

Memorandum of Understanding

Date: February 2, 2021

BETWEEN:

CITY OF OTTAWA (the “**City**”)

AND:

CONSEIL DES ECOLES PUBLIQUES DE L'EST DE L'ONTARIO (“**CEPEO**”)

WHEREAS:

- A. The City is a municipality under the laws of Ontario (the “**City**”);
- B. CEPEO is the public school board responsible for education in the French language in Eastern Ontario and is a member of the Association des conseil scolaires des écoles publique de l'Ontario (ACSEPO);
- C. The City has or will enter into a conditional agreement to purchase (the “**Acquisition Agreement**”) lands municipally known as 1010 Somerset Avenue, Ottawa, ON (the “**Lands**”) and on closing of the Acquisition Agreement will become the registered owner of the Lands;
- D. The parties acknowledge that the City intends to develop the Lands as a mixed use development to include affordable housing and residential use, office use, municipal uses and other public purposes (the “**Project**”), and that following its acquisition of the Lands, the City intends to demolish the existing buildings and structures currently situated on the Lands. The parties further acknowledge that the gross developable area of the Lands will be sufficient to permit the development and construction of a French Public elementary school, currently identified as École élémentaire publique Centre-Nord (the “**School**”); to be undertaken by or on behalf of CEPEO as part of the Project.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the City and CEPEO agree as follows:

- 1. Subject to paragraph 13, the City and CEPEO are entering into this non-binding Memorandum of Understanding solely to enable them to explore the feasibility of proceeding with the development of the School within the overall framework of the Project. In the event that the parties decide to proceed with the development and construction of the School, it is agreed that they shall thereupon enter into an agreement dealing with all matters set out herein as well as other matters reasonably required by the Parties (the “**Project Agreement**”) and/or other related agreements, including but not limited to an agreement for purchase and sale in respect of the stratified school parcel on which the School is or will be constructed forming part of the Lands (the “**School Parcel**”), reciprocal easements and operating agreements, joint use and maintenance agreements, restrictive covenants (the “**Material Agreements**”).
- 2. CEPEO shall remit to the City the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) upon execution of this Memorandum of Understanding (the “**Deposit**”) which sum shall be applied to the purchase price of the School Parcel in the event that the parties are able to conclude the Project Agreement and all of the Material Agreements. In the event that the parties are unable to reach agreement with respect to the development and construction of the School and decide not to proceed with development and construction of the School, the City shall return the Deposit to CEPEO after deduction of all reasonable costs incurred by the City on account of steps taken by the City pursuant to this Memoranda of Understanding to develop the Lands for the Project, including, without limitation, legal costs, consulting fees and other expenses; provided that such costs shall not include costs incurred for the development of specific lands not related to the School Parcel; such deduction not to exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) without the written consent of CEPEO. The City and CEPEO believe the specific requirements for the construction of the School and related amenities can be accomplished within the overall framework

of the Project on the Lands. It is CEPEO's present objective to take occupancy of the School by September 2026.

3. The School will be integrated into the Project and the School Parcel will be a fee simple above grade stratified parcel situated with the Lands, together with appropriate rights over the Lands for access and services. The School shall be sufficient to accommodate a minimum of 389 students in grades junior kindergarten to grade six and shall be a minimum of two (2) storeys and a maximum of four (4) storeys in height. Parking within the Project will be shared, the allocation and terms of which are to be agreed upon between the parties in a Material Agreement.
4. The purchase price of the School Parcel to CEPEO shall be calculated based on a proportion of the appraised value of the Lands from Her Majesty the Queen in right of Canada, represented by Public Works and Government Services Canada (“**PWGSC**”) pursuant to the Acquisition Agreement, that is equal to the percentage interest represented by the square footage of the gross developable area of the School Parcel to be conveyed by CEPEO, relative to the total above grade gross developable area of the Project on the Lands (the “**Proportionate Interest**”). The Proportionate Interest shall be increased for inflation in accordance with the Consumer Price Index from the date of this Memorandum of Understanding to the date of closing of the School Parcel between the City and CEPEO.
5. The purchase price of the School Parcel shall be subject to adjustment such that CEPEO shall also pay its share based on its Proportionate Interest, of all reasonable legal costs, taxes, and adjustments related to the City’s acquisition of the lands from PWGSC, and all reasonable costs associated with the proposed general development of the Lands (other than those costs related to a specific parcel unrelated to the School Parcel) and the creation or fully serviced parcel of land on which the school will be constructed, including, but not limited to the cost of any application for master site plan approval for the overall Project, planning and zoning applications, planning consultant(s), environmental studies, environmental remediation, road design and construction, design and construction of services, and design and construction of parkland.
6. The Project Agreement shall provide for CEPEO to pay the costs of constructing the School within the School Parcel on terms and conditions that the parties agree, acting reasonably.
7. Each of the City and CEPEO will be responsible to determine whether sufficient grants and/or loans are available to permit the construction of their respective components of the Project. Both the City and CEPEO must be satisfied, in their sole and unfettered discretion, with the results of such financing and other inquiries prior to making any decision to proceed with the development and construction of the School and the Project and the Project Agreements and Material Agreements will be subject to a condition precedent in the City’s favour that CEPEO confirms that it has received sufficient funding to proceed.
8. Without limiting paragraph 2, the parties agree that all costs in relation to the determination of feasibility of the proposed School pursuant to paragraphs 1 and 2 herein, including but not limited to the cost of planning consultant(s), environmental studies and other studies necessary to determine the feasibility of the construction of the School and the ability of CEPEO to finance the School shall be borne solely by CEPEO. In the event that the parties decide to proceed with the construction of the School, the parties shall each engage independent legal representation with respect to the preparation of all agreements and each of the parties shall pay their own costs of such representation.
9. The parties shall work together to agree solutions for bus pick-up and drop-off to service the School which are satisfactory to the parties. The Project must also include a walking path around the School.

10. In the event that the City and CEPEO decide to proceed with the construction of the School within the overall framework of the Project, they agree to proceed as follows:
- i) The City and CEPEO will jointly apply to the City for all zoning and other municipal approvals which may be required to permit the construction and development of the Project, including the School.
 - ii) The City or its partner will undertake construction of the School on behalf of CEPEO. The City shall select the contractor and architect provided that the parties will work together to ensure that their respective procurement policies are complied with and the City shall keep CEPEO fully informed. CEPEO, acting reasonably, must approve the design of the School. Further, CEPEO agrees to pay to the City any reasonable costs incurred by the City in relation to the design and construction of the School; provided that the Construction Contract and any change orders relating to the School must be approved by CEPEO, acting reasonably.
 - iii) The timing of the transfer of the School Parcel shall be determined by the parties in the course of their further investigations and due diligence. The terms and conditions of any conveyance of any interest in the Lands and/or the School Parcel to CEPEO for the construction of the School shall be subject to terms and conditions satisfactory to the parties and shall be reflected at the outset in the Project Agreement and the Material Agreements.
 - iv) It is anticipated that freehold title to the School Parcel may be required by CEPEO in order to support the construction of the School and meet all requirements of governmental authorities including the Ministry of Education.
 - v) CEPEO may be partially exempt from the payment of development charges. If this is confirmed, the reduction shall apply only to CEPEO's interest in the Project and shall be to the credit of CEPEO alone.
 - vi) Prior to entering into the Project Agreement and other Material Agreements, the parties must agree, in principle, on all issues that will govern the construction of the School and the operation of the school following completion, including the extent of the respective interests in the completed Project, the common areas or other shared property, the contribution of each of the City and CEPEO to the costs of operating, maintaining and repairing any shared property and the obligations of the owners and future owners with respect to management, operation, maintenance, repair and replacement, the terms and conditions of which will be included in the Project Agreement Material Agreements.
 - vii) It is agreed that the Project Agreement must be entered into prior to the commencement of the construction of the School.
11. This Memorandum of Understanding supersedes and invalidates all other commitments, representations and warranties relating to the subject matter hereof which have been made by the parties either orally or in writing prior to the date hereof, and all of which shall become null and void from the date this Memorandum of Understanding is signed.
12. This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
13. The City agrees that it will not negotiate with or entertain any offers from any school boards other than the CEPEO during the term of this Memorandum of Understanding. The parties agree that this paragraph shall be binding on the parties.
14. If a Project Agreement is not signed by the parties by **February 1, 2023**, then this Memorandum of Understanding will become null and void and, subject to the terms of section 2, the Deposit shall be returned to CEPEO.

IN WITNESS WHEREOF the parties have each hereto caused their respective corporate seals to be affixed and duly attested by that respective proper officers duly authorized in their behalf upon the day and year first above written.

CITY OF OTTAWA

Per _____
Name:
Title:

Per _____
Name:
Title:

We have the authority to bind the Corporation.

**CONSEIL DES ECOLES PUBLIQUES DE
L’EST DE L’ONTARIO**

Per _____
Name: Sylvie C.R. Tremblay
Title: Directrice de l’éducation et
secrétaire-trésorière

Per _____
Name: Stephane Vachon
Title: Surintendant des affaires

We have the authority to bind the Corporation.