of the City Facilities and it will not seek any development levies, fees and charges from *PTC Ownership* in respect of the

City Facilities, regardless of who has responsibility to construct or maintain such facilities. For clarity, this includes the City Parking Facility and the Piazza.

- 8.3 The City acknowledges that certain of the works to be carried out by *PTC Ownership* under this Agreement may be eligible for credits against applicable City and Durham Region Development Charges and the City agrees to apply any such credits.
- 8.4 *PTC Ownership* will pay applicable Development Charges in accordance with the provisions of By-Law # 7595/17 as amended, and Durham Region By-Law # 28-2018 as amended before the first above ground permit is issued for each building.
- 8.5 Certain capital infrastructure is required to build out the Master Plan, and the Parties may work together to consider whether front-end financing under s. 44 of the *Development Charges Act* or construction as a municipal capital facility under s. 110 of the *Municipal Act, 2001* should apply.

ARTICLE 9

LAND TRANSFERS

The Parties agree that the lands to be transferred between them are to be of equivalent value, and that this has been confirmed by market appraisals undertaken by ● and dated ●. And furthermore that any difference has been made up through costs *PTC Ownership* (*PTC Ownership* Contributions) has assumed that go beyond fees and charges that would normally apply.

- 9.1 Separate agreements of purchase and sale will be entered into for each parcel or strata parcel of land to be conveyed within the Master Plan.
- 9.2 The parties agree that the proposed land severances are required to implement the Master Plan development as approved by the Parties and that they will ***[NTD: option of deal with through the plan of subdivision or jointly apply to the Durham Region Land Division Committee and support the technical land severance consents required to convey the land parcels contemplated by this Agreement.] NOTE: DO WE NEED PROVISION TO ALLOW FOR THE STRATA PARCELS TO BE ADJUSTED ONCE STRUCTURES ARE COMPLETE?***
- 9.3 The Parties will agree on a date for the land transfers to take place, following approval of this Agreement by City Council and by *PTC Ownership*.
- 9.3.1 The Parties agree that *PTC Ownership* reserves the ability to determine who will take title of the South Block lands to be acquired from the City.
- 9.4 The Parties agree that as conditions of consent to sever the land, all required reciprocal support and access easements for both vehicles and pedestrians shall be finalized for all lands within the Master Plan as well as general easements to provide rights-of-way for the maintenance and repair of buildings on adjacent lands, the installation of utilities and services, rights of support, emergency egress and temporary construction access.

[NTD....Land transfer tax considerations]

ARTICLE 10

REPRESENTATIONS and WARRANTIES

- 10.1 The City represents that it has authority to enter into this development Agreement.
- 10.2 *PTC Ownership* represents that it has authority to enter into this development Agreement.
- 10.3 The City represents that it will provide *PTC Ownership*, twopoint0 and Cushman Wakefield with an “ambassador level of service” in respect of obtaining all necessary approvals required to construct this **project**.

[NTD: Additional reps and warranties to be added once further information is available]

ARTICLE 11

Dispute Resolution

- 11.1 A Party may give written notice of a difference with respect to any determination under this Agreement, or the interpretation, application or administration of this Agreement to the other Party. Such notice shall describe the particulars of the matters in dispute. The other Party shall reply to such notice no later than twenty (20) business days after they receive it or are considered to have received it, setting out in such replies their position regarding the matters in dispute.
- 11.2 Where a notice and replies have been given, if the Parties fail to resolve the dispute within ten (10) business days after delivery of all replies within the period of time described above, each Party, within five (5) business days thereafter, shall nominate a senior officer of its management to meet at a mutually agreeable place and time to resolve the matters in dispute. Should the Parties be unable to resolve the dispute to their mutual satisfaction within a further thirty (30) days after such nomination, then either Party may give written notice to the other Party requiring that the dispute be referred to mediation under Section 11.2.
- 11.3 The mediation shall be held within sixty (60) days following the date of notice given by a party requiring that the dispute be referred to mediation.
- 11.4 Within ten business (10) days following the end of such notice, the Parties shall jointly select and appoint a skilled and experienced mediator to assist the Parties to reach an agreement through mediation.
- 11.5 The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be shared equally by the Parties. Any settlement reached by mediation shall be set forth in writing, shall be signed by the Parties and shall be final and binding on them. If the Parties fail to agree on a mediator within such ten (10) business day period or the dispute is not resolved to the mutual satisfaction of the Parties (as evidenced by the written

agreement referenced herein) within sixty (60) days following the selection of the mediator as provided herein, then Section 11.3 shall apply with respect to such dispute.

- 11.6 Either Party may elect to refer this matter to binding arbitration by a single arbitrator selected and paid for proportionately by both Parties.

ARTICLE 12

NOTICE

- 12.1 Any notices, requests, demands, instructions, certificates, consents or other communications required or permitted under this Agreement shall be in writing and delivered under this Agreement shall be delivered,

- (a) to the City:

Attention:

Email:

And

Attention:

Email:

- (b) To *PTC Ownership*:

Attention:

Email:

- 12.2 A notice given by email or by hand delivery to the persons identified above, shall be deemed to have been received on the day it is delivered, subject to:

- (a) a notice delivered or transmitted on a day that is not a business day or on a business day after 4pm EST, shall be deemed to have been received on the next business day;

- (b) a notice delivered by email shall be deemed to have been received only if and when the recipient acknowledges receipt of such email by reply email or by otherwise acknowledging receipt in writing.

ARTICLE 13

REMEDIES

- 13.1 If at any time or from time to time a Party does not advance its responsibilities under this Agreement, such Party is hereinafter referred to as a "Defaulting Party" and the other Party as "Non-Defaulting Party". In the event of default as aforesaid and should such default continue for five (5) days after written notice thereof is given to the Defaulting Party by the Non-Defaulting Party, the Non-Defaulting Party may elect to demand the Defaulting Party remedy the Default within a specified time. ***[NTD: we have used clauses that would allow the non-defaulting party to notify the Defaulting Party's bonding company to demand the bonding company assume responsibility. Is this something we want to consider as a way to keep the project moving? If yes, we would suggest putting some construction clauses in this Agreement as well as the construction contracts. Additionally we may want to have each Party named as an additional insured on the other's coverage]***

[NTD....should there be language inserting a predetermined damages amount should either party abandon its obligations under this Agreement or any Definitive Agreement?]

- 13.2 Force Majeure

In the event either shall be delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of Acts of God, strikes, lockouts, unavailability of materials or services, failure of power, prohibitive governmental laws or regulations, delays in issuance of governmental approvals, riots, insurrections, the act or failure to act of the other party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such party's control, including in respect of a pandemic which impacts labour availability, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

- 13.3 The Party claiming relief shall notify the other as soon such an event occurs and shall also notify the other Party as soon as the consequences of the event of Force Majeure have ceased, and of when performance of its affected obligations can be resumed.
- 13.4 If, following the issue of any notice referred to in this section, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

- 13.5 **Insured Exposure** ***[NTD: Do we want this here or in the construction agreements?]***

The compensation payable to the Non-defaulting Party pursuant to this Section 13 shall be reduced by any amount which the Non-Defaulting Party recovers, or is entitled to recover, under

any insurance policy, or would have recovered if it had complied with the requirements of this Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

13.6 **Modifications**

The Parties shall use commercially reasonable efforts to agree to any modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. The Dispute Resolution Procedure set out in Article 11 shall not apply to a failure of the City and *PTC Ownership* to reach agreement pursuant to this Article 13.

ARTICLE 14

CONFIDENTIALITY

- 14.1 Each Party shall keep confidential the terms of this Agreement and of all negotiations related to the Master Plan and redevelopment of the site, except to the extent disclosure is necessary to inform their individual professional advisors, potential lenders or investors, or the officers, directors, Members of Council or employees of each Party to the extent they have a need to know.
- 14.2 All dispute resolution proceedings shall be strictly confidential, and each Party shall have a fiduciary obligation to the other to protect, preserve and maintain the integrity of such confidentiality.
- 14.3 Neither Party shall issue any news release or other public announcement or communication about this Agreement and its contents without the prior written approval of the other party.
- 14.4 The Parties agree that any public notice to third parties, including the City, and any media release or publicity issued concerning the redevelopment of the Site shall be jointly planned and coordinated by the Parties.
- 14.5 For purposes of the *Municipal Freedom of Information and Protection of Privacy Act*, the parties agree that the contents of this Agreement, and the agreements to be negotiated and all related documents constitute financial and commercial information the disclosure of which will harm the economic interests of the City and *PTC Ownership* if disclosed.

ARTICLE 15**GENERAL**

- 15.1 The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference only.
- 15.2 The Schedules attached hereto form an integral part of this Agreement.
- 15.3 This Agreement shall be construed with all changes in number and gender as may be required by the context transmitted (as the case may be).
- 15.4 *PTC Ownership* may assign, transfer, or otherwise dispose of this Agreement in whole or in part without the consent of the City provided that the person to whom any such assignment, transfer or disposition has the legal capacity, power and authority to accept such assignment, transfer or disposition, and agrees in writing with the City to be bound by and to perform all the obligations of *PTC Ownership* that have been assigned, transferred or disposed.
- 15.5 Any amendment to or waiver of any provision of this Agreement must be in writing and signed by the Parties.
- 15.6 If any covenant or provision of this Agreement, including all or any part of this clause, is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and all other provisions hereof shall continue in full force and effect.
- 15.7 Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable, in order to effectively implement and carry out the true intent and meaning of this Agreement.
- 15.8 This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the Province of Ontario and of Canada applicable thereto, and the Parties submit to the jurisdiction of the courts of the Province of Ontario.
- 15.9 If at any time during the continuation of this Agreement, the Parties shall deem it necessary or expedient to make any alteration or addition to this Agreement, they may do so by means of a

written agreement among all of them which may be signed in counterparts, which shall be supplemental and form part of this Agreement.

- 15.10 It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressed in it.
- 15.11 Any reference in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time, or as a reference to any successor thereto.
- 15.12 Time shall be of the essence with respect to all time limits mentioned in this Agreement.
- 15.13 This Agreement may be executed in counterparts.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

THE CORPORATION OF THE CITY OF PICKERING

Per: _____
Name:
Title:

Per: _____
Name:
Title:
I/We have authority to bind the City

PTC OWNERSHIP REALTY INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:
I/We have authority to bind the Corporation.



MEMORANDUM

PRIVILEGED AND CONFIDENTIAL DENTONS COMMENTS SEPTEMBER 24, 2021

To	OPB Realty Inc. Dentons LLP	Date	September 20, 2021 (original draft dated August 25, 2021)
From	Torys LLP The Corporation of the City of Pickering		
Re	Pickering City Centre Redevelopment – Draft Master Agreement (revision dated as of July 21, 2021) (the “Agreement”)		

City staff and advisors have undertaken an initial review of the Agreement. The following memorandum reflects the preliminary comments, questions and proposals of the City.

We would be happy to facilitate a detailed review and/or provide further information on any of the comments below and look forward to advancing the Agreement with you.

All capitalized terms used in this memorandum shall have the meanings ascribed to such terms in the Agreement.

General Comments

1. The Agreement remains a work in progress and further legal comments including drafting revisions will be provided in due course. Dentons – agreed. The business terms need to be settled asap.
2. City would like to understand the relationship between PTC Ownership Realty Inc. and OPB Realty Inc. **City requires assurances as to OPB’s continued involvement in the project (i.e. no disposition of any interests during development without the approval of the City (not to be unreasonably withheld), no release of OPB’s covenant etc.).** Further information to be provided as to the identity of the OPB entity which will own/operate the rental tower and who will own and maintain the OPB Parking Garage. Dentons – PTC Ownership Inc. has not been created yet so far as we are aware. We understand that the intention is that the obligation to construct and develop should bind the owner of the shopping centre 58 acre parcel. There can be no controls on OPB or its assets as we have discussed. City proposes that all roads servicing City Facilities and the Parking Garage are conveyed to the City as public roads, **with the City then dedicating the same as ‘public highway’.** Notwithstanding, we understand the road which will service the Parking

Garage would remain a private road, therefore appropriate public easements would be required over such private road to enable access to the Parking Garage. Dentons – Agreed in principle.

3. Section 4.6 - Provisions should be added (or a new construction coordination agreement should be added as a schedule) to address the construction of the Parking Garage and covenants and obligations of the parties with and to each other, with respect to construction generally and construction contracts. For instance, with respect to the Parking Garage, the City will need rights for input/approval as to any change orders, payments and other development matters under the construction contract with OPB. It will also need benefit of warranties etc. This would also speak to mutual obligations to pay contractors, commence and complete the construction of the various facilities, as well as provide clarity on the cross-default provisions of the contracts (i.e. neither owner will be required or compelled by the other to enforce cross-default under its contracts). Dentons – agreed in principle. OPB to have the lead as constructor of the parking garage. We can discuss particulars of inputs and approvals and applicable time frames recognizing the shared cost of this facility.
4. Timing for execution of agreements of purchase and sale and closing of all land transfers to be discussed. Also question of due diligence (e.g. title due diligence, existing restrictive covenants on OPB lands which could impact use/development of the site) to be considered. We understand OPB/Dentons is in the process of preparing a summary of the relevant restrictive covenants which relate to the OPB lands for review by City and mitigation of the impacts of these may need to be addressed in the Agreement. We understand that the agreement in principle is that the City would not be subject to any restrictions on title which would impact the proposed use and/or development of the lands to be transferred to the City. Dentons- agreed in principle. Materially adverse restrictions on title will be dealt with. We note that the Cineplex lease has a theatre exclusive that contemplates permitted uses by the Performing Arts Centre that will remain on title. An excerpt from the Cineplex lease is attached as Schedule “A”.
5. Detailed operating and maintenance cost breakdown of shared facilities and estimates of such costs are required. Breakdown should include, for example, lighting, landscaping, utilities and details on other items. Dentons – need to identify what are shared facilities.
6. Commercial space in SYC Centre – the agreement should address the commercial space to be located in the SYC Centre building but retained by OPB. City would propose registration on title to the lands of a form of restrictive covenant which would limit certain noxious uses (e.g. nightclubs, adult entertainment etc.). Dentons – agreed in principle.
7. Responsibility and cost associated with additional deliverables (such as, reference plans, environmental reports etc.) to be agreed between the parties and reflected in the Agreement. We understand the agreement in principle is that each party would bear costs of its own engineers/advisors, however there may be some scope for reliance on **other party’s reports etc.** Dentons – to be discussed. To the extent available, retainer agreements should provide for reliance by both parties regardless of who has commissioned the report, etc.

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8. An additional recital and/or schedule should be included clearly identifying which parts of the site lands the Agreement relates (i.e. South Block Lands and lands on which City Facilities and Rental Tower are being constructed). Dentons – we do not understand this comment. City to clarify the request.
9. The draft agreement contains a number of references to events which have yet to occur, but which must take place prior to execution of the agreement. Dentons – these issues should be addressed and resolved by the time the Master Agreement is executed. City to confirm target signature date – is it next spring? For instance, a number of the recitals **state definitive positions of the parties (e.g. Recital E (“parties have agreed on a master plan”), Recital I (“City has determined that adequate sanitary, storm and water service capacity exists”). At the present time, these statements are not correct, however we** understand the majority of these will be verified or known at the date of signing of the Agreement. These include:
 - a. Recital H - The City cannot confirm that that the Master Plan conforms with the City Centre Zoning By-law until they have reviewed the detailed plans. Variances or other technical zoning by-law amendments may be required.
 - b. Recital I - The Region will need to provide confirmation that there is adequate water and servicing capacity. Through the master plan planning process, the Region may need to confirm adequacy of servicing for services it controls. OPB needs to demonstrate compliance with City Centre SWM guidelines. Dentons – City to confirm the solution to stormwater management and stormwater storage should be addressed in the Master Agreement.
 - c. Section 1.1(a) – **Schedule “O”** – There is also a stand-alone servicing agreement required by the Region. This should be referenced also. Dentons-we assume the City will also be a party to the servicing agreement given the land swap. Please confirm.
 - d. Section 3.1 - The South Block Lands are zoned to permit residential. City is in process of determining what, if any, additional approvals from Council are required (Note: South Block Lands also remain subject to the Minutes of Settlement dated March 30, 2021). Dentons – has MTO approval been obtained? If not, what is the plan and timing?
10. Parties to consider including the settled **form of ‘Delineation of Works’ memorandum as** a new schedule to the Agreement. Dentons – Agreed.

Recitals

11. General – Further review and revisions to recitals will be necessary to reflect the agreed facts of the development and planning process. This will occur in due course closer to execution of the Agreement. Dentons – Agreed.
12. Recital D:
 - a. City will require the transferee of the South Block Lands to agree to certain acceptable profit sharing mechanisms on any future sale of the South Block

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Lands within a certain period following closing. This profit sharing would not apply to the sale of residential condominium units constructed on the South Block Lands. ~~Please find attached as Schedule "A" to this memorandum a draft of the proposed profit sharing (Participation) agreement for review and comment. It remains important for the City to ensure expedient development of the South Block Lands and avoid a long term construction site in such close proximity to new facilities.~~ City and transferee of the South Block Lands to enter into a lease to the City on closing for purposes of car parking at a nominal rent for a term commencing on closing and ending on the commencement of residential condominium tower construction. Dentons – agreed. City to repair, replace, maintain, insure, etc. Carefree lease to PTC Ownership. Lease term to run until South Block lands are ready to be developed.

- b. **Include in Recital D, reference to** *“two condominium towers, a 14.5-metre wide public road and an 8-metre wide pedestrian walkway as identified on Figure 6.13.2(a) of Zoning by-law 7719/19”*. The public road is to be conveyed to the City as a strata parcel. Title to the 8-metre wide pedestrian walkway, is to be retained by the City. The land areas for both the 14.5 metre wide road and the 8-metre wide pedestrian walkway are to be excluded from the FSI calculation. The pedestrian walkway can be accepted as parkland dedication. For greater certainty, all lands on which public or private roads are to be constructed would not form part of the appraised lands for purposed of the land swap (e.g. no value should be ascribed to lands designated for road use). Dentons – we understand that this has been modified now to provide density to Pickering Town Centre lands and that the appraisals should consider the value of the lands swapped that will be roads? We also understand that the City will have a strata ownership of both the walkway and the public road

13. Recital E – Please change references **throughout from “City Centre Master Plan” to “PTC Master Plan”**. **This refers to the master plan for the development of PTC lands, not the City Centre project. At the end of the section, please change the words “City Centre Plan” to “City’s Official Plan, City Centre Zoning By-law 7753/17 and City Centre Urban Design Guidelines.”** Dentons – we thought this was called the Pickering City Centre project and Pickering City Center Master Plan? City to clarify the purpose of this request.
14. Recital J – Please **provide further information on the reference to the “City Centre 2023 Plan”**. Dentons – this was taken from a Council Report. Can be deleted if concerning.

Article 1 - Definitions

15. Change following defined terms throughout the Agreement:
- a. “Arts Centre” **change to** “Performing Arts Centre”.
 - b. “Piazza” **change to** “Public Square”.
 - c. “S & YC” (and in some instances “SY&C”) **change to** “SYC”.

- d. "Parks and Recreation Centre" **change to** "Chestnut Hill Development Recreation Complex" (this should also be added as a defined term). Dentons – agreed.
16. Section 1.1(a) – We suggest a single form of template which would be attached as a schedule to the Agreement for each (A) Agreement of Purchase and Sale for Performing Arts Centre, Library, SYC and a form for the South Block Lands (including a form of development agreement); and (B) Reciprocal Operating Agreement. Dentons – agreed. Torys agreed to produce the draft form of purchase agreement.
17. Section 1.1(a) – **Schedule "N"** – Parking Management Agreement, we understand that the City and OPB will each appoint their own parking manager to manage their portion of the Parking Garage. Dentons – there will have to be an agreement between the parties. Makes sense if each party is to own its respective parking facilities. There can be no impediment to access or egress to the lower parking levels.
18. Section 1.1(a) – **Schedule "Q"** – There is a requirement for a registered plan of subdivision for the 9 Blocks (other than for Block 2 (PAC) which will not be included in the draft plan of subdivision), the public roads and the Public Square so the Lands can be exchanged when construction is approved by the Owners (this is important to protect the use of DC funding). Dentons – City to clarify.
19. Section 1.1(a) – **Schedule "CC"** – Memorandum of Understanding. Delete this schedule, the MOU will be essentially superseded by the Agreement. Dentons – agreed.
20. Section 1.1(a) – Reference is made in Section 5.5 of the agreement to a "*Shared Facilities Management Agreement*" which should be added as a new schedule. There will likely also be the need for a shared facilities agreement and reciprocal operating agreement to **address issues such as access by both parties across each other's respective properties for purposes of repair and maintenance of certain infrastructure.** Dentons – agreed. Torys agreed to produce the template shared facilities agreements/ operating agreements
21. Section 1.1(j) – City Facilities - Include Public Square in the definition. Dentons – City to clarify.
22. Section 1.1(k) – City Lands - Definition should be revised by **deleting the words "in exchange for the South Block Lands to be conveyed to PTC Ownership by the City"**. Dentons – City to clarify. This is the land swap component.
23. Section 1.1(m) – City Parking Structure and Public Square – we understand development managers for the City and OPB are working with City Development Department to prepare a site specific zoning by-law amendment to be submitted by OPB to permit the transfer of the FSI **for the public roads to OBP's lands. The City will not transfer the FSI on the public square.** We understand the Public Square will now be a parkland dedication and the City Parking Structure is to be conveyed to the City as a strata parcel. This section should be revised to reflect the outcome of those discussions. Dentons – City Parking Structure to be conveyed (instead of leased) so long as no issues related to Building Code/ fire separation, etc. We believe that FSI is to be transferred. No obstruction of ingress or egress to PTC Ownership parking levels. This seems to conflict with note 12(b).

24. Section 1.1(bb) - Library Parcel - **Given the conveyance of 'Road B' to the City for** purposes of a public road, consideration should be made to convey freehold title (rather than a strata title) for the lands on which the Library will be situated. This should be possible given there would be no **part of OPB's** subsurface parking structure beneath the Library. This proposal would be subject to agreement in principle from City Development Department. Dentons – agreed in principle. Is this land being appraised on the basis of a freehold transfer?
25. Section 1.1(ff) – Parking Garage Development Management Agreement – Please provide for review once available. Dentons – we will follow up with Cushman. We also understand a development manager agreement has yet to be prepared with respect to service relocation [Dentons – between City and Cushman] and public realm work [Dentons – between City and twopoint0]. For further consideration and discussion.
26. Section 1.1(II) – Public Square – The Public Square shall have its own legal description and will be deeded to the City as parkland dedication for Block 1 and 3-9. Dentons – correct. + South Block Lands? [See note 29(b)(ii) below]
27. Section 1.1(ss) – Public Realm Improvements – City considering the scope and detail of what constitutes public realm improvements (e.g. benches, light fixtures, trash receptacles, wayfinding signage). Dentons – City to clarify. City to carry the same finishes throughout.
28. Section 1.3 – The paramountcy language is somewhat unclear. Further discussions **between legal counsel required to ensure clarity and appropriateness of the 'waterfall'.**

Article 3 – Co-Ordination of Development and Use of the Public Facilities

29. General:

- a. Agreement should also speak to development of Rental Building and requirements of City and confirm that the Rental Building is purpose built rental. [Dentons – agreed] OPB should also agree to a prohibition against any future condominiumization of the Rental Building. [Dentons – we have requested OPB to confirm] Please confirm all easements, air rights and mutual support requirements are contemplated in the reciprocal operating agreement. Dentons – agreed. Torys agreed to produce the template reciprocal operating agreement.
- b. Parkland dedication – parkland dedication issues should be addressed in the Agreement and are being further considered by City Development Department. In particular:
 - i. Need to add a schedule identifying the legal description, boundary and area of the Public Square lands. Graphic to be added showing the approximate location and boundary of the Public Square.
 - ii. Confirmation to be included that the Public Square only satisfies parkland dedication for Blocks 1 ~~and 3 through~~ 9 and the South Block Lands, and not for the entire OPB site.

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- c. We understand that development managers for City and OPB are working on a collaborative basis with City Development Department on required zoning amendment(s) and minor variances (if required), given that the lands will be owned by OPB until they are transferred to the City. Appropriate revisions to be included in the Agreement to reflect the outcome of these discussions. Dentons – agreed.
 - d. Propose an additional and separate provision in the Agreement to address requirement for public easements, which would include, if required a right-of-way/access easements for vehicles and pedestrians will be required over any private roads servicing City Facilities (Note: appropriate reference plans will need to be prepared and registered on title prior to the opening of the City Facilities). Dentons – agreed in principle.
30. Section 3.2 – **Remove reference to ‘preliminary’ site plan submission, as there is no recognized concept of ‘preliminary’ submission.** Dentons – agreed. We understand City and OPB’s development managers together with architectsAlliance are preparing site plan applications for submission to City Development Department. All site plan approval is delegated to the Director, City Development & CBO. The City does not issue customary site plan conditions.
31. Section 3.3 – **Same comment as above regarding ‘preliminary’ site plan submission.** Dentons - agreed
32. Section 3.4 – Parcel creation for Blocks 1 and 3-9, + Library? public roads and parkland to be by way of plan of subdivision. Dentons – what about South Block?
33. Section 3.5 - The public roads will be identified through the Master Plan review process and we understand will be conveyed to the City on closing. Dentons – what is the timing re note 32 and 33?
34. Section 3.6:
- a. Decision to close the Public Square **should be City’s exclusively and** Public Square should be deemed a closed, private space, subject to certain exceptions (e.g. limited rights of access/egress to and from PTC in the event of emergency). Dentons – agreed in principle. How does this affect ingress and egress to the shopping centre? Concern regarding emergency fire exit capacity from the shopping centre to be reviewed.
 - b. OPB will require a permit from the City use the Public Square. ~~Form of permit and requirements to be addressed (i.e. license of occupation restricted to a few days per year to host events for tenants, not commercial events).~~ Dentons – suggest that OPB follow the City’s usual permit procedures.
 - c. The City agrees that any permanent signage facing the Public Square be installed so as not to interfere with or create a nuisance for the tenants occupying the Rental Building.

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35. Section 3.7 – Obligation should be for each party to negotiate and finalize agreements (in substantially the same form as provided in the schedules) acting reasonably and in good faith. Timing for execution of the agreements to be discussed further. Dentons – agreed.

Article 4 – Construction of City and Shared Buildings

36. Section 4.4 – Clarification to be included to differentiate the Public Realm Improvements and the PTC Public Realm Improvements referenced in third line of Section 4.4. We understand the PTC Public Realm Improvements relate to the residential component (and shown on the plan), which PTC is completing and will not be included in the \$6.3m contribution. Dentons – agreed.
37. Section 4.8 - Further clarity to be provided with respect to how the \$6.3m contribution from OPB to City is to be effected. Dentons – please see page 10 of MOU. Is a set off from City's construction costs of the parking garage.

Article 5 – Operation of Master Plan Facilities

38. Section 5.3 – **Should there also be reference to “Rental Building Parking Structure”?** Dentons – City to clarify. This may also need to be made in Section 7.1(a)(vi). We understand each of City and OPB will be responsible for operating its respective parking garage. Dentons – agreed if no building code issues caused by separate ownership.
39. Section 5.5 – ~~City to approve any transferee of the South Block Lands. Further information required from OPB as to its proposal for the transfer and development of the South Block Lands (see comment re: Recital D above).~~ Intentionally Deleted.

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Article 6 – Owner’s Committee

40. Section 6.1 – Further discussion required on the composition and authority of the **proposed owner’s committee**. City would not be in a position to delegate any binding authority on the members and would see this more of a steering committee to address ongoing development issues as they arise and report back. We certainly see value in something like this for purposes of the reciprocal operating agreements and the Parking Garage. Dentons – no issues.

Article 7 – Cost Sharing

41. General:
- a. Demolition cost – Lands are **to be delivered ‘as is, where is’ but language to be added** requiring OPB to deliver the Library lands with the existing theatre demolished to grade, other than the walls and floors which are being left for the benefit of the Library. Dentons – please see Delineation of Work. With respect to South Block Lands, environmental investigations are required to ascertain condition of the lands. Dentons – this is a City responsibility. Further discussions between the parties may be required following issuance of Phase II environmental site assessment. Dentons – will need the ability of both parties to rely upon the Phase II reports.

- b. Loading docks – In principle, the City would be prepared to pay 50% of initial capital costs of loading docks and 50% of costs of maintenance and life cycle work. Dentons – agreed.
42. Section 7.1(a)(i) and (ii) – Proportionate share of costs of the Parking Garage as between OPB and City to be **as set out in the agreed upon ‘Delineation of Works’ memorandum and confirmed upon issuance of final design drawings.**
43. Section 7.1(a)(iii) – In principle, City is prepared to pay 50% of initial capital costs for entry ramp onto P1 parking level and 50% of costs of maintenance and life cycle work. Dentons – agreed.
44. Section 7.1(b) – **Reference to “total costs of construction” should this be just the roof of the Parking Structure?** City is concerned about a double-count. Dentons – PTC Ownership to provide \$6.3M contribution to public realm and it will be done through adjustment to parking structure costs as contained in MOU. City to assume all responsibility for design, construction, operation, maintenance, etc of the Public Square. All finishes to be consistent throughout.
45. Section 7.1(c), (d) – Costs of construction, maintenance and operations of facilities are not provided for in the DMAs. Should the reference be the respective construction contracts and operating and maintenance agreements? With respect to those aspects of operation and maintenance of the City Facilities that the City is required to undertake, there should be no obligation on City to use OPB service/maintenance provider or have any limitations on the contractors or vendors the City can retain. All City work would be undertaken by contractors or vendors selected by the City, in its sole discretion. Dentons – as the leases provided for in the MOU have been eliminated, there is no obligation on the City to use PTC Ownership service, maintenance providers for City Facilities. 100% City cost = 100% City choice. Need a provision confirming collective use of Development Managers for construction and development as per MOU.
46. Section 7.1(g) – Operating and maintenance costs and share of such costs to be further discussed. City requires additional detail of the proposed scope of the items subject to operating and maintenance. Form of operating agreement OPB intends to use with its service/maintenance provider to be provided for review. Dentons – we will review upon receipt of form of agreement from Torys.

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Article 8 – City Fees and Charges and Applicable Credits

47. Section 8.1 – Include reference to, among other things, OPB Rental Building, ~~Rental Building~~ Parking Structure and Public Square. Dentons – City to clarify. Public Square is being conveyed for parkland dedication credit.

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Article 9 – Land Transfers

48. General – City is in process of obtaining updated appraisals for all parcels. Appraisals will be based on highest and best use. Dentons – please provide once obtained.
49. Section 9.2 – The form of purchase and sale agreement for strata properties would need to contemplate initial reference plans to enable the transfer of strata title prior to

construction commencement, with a mechanism for the parties to work together following completion to revise (e.g. transfer if additional title required and/or quit claim where required) the parties ownership interests. Dentons – agreed. Torys to produce form of agreement of purchase and sale.

50. Section 9.3 – ~~Further information to be provided by OPB with respect to proposed transferee of South Block Lands. Intentionally Deleted~~

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Article 10 – Representations and Warranties

51. General – Further consideration is ongoing with respect to appropriate representations and warranties required from OPB. Dentons – will review when received.
52. Section 10.3 – Please delete. City will act in accordance with its obligations under **Municipal Act and otherwise, no preferential or ‘ambassador level’ service is permitted.** Dentons – agreed.

Article 13 – Remedies

53. Section 13.1 – Is this necessary given the nature of the Agreement? Suggest obligations would simply be to act reasonably and in good faith. We are unsure of the relevance of bonding in the notes provided. Further discussion may be necessary. Dentons – we can discuss further. Not a large issue.

Article 14 – Confidentiality

54. Section 14.1 – Further discussion required with respect to MFIPPA application. There is **limited ability of City to keep certain agreements confidential, given the City’s freedom of information obligations.** Dentons – no issue. Clause is intended to trigger certain MFIPPA protections. City to advise.

Article 15 – General

55. Section 15.4 – ~~There should be no ability for OPB to assign or transfer its ownership of the Agreement or the development without the consent of the City, not to be unreasonably withheld. In the event of consent being provided, there would be no release of OPB from its covenants under the various agreements. This is a transaction where OPB is essential and needs to be involved until the completion of all development contemplated. Intentionally Deleted. Legal counsel can discuss an appropriate mechanism to ensure that the owner of the shopping centre 58 acres is bound by the obligations to construct and develop as we believe that the intention is that the owner of the shopping centre be committed to this project. Please see our comment in note 2 above.~~

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Schedule "A"

Draft Participation Agreement Cineplex Lease Restriction

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~~{To be attached}~~

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8.2 Restrictive Covenants

(a) So long as the Tenant is conducting business in the Leased Premises in accordance with the provisions of Section 8.1(a), then:

(i) During the Term, provided the Tenant is not in material default of any of its obligations under this Lease beyond any cure period applicable to such default, the Landlord, except as hereinafter provided, shall not occupy or use or permit any premises or space in the Shopping Centre other than by the Tenant (or a related entity), for the purpose of the operation of a motion picture theatre or for the exhibition of motion pictures, opera, concerts, event cinema and/or stage plays/live theatre. Notwithstanding the restriction in the preceding sentence of this subsection 8.2(a)(i), the Landlord may use, lease, license or otherwise use or permit to be used premises or space within the Shopping Centre, in the approximate location outlined in heavy BLACK on Schedule "B" attached hereto, for the purpose of a performing arts centre (herein the "Performing Arts Centre"), which facility may be used (in addition to any other use or uses not expressly prohibited under the preceding sentence of this subsection 8.2(a)(i)) to present live opera, live concerts, live stage plays and live theatre to an audience within the Performing Arts Centre and/or transmitted to an audience outside the Shopping Centre, provided that:

(A) the Performing Arts Centre shall not present:

(i) to any audience therein any onscreen opera, concerts, stage plays/theatre (whether pre-recorded; on DVD, Blu-Ray or any technological evolution thereof; televised, broadcast, cablecast, simulcast, narrowcast, delivered via satellite, internet or otherwise) except a recording of live opera, concert and/or stage plays/theatre which was originally performed at the Performing Arts Centre; and
(ii) the public, ticketed performance of onscreen educational or instructional content;
and

(B) the Performing Arts Centre may present motion pictures provided such motion pictures:

(i) are accompanied by a live orchestra performing within the Performing Arts Centre facility; or
(ii) form part of a live opera, live concert, or live stage play/theatre performance performed at the Performing Arts Centre and were custom created for the particular live presentation being performed and were never released theatrically in motion picture theatres in North America.

Except as specified in this subsection 8.2(a)(i), the restrictions contained above in the first sentence of this subsection 8.2(a)(i) shall be binding upon the Performing Arts Centre, and the restrictive covenant set out in this subsection 8.2(a)(i) shall hereinafter be referred to as the "Theatre Exclusive".

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