

This Agreement made as of the 7th day of February, 2020

B E T W E E N:

CITY OF HAMILTON
(hereinafter called "Hamilton")

OF THE FIRST PART,

-and-

ARCELORMITTAL LONG PRODUCTS CANADA G.P
(hereinafter called "AMLPC")

OF THE SECOND PART,

WHEREAS Hamilton is a municipal corporation governed in accordance with the *Municipal Act, 2001, c. 25 as amended* ("the Act"), under which it exercises the following statutory authority:

1. Pursuant to sections 8, 9 and 10 of the Act, Hamilton is authorized to regulate matters within its jurisdiction, which includes regulation within its geographical boundaries over water distribution, production, treatment and storage;
2. Pursuant to section 23 of the Act, Hamilton is authorized to enter into an agreement with any person to construct, maintain and operate a private water or sewage works; and,
3. Pursuant to section 391 (1) of the Act, Hamilton is authorized to impose fees or charges on persons for services or activities provided or done by or on behalf of it; costs payable by it for services or activities provided or done by or on behalf of any other municipality or local board, and for the use of its property including property under its control;

AND WHEREAS AMLPC owns and operates a manufacturing facility at 690 Strathearne Avenue North, City of Hamilton (the "**Delivery Point**"), and owns and operates an existing water main Pipeline, used to deliver in, on, under or across rights of way and lands of Hamilton, Raw Water from the Raw Water Pumping Station to the Delivery Point;

AND WHEREAS AMLPC and Hamilton wish to enter into an Agreement for the continued supply of Raw Water to the Delivery Point which will incorporate a licence that will authorize the continued presence of the Pipeline on City lands;

AND WHEREAS on April 25, 2018, Council of the City of Hamilton approved Item 9 of the Audit, Finance and Administration Committee Report 18-005 and authorized entering into an Agreement with AMLPC for the continued supply of Raw Water by Hamilton to the Delivery Point;

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN AND THE PROVISION OF OTHER GOOD AND VALUABLE CONSIDERATION BY EACH PARTY HERETO TO THE OTHER (THE RECEIPT AND ADEQUACY OF WHICH IS ACKNOWLEDGED) THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

ARTICLE 1. INTERPRETATION

1.01 Definitions

In this Agreement, unless the context otherwise specifies or requires, the following terms shall have the respective meanings specified or referred to below and grammatical variations of such terms shall have corresponding meanings:

"Agreement" means this Raw Water Supply Agreement and includes any Schedules.

"Business Day" means a day that is not Saturday, Sunday, statutory or civic holiday or other day on which Hamilton has elected to be closed for business.

"Council" means the municipal council for the city of Hamilton.

"Delivery Point" means the Delivery Point defined in the Recitals to this Agreement.

"Effective date" means February 7, 2020.

"Emergency" means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of the Parties.

"Future delivery point" has the meaning ascribed in section 2.04.

"Licensed Lands" means the lands owned by Hamilton upon which the Pipeline is currently located and existing.

"Maximum Flow Rate" means a maximum flow rate of 6.94 cubic metres per minute.

"New Construction" means the construction of new structures or the installation of new landscaping, but does not include normal repairs and maintenance, nor does it include reconstruction and landscaping replacement that involves the replacement of old structures or landscaping with new structures or landscaping in the same location and which are substantially the same as the structures or landscaping being replaced.

"Maximum Daily Volume" means a maximum of Ten-thousand (10,000) cubic metres per day.

"Parties" means both Hamilton and AMLPC and "Party" means either Hamilton or AMLPC.

"Pipeline" means collectively, the pipeline used to supply Raw Water from the Raw Water Pumping Station to the delivery point, in existence as of the Effective date, which pipeline is located on lands belonging to AMLPC and on the Licensed Lands. The Pipeline includes the active Pipeline, any decommissioned pipeline and any abandoned pipeline which may formerly have been used to supply Raw Water to the Delivery point, aboveground markers and a metering chamber (but not the water meter itself within the metering chamber), a valve chamber, a backflow preventer and any heated enclosure used in connection therewith that may hereinafter be installed, connections to the Pipeline, and four pumps located in the Raw Water Pumping Station.

"Qualified Person" means an employee of AMLPC or a contractor employed by AMLPC that is competent, trained, experienced and licensed in the Province of Ontario and is in good standing with the applicable licensing authority to perform the work assigned.

"Raw water" means water drawn from Lake Ontario screened but not filtered or otherwise treated, except for the occasional addition of chlorine to prevent the growth of algae and for zebra mussel control, and for primary disinfection of microbial organisms.

"Raw Water Pumping Station" means the dedicated pumping station building owned by Hamilton, and located at 900 Woodward Avenue at Hamilton's Woodward Avenue Water Treatment Plant site together with its electrical appurtenances outlined in red on the attached Schedule "A", which as of the Effective Date, is used to pump Raw Water from the Water Treatment Plant, through the Pipeline, to the Delivery Point.

"Sewer Use By-law" means By-law 14-090 of the City of Hamilton as amended from time to time.

"Term" means the twenty-year duration of this agreement which commences on February 7, 2020 and ends at midnight on February 6, 2040.

"Water and Wastewater/Storm Fees and Charges By-law" means the City of Hamilton Water and Wastewater/Storm Fees and Charges By-law, as amended from time to time, which By-law is currently By-law 19-291 of the City of Hamilton but which is anticipated to be amended on at least an annual basis throughout the Term.

(b) Compliance with Laws

Compliance with applicable laws is a fundamental obligation of both parties under this Agreement, and such compliance is applicable to every obligation hereunder whether special reference to compliance with laws is specifically expressed. The rights, privileges, duties and obligations arising out of this Agreement shall be subject to any applicable statute, regulation, law, order and direction of any governmental authority having jurisdiction over the Parties and now or hereafter in effect during the Term.

(c) Time of the Essence

Time shall be of the essence in this Agreement

(d) Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. References to currency are references to Canadian dollars.

(e) Interpretation not affected by headings, etc.

Grammatical variations of any terms defined herein shall have similar meanings; words importing the singular number shall include the plural and vice versa; words importing the masculine gender shall include the feminine and neutral genders and vice versa. The division of this Agreement into separate sections, subsections, and paragraphs and the insertion of headings and marginal notes and references are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

ARTICLE 2. PIPELINE AND RAW WATER PUMPING STATION

2.01 Pipeline

(a) All right, title and interest in the Pipeline is, has always been and shall remain vested with AMLPC.

(b) AMLPC is responsible for the operation, maintenance and repair of the Pipeline and all operating costs, including electricity, in relation thereto.

2.02 Raw Water Pumping Station

All right, title and interest in the Raw Water Pumping Station is, has always been and shall remain vested with Hamilton.

2.03 Connection Rights

(a) It is the intention of Hamilton and AMLPC that the Raw Water supplied under this Agreement shall be solely for the supply of Raw Water to the Delivery Point to be used for manufacturing processes at AMLPC's Hamilton manufacturing site.

(b) All water supplied by Hamilton pursuant to this Agreement shall be supplied through the Pipeline.

(c) In the event that, subsequent to the execution of this Agreement, AMLPC desires to add a service line and/or lateral main to the Pipeline and/or desires Hamilton to supply and deliver Raw Water through the Pipeline to a future/other delivery point other than that which is in place as of the Effective Date (collectively "Future Delivery Point"):

(i) AMLPC shall make a request in writing to Hamilton for consent to add a Future Delivery Point to the pipeline;

(ii) Hamilton may approve such request, provided that,

(1) delivery of Raw Water to a Future Delivery Point will not affect Hamilton's ability to supply water to Hamilton's ratepayers in the same manner as then currently provided, in Hamilton's sole and absolute discretion;

(2) an engineer confirms on AMLPC's behalf that the delivery of Raw Water to a Future Delivery Point will not result in withdrawing Raw Water beyond the Maximum Flow Rate and the Maximum Daily Volume; and,

(3) AMLPC shall be responsible for all capital costs associated with the installation of any pipelines/service lines/lateral mains, related infrastructure and water meter(s) required to serve a Future Delivery Point,

(iii) any such approval shall only become effective if this Agreement shall be formally amended in writing to reflect such approval, failing which any purported approval shall be null and void.

2.04 Grant of Licence

(a) For the duration of the Term, AMLPC shall have a licence under which AMLPC shall have the right to have the Pipeline occupy the Licensed Lands. The said licence is an integral part of this Agreement, and the said licence shall terminate immediately upon the expiration or other termination of the Term. The licence is exclusive with respect to the physical location of the actual Pipeline, but shall otherwise be non-exclusive with respect to the Licensed Lands in general.

(b) Included within the licence granted in (a) above is the right to have access to the Licensed Lands for the purpose of inspection and maintenance, including the right of replacement of the Pipeline, provided always that AMLPC shall be required to obtain any and all applicable permits from Hamilton prior to the commencement of any work.

(c) AMLPC shall pay an annual Licence Fee, plus applicable sales taxes, during each year of the Term in accordance with the following chart:

Timeframe	Amount of annual Licence Fee
January 15, 2020 to January 14, 2025	\$18,500.00
January 15, 2025 to January 14, 2030	\$19,425.00
January 15, 2030 to January 14, 2035	\$20,400.00
January 15, 2035 to January 14, 2040	\$20,420.00

(d) The annual licence fee shall be invoiced in full with the monthly raw water bill for the first year, on the commencement of the Term and shall be invoiced in full thereafter with the January raw water bill in each subsequent year of the Term.

(e) AMLPC specifically acknowledges that it has examined the Licensed Lands and that it accepts the Licensed Lands as is and is fully satisfied with their condition.

(f) AMLPC shall be responsible for all realty taxes, including local improvement rates, duties, charges and assessments that may be levied, charged, or assessed against the Licensed Lands during the Term, which amounts shall be payable to Hamilton as an additional Licence Fee. AMLPC shall have the right to register appeals and request reconsiderations of assessments under the Assessment Act in relation to the Licensed Lands.

ARTICLE 3. OBLIGATIONS OF AMLPC

3.01 Payment of Charges

(a) AMLPC shall pay to Hamilton all amounts charged in accordance with this Agreement, including the cost for the raw water delivered by Hamilton through the Pipeline in accordance with invoices issued to it by the invoiced due date.

(b) The charge for Raw Water supplied to AMLPC for each billing period will be calculated in accordance with the Water and Wastewater/Storm Fees and Charges By-law, as amended from time to time, as follows:

(i) Fixed Charges – Are based on the size of the water meter(s) and will be charged at the same rates that Hamilton charges to its consumers within the City of Hamilton.

(ii) Variable (Consumption) Charges – Raw Water consumption will be charged on a per cubic metre basis at 7.5% of the rate Hamilton charges for the supply of potable water.

(iii) Wastewater Charges – A fee will be charged on a per cubic metre basis for the quantity of sewer discharge of water that has originated from a source other than Hamilton's potable water supply. The formula used to determine surcharge discharge fees is as follows: Discharge fee payable on a quarterly basis = quantity of discharge × wastewater/storm treatment charge per cubic metre that from time to time Hamilton charges to its customers.

For added certainty, and without limiting the generality of the foregoing, it is agreed that the fees and charges set out in (i) through (iii) above will be adjusted on an annual basis, usually in January of any given calendar year, to correspond to the rates set by Council annually in the Water/Wastewater Fees and Charges By-law. The charges for Raw Water in accordance with the foregoing are deemed to be charges for the supply of Raw Water only, and do not include any cost recovery for costs for which AMLPC provides any other payment pursuant to this Agreement, or otherwise constitute any form of double-charging.

(c) AMLPC shall pay to Hamilton the sum of Four-hundred and forty-three thousand, four-hundred and thirty-two dollars (\$443,432.00) for the electrical upgrade to the Raw Water Pumping Station, which amount shall be paid in full as a lump sum not later than 30 days following the date that Hamilton switches over from the pre-upgrade electrical system to the post-upgrade electrical system. It is acknowledged that the foregoing payment is intended to reimburse Hamilton for its costs in performing the said electrical upgrade.

(d) In the event that AMLPC alleges that the charges in (c) above do not accurately reflect Hamilton's actual costs for performing the said electrical upgrade, the charge may be submitted to an auditor licensed under the Public Accounting Act who shall consider the charge and shall submit its recommendation to both parties. All expenses in connection with the work of the auditor shall be the responsibility of AMLPC alone. Neither party shall be obliged to accept the results of the audit recommendation, and either party may choose to seek resolution of the matter by having recourse to the dispute resolution provisions of this Agreement, however none of the foregoing shall delay the making of the payment pursuant to (c) above.

3.02 Suitability of Pipeline

AMLPC warrants that the Pipeline is in good working order and is suitable for the purposes of the delivery of Raw Water Delivery Point as set out in this Agreement.

3.03 Backflow Prevention Requirement

(a) AMLPC shall install a backflow prevention device to protect against any backflow conditions related to the Raw Water Supply. AMLPC will install a backflow prevention device, RP-BFP (Reduced Pressure Backflow Prevention Device), based on the directives of Premises Isolations as defined in the CSA B64.10-17 norm. The foregoing relies on clause 5.4 of the Selection Guide of the aforesaid B64.10-17 norm and more specifically is based on table 2 therein for which the applicable CSA standard designation is B 64.4.

(b) The Reduced Pressure Backflow Prevention Device shall be installed no more than three (3) metres downstream of the existing City of Hamilton water meter for the Pipeline. The installation shall occur on or before August 31, 2020.

(c) The installed backflow prevention device must be inspected annually by a licensed master plumber with a Backflow Prevention Device tester's certificate, retained by AMLPC at its sole cost and expense, and verified to be functional. Inspection reports will be submitted to Hamilton Water staff for review no later than December 31st of each calendar year that this Agreement remains in effect, except for the year 2020.

(d) Prior to August 31, 2020, Hamilton will consider whether it is a feasible option to relocate the backflow preventer into the Raw Water Pumping Station and the terms under which this option might be fulfilled. Hamilton shall consider the issue in good faith and with an open mind, but it shall be in the absolute discretion of Hamilton to either accept or reject any such option. AMLPC shall bear the full costs of any engineering studies in connection with the consideration of any such option, as well as any other costs in connection with the installation of the backflow preventer in the Raw Water Pumping Station, including the ongoing maintenance and other costs that may be incurred by Hamilton in connection therewith. The approval of any such option by Hamilton shall prevail over (a), (b), and (c) above to the extent of any inconsistency.

3.04 Maximum Flow Rate and Maximum Daily Volume

(a) At no time during the Term of this Agreement shall AMLPC withdraw Raw Water from the Pipeline at a rate that exceeds the Maximum Flow Rate or at a volume that exceeds the Maximum Daily Volume.

(b) In the event that Hamilton determines, based on measurement in accordance with section 6.02, that AMLPC is in contravention of (a) above:

(i) AMLPC shall take such measures as are necessary and appropriate to ensure compliance with the Maximum Flow Rate and Maximum Daily Volume amounts; and,

(ii) Without limiting any other rights it may have under this Agreement, or otherwise awaiting compliance by AMLPC, Hamilton may take any measures it deems appropriate,

in its sole and absolute discretion, to reduce the supply or reduce the flow rate of Raw Water to AMLPC.

(c) Either Party, may upon 60 calendar days' written notice to the other Party, request a review of the Maximum Flow Rate or the Maximum Daily Volume, as defined by this Agreement. If the parties are willing to change either the Maximum Flow Rate or the Maximum Daily Volume, this Agreement shall require amendment to the corresponding definitions. It is acknowledged that any change to these amounts shall be subject to Hamilton's ability to supply water to Hamilton's ratepayers as then currently being provided, in Hamilton's sole and absolute discretion.

3.05 Repair and Maintenance Costs

AMLPC covenants and agrees to be fully responsible for:

- (a) the maintenance and repair of the Pipeline in connection to Hamilton's supply of Raw Water; and,
- (b) reimbursement to Hamilton of all Hamilton's direct costs and expenses exclusively related to the maintenance and repair of the Raw Water Pumping Station, and any sizing and resizing of equipment or infrastructure as may be required in case of replacement. It is recognized that sizing and resizing, including without limitation the potential resizing referenced in section 3.09(a)(i), shall be determined with reference to the rights of AMLPC under this agreement and its other requirements hereunder.

3.06 Operating Costs

AMLPC covenants and agrees to be fully responsible for:

- (a) all operating and electrical costs related to the Pipeline, the water meter chamber, and all of its works and/or infrastructure in connection with the Pipeline; and,
- (b) all direct operating costs (including without limitation all electrical costs, grounds maintenance costs, cleaning costs, and communications costs) exclusively related to the supply and delivery of Raw Water from the Raw Water Pumping Station to the Delivery Point.

3.07 Standard of Care

(a) In addition to its general obligations under section 1.01(b), when undertaking the construction, administration, operation, repair, replacement or maintenance works pursuant to this Agreement, AMLPC shall:

- (i) use the same standard of care that is used by Hamilton in relation to its construction, administration, operation, repair, replacement or maintenance of its waterworks system;
- (ii) ensure that any personnel used by AMLPC or any contractor or subcontractor of AMLPC shall be a Qualified person; and,

(iii) not subcontract or delegate the work without the prior written consent of Hamilton, which consent shall be granted or withheld acting reasonably. Despite any such consent, Hamilton may at any time require AMLPC by notice to replace any contractor or staff person employed by AMLPC performing work if such person or contractor is unsuitable for the task or will be unavailable to perform the task in a timely manner. In the event that Hamilton provides such notice to AMLPC, AMLPC shall immediately withdraw the applicable person or persons from work, and shall use all reasonable efforts promptly to make a replacement or replacements.

(b) It is acknowledged that the approval of Hamilton to the use of any subcontractor for the performance of any work pursuant to this Agreement or otherwise, shall not relieve AMLPC from any liability under this Agreement and AMLPC shall always remain principally liable for any acts or defaults of its employees or contractors.

3.08 Wastewater Discharge

Without limiting the generality of section 1.01(b), AMLPC shall comply with the requirements of the Sewer Use By-law in respect of all sewer discharges to Hamilton sewage works, as the By-law may be amended from time to time. It is acknowledged that the foregoing shall, among other things, require the payment of fees in relation to sewage discharges, which shall be calculated and applied in the same manner as occurred immediately prior to the execution of this Agreement.

3.09 Necessary repairs to the Raw Water Pumping Station

(a) Without limiting the generality of section 3.05(b), AMLPC shall pay for Hamilton's actual costs as they are incurred needed to bring the Raw Water Pumping Station to a reasonable level of repair, it being acknowledged that the Raw Water Pumping Station is not now in a reasonable level of repair and that necessary work has been identified that includes but is not necessarily limited to the following:

(i) Process Mechanical Work

Review and repair of all existing piping, supports, isolation valves, check valves and appurtenances. Provision of redundant alarm functionality in the sump pump system. Provision of SCADA integration, antivibration and communication functionality. Review and performance of any necessary repairs to satisfy capacity and operational needs, including potential resizing of components.

(ii) Process Electrical Work

Review and repair of exterior transformers, including elimination of possible PCB contamination. Review and repair of any obsolete breaker parts or components, or other electrical components that may be oversized or antiquated. Updating of communications abilities to current standards and identification of components and conduits.

(iii) Health and Safety Work

The completion of a designated substances survey in relation to the entire building, including any required remediation that is identified, an arc flash survey to label all

necessary electrical components, review and repair of emergency lighting, and evaluation and repair of all exterior chambers associated with the Pipeline for integrity.

(iv) Building and Grounds Work

The completion of repair work to the building roof including recoating the roof decking from inside the building. The completion of vegetation removal around the building, repair of cracks in the building walls, and sealing the building foundation. Resurfacing the flashing associated with the building including the sealing of all joints.

(b) Despite sections 3.05(b) and 3.09(a)(ii), AMLPC's total contribution to any necessary remediation or adjunct costs incurred or to be incurred in respect of any PCB soil contamination is limited to the total sum of Twenty-thousand dollars (\$20,000).

3.10 Alternative to reimbursement of Hamilton Costs

When work is to be done by Hamilton for which it is entitled to obtain reimbursement from AMLPC, Hamilton may authorize such work to be performed in the first instance by AMLPC if:

- (a) AMLPC assumes all costs and responsibility, including Construction Liens and Occupational Health and Safety, for any such work; and,
- (b) the parties are both in agreement that such arrangements would reduce AMLPC's ultimate costs and would otherwise be appropriate in all the circumstances.

ARTICLE 4. COVENANTS AND RESPONSIBILITIES OF HAMILTON

During the Term of this Agreement, subject to the terms of this Agreement, Hamilton will supply and deliver Raw Water to the Delivery Point that meets the following requirements:

- (a) the Raw Water shall have been screened with occasional chlorination treatment if deemed necessary to prevent zebra mussels or similar invasions, and for primary disinfection of microbial organisms; and,
- (b) the supply of Raw Water will achieve the Maximum Daily Volume and the Maximum Flow Rate.

ARTICLE 5. INTERRUPTION OF SUPPLY

5.01 General

Hamilton shall have no obligation or liability to AMLPC for any interruption of supply of Raw Water occasioned by the causes described in this Article.

5.02 Force Majeure

Without limiting the generality of section 13.11, in the event that Hamilton is prevented from carrying out its obligations for supply and delivery of Raw Water under this Agreement by reason of any industrial disturbance, insurrection, riot, embargo, fire or explosion, act of God or war or by order of any legislative or federal authority or commission having jurisdiction over it, or by any other similar events over which Hamilton has no control and cannot reasonably prevent, Hamilton shall, to the extent to which it is so prevented from carrying out any such obligation, be relieved from same while such disability continues.

5.03 Temporary Interruption of Supply

Hamilton may temporarily discontinue the delivery of Raw Water to the Delivery Point in the event of planned maintenance work affecting the delivery, or if an Emergency exists in the City of Hamilton, as determined in Hamilton's sole discretion, acting reasonably. Hamilton may also temporarily discontinue the delivery of Raw Water to the Delivery Point in any other instance when Hamilton determines that it is necessary to discontinue delivery. Any such discontinuance will be of the minimum duration reasonably possible in the circumstances, and Hamilton will use reasonable efforts to provide AMLPC with appropriate notice of any such discontinuation given the circumstances of each event.

5.04 Emergency Backup

In the event Hamilton discontinues or interrupts the delivery of Raw Water to the Delivery Point pursuant to this Article, AMLPC shall, at its sole cost and expense, be responsible for supplying and generally meeting its requirements for water until the regular Raw Water supply is restored pursuant to this Agreement and shall tolerate and accept such discontinuation of service without any claim against Hamilton therefor.

ARTICLE 6 BILLING

6.01 Billing

Hamilton will invoice AMLPC for Raw Water and all other costs and charges permitted hereunder on a monthly basis.

6.02 Measurement

As of the Effective Date, it is acknowledged that the supply of Raw Water from Hamilton to AMLPC is measured through a single water meter located in one chamber. It is agreed and acknowledged that this is adequate for purposes of this Agreement, however if the parties successfully make an agreement on another feasible option for the relocation of the backflow preventer pursuant to section 3.03(d), it is acknowledged that the water meter will move inside the Raw Water Pumping Station.

6.03 Interest on overdue accounts

AMLPC shall pay interest on overdue accounts calculated at the same rate as charged on overdue accounts to consumers within the City of Hamilton.

ARTICLE 7 EXCLUSION OF LIABILITY

7.01 Exclusion of Liability

(a) The parties expressly agree and acknowledge that Hamilton shall not be liable to anyone, including AMLPC for any expense, cost, loss or damage (including any direct, indirect, special, remote, consequential and/or exemplary or punitive damages, regardless of the form of action, whether in contract, tort or otherwise), sustained directly or indirectly by reason of any variation, interruption or temporary discontinuance of the Raw Water supply delivered under this Agreement or the failure to supply such Raw Water or to supply sufficient Raw Water to AMLPC pursuant to this Agreement or the failure to provide reasonable notice of any variation, interruption or discontinuance of supply, for any reason whatsoever, whether such failure is a result of gross negligence or willful disregard of Hamilton or its servants, agents or employees, or otherwise, including, but not limited to, by reason of the construction, administration, operation, repair, replacement or maintenance of its water works system, and Hamilton shall not be responsible or liable for any loss or damage suffered by AMLPC that is related to or that would not arise but for this Agreement and anything done under or by reason of this Agreement. For added certainty, and without limiting the generality of the foregoing, it is agreed that due to weather and other circumstances beyond the control of Hamilton, the pressure at the Delivery Point may vary and Hamilton shall not be liable in any way whatsoever responsible for such variations in pressure.

(b) The parties expressly agree and acknowledge that AMLPC shall not be responsible for the decommissioning of the Raw Water Pumping Station as more particularized in 10.04(b) of this Agreement.

ARTICLE 8. INDEMNITY

8.01 Indemnity to Hamilton

(a) AMLPC shall and does hereby for all times covenant to defend, indemnify and save harmless Hamilton, its elected officials, officers, employees and agents, from and against any and all actions, causes of action, interest, claims, demands, costs, damages, expenses, loss or other proceedings however arising which Hamilton may bear, suffer or be put to by reason of this Agreement or the operation of the Pipeline, the lack of repair or maintenance of the Pipeline, the exercise by AMLPC of its rights as a licensee under this Agreement, or any other cause arising out of the Agreement or the exercise of AMLPC's rights hereunder, except to the extent such proceedings are due to the gross negligence of Hamilton, its elected officials, officers, employees or agents.

ARTICLE 9 INSURANCE

9.01 AMLPC Insurance

(a) Throughout the term of the Agreement (including any renewal thereof), AMLPC shall maintain and keep in full force and effect at its own expense (including the cost of deductibles), the following policies of insurance:

(i) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, and non-owned automobile and having an inclusive limit of not less than Ten Million (\$10,000,000) per occurrence and in the aggregate and endorsed to include the City of Hamilton as additional insured;

- (ii) Property insurance covering against damage and loss of properties owned by Hamilton and used in connection with the Licensed Premises granted in this agreement; and,
- (iii) Sudden & Accidental Pollution coverage under either the Commercial General Liability policy or under a separate policy of Pollution liability, which Pollution policy shall carry a limit of not less than Ten Million (\$10,000,000) per occurrence endorsed to include Hamilton as additional insured.

The policies shall require at least thirty (30) days' written prior notice of any change to or amendment, cancellation, expiration or termination of the coverage under such policies to be given to Hamilton herein and be in a form satisfactory to Hamilton. The insurer shall be licensed to do business in Ontario, and such insurer and the insurance coverage shall be acceptable to Hamilton acting reasonably and prudently. AMLPC shall deliver to Hamilton a certificate of insurance originally signed by authorized insurance representatives, or, if required by Hamilton, a certified copy of the policy prior to the execution of this Agreement. Certificate Holder will be addressed as City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5, Attn: Public Works, Director of Hamilton Water. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address.

(b) All insurance coverages to be provided by AMLPC herein shall be primary and not call into contribution any other insurance coverages available to Hamilton and such coverage shall preclude subrogation claims against Hamilton and any other person insured under the policy. Insurance requirements and coverage herein shall not limit, reduce, or waive any of AMLPC's obligations to indemnify Hamilton pursuant to this Agreement herein or the liabilities assumed by AMLPC under this Agreement. AMLPC shall not do or omit to do anything that may breach, limit, restrict, or prejudice the terms or conditions of the insurance coverages referred to herein.

9.02 AMLPC Contractor Insurance

It is the responsibility of AMLPC to ensure that its contractors and subcontractors, providing maintenance or other services related to the works and/or infrastructure described in this Agreement, obtain and maintain insurance coverage which includes at a minimum, Commercial General Liability insurance covering against any and all claims for bodily injury, including death, personal injury, and property damage with a minimum limit of coverage of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate endorsed to include Hamilton and AMLPC as additional insureds.

9.03 Hamilton Insurance

Throughout the term of the Agreement (including any renewal thereof), Hamilton shall effect at its own expense (including the cost of deductibles), and maintain and keep in force Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, and non-owned automobile and having an inclusive limit of not less than Ten Million, (\$10,000,000) per occurrence and in the aggregate. Hamilton shall deliver to AMLPC a certificate of insurance originally signed by an authorized insurance representative, at the time of the execution of this Agreement.

ARTICLE 10. TERM

10.01 Term of Agreement

The Term of this Agreement shall commence on the Effective Date and shall remain in effect for a period of twenty (20) years, unless terminated earlier in accordance with this Agreement. Upon the expiration or other termination of the Term, subject to section 13.07 of this Agreement, all rights of AMLPC pursuant to this Agreement shall immediately cease.

10.02 Early Termination by AMLPC

(a) In the event that the supply of Raw Water from Hamilton pursuant to this Agreement is no longer required by AMLPC, then upon providing Hamilton with not less than six (6) months notice in accordance with the notice provisions contained in section 12 of this Agreement, AMLPC may terminate this Agreement and this Agreement shall terminate in accordance with such notice.

(b) Where AMLPC avails itself of its right of termination in accordance with (a) above, it shall be entitled to a partial refund of the electrical upgrade chargeback collected pursuant to section 3.01(c) of this Agreement, as adjusted to take account of any reduction in the electrical upgrade chargeback in accordance with section 3.01(d), calculated in accordance with the following chart:

Year(s) in which termination becomes effective	Percentage to be refunded
2020-2021	85%
2022-2023	70%
2024-2025	55%
2026 or later	No Refund

(c) Half of any refund entitlement pursuant to (b) above shall be payable within 30 days of the approval of the decommissioning plan described in section 10.04(a), but the remaining refund entitlement shall not be payable unless and until AMLPC has fully complied with its obligations pursuant to section 10.04. The said remaining refund shall be held back without interest until completion of the said obligations has occurred to the satisfaction of Hamilton, acting reasonably, at which time it shall be payable forthwith.

10.03 Early Termination by Hamilton

(a) In the event that during the Term, there is not sufficient capacity in Hamilton's waterworks system to continue to supply AMLPC the volumes and rates of Raw Water required under this Agreement, in Hamilton's sole opinion acting reasonably, then upon Hamilton providing AMLPC with not less than two (2) years notice, in accordance with the notice provisions contained in section 12 of this Agreement, Hamilton may terminate this Agreement and this Agreement shall terminate in accordance with such notice.

(b) In the event that Hamilton exercises its rights pursuant to (a) above, Hamilton shall have no responsibility or other obligation in respect of any loss, expense or damage sustained directly or indirectly by AMLPC arising from such termination.

(c) Where Hamilton avails itself of its right of termination in accordance with (a) above, AMLPC shall be entitled to a partial refund of the electrical upgrade chargeback collected pursuant to

section 3.01(c) of this Agreement, as adjusted to take account of any reduction in the electrical upgrade chargeback in accordance with section 3.01(d), calculated in accordance with the following chart:

Year(s) in which termination becomes effective	Percentage to be refunded
2020-2021	85%
2022-2023	70%
2024-2025	55%
2026 or later	No Refund

(d) Half of any refund entitlement pursuant to (c) above shall be payable within 30 days of the approval of the decommissioning plan described in section 10.04(a), but the remaining refund entitlement shall not be payable unless and until AMLPC has fully complied with its obligations pursuant to section 10.04. The said remaining refund shall be held back without interest until completion of the said obligations has occurred to the satisfaction of Hamilton, acting reasonably, at which time it shall be payable forthwith.

10.04 Termination and Removal or Abandonment

(a) Upon the expiry of the Term, or early termination of this Agreement by either AMLPC or Hamilton pursuant to this Article or otherwise, or in the event the use of all or any portion of the Pipeline is terminated, abandoned or decommissioned for any reason, AMLPC shall, at its sole cost and expense, do the following:

(i) Within sixty (60) calendar days of the effective date of termination, AMLPC shall provide detailed plans to Hamilton which specify the method of decommissioning of the Pipeline, including details of all proposed restoration works, which plans shall comply with the following rules:

(1) With respect to portions of the Pipeline that are located on a public highway, AMLPC may leave the Pipeline in situ according to such instructions as the City may give regarding plugging with grout or such other matters related to the methodology of decommissioning, as it may direct;

(2) With respect to portions of the Pipeline that are not located on a public highway, the default obligation of AMLPC shall be to physically remove the Pipeline running over Hamilton lands, and the plans shall reflect this default obligation. Despite the foregoing, within its plans AMLPC may propose an alternate means of decommissioning the Pipeline that does not necessarily include physical removal, but in either case, the plans shall require AMLPC to restore the lands disturbed by the removal or decommissioning of the Pipeline, as the case may be.

(3) The plans shall provide a detailed work plan and timeline.

(ii) Hamilton will consider the plans filed pursuant to (i) above and shall either approve or reject the plans within 60 days of the date of filing. If the plans are rejected by Hamilton, Hamilton shall describe the deficiencies in the plans that require modification.

(iii) Within ninety (90) days of the approval by Hamilton of the said plans, or such other time as agreed upon in writing by Hamilton or contained within the approved plans, AMLPC

shall implement the approved plans in accordance with the methods and according to the timeline contained therein.

(b) In the case of the Raw Water Pumping Station, Hamilton shall assume sole responsibility for its decommissioning.

(c) If, during the Term, Hamilton erects New Construction on any portion of the Licensed Lands that do not have the status of a public highway, and such New Construction has the effect of causing increased costs to AMLPC in the performance of its obligations under section 10.04(a)(i)(2), Hamilton shall be responsible for the increase in costs attributable to the erection of such New Construction.

ARTICLE 11. DISPUTE RESOLUTION

11.01 High Level Negotiation

If a dispute arises under this Agreement which is not resolved by the operational personnel involved, the AMLPC's Plant Director of its Hamilton East, Wire Mills facility and Hamilton's Director of Hamilton Water shall be notified and shall meet within fifteen (15) Business Days of the notification in attempt to resolve the dispute. In the event that they are unable to resolve the dispute, they shall notify AMLPC's General Manager of Wire Mills, and Hamilton's General Manager of Public Works who shall meet as promptly as possible to attempt to resolve the dispute.

11.02 Mediation and Arbitration

In the event of any dispute or disagreement between the Parties as to the meaning or interpretation of anything contained in this Agreement or as to the performance or non-performance hereof or as to the respective rights and obligations of the Parties under this Agreement, that is not resolved pursuant to the process provided for under subsection 11.01, the Parties may mutually agree to refer such dispute or disagreement to mediation or arbitration.

11.03 Procedure for Mediation or Arbitration

The procedure upon mediation or arbitration pursuant to the provisions of subsection 11.02 shall be as follows:

(a) Within twenty (20) calendar days after the written request of either of the Parties for mediation or arbitration, in the event the Parties are unable to agree upon a single, mutually acceptable mediator/arbitrator, each of them shall appoint one mediator/arbitrator and the two so appointed shall, within twenty (20) calendar days after the expiration of the twenty (20) day period select a third. If either of the Parties fails to name a mediator/arbitrator within twenty (20) days after the written request for mediation/arbitration, the mediator/ arbitrator appointed shall be the only mediator/arbitrator. If the two mediators/arbitrators so appointed are unable to agree on a third mediator/arbitrator within twenty (20) calendar days after the expiration of the first twenty (20) calendar day period mentioned above, application shall be made as soon as reasonably possible to any judge of the Ontario Superior Court of Justice for the appointment of a third arbitrator.

(b) The mediator(s)/arbitrator(s) so appointed shall have all the powers accorded to arbitrators by the *Arbitration Act, 1991*, SO 1991, c17. The decision of the

mediator(s)/arbitrator(s) (or of a majority of the mediator(s)/arbitrator(s)) shall be final and binding on the Parties.

(c) Either Party may appeal an arbitration award to the courts of the Province of Ontario on a question of law.

(d) Either Party may apply to a court of competent jurisdiction for (i) an interim measure of protection or (ii) any order for relief which the arbitrator(s) do not have the jurisdiction to provide.

(e) The cost of the mediator(s)/arbitrator(s) referred to in this section shall be shared equally between AMLPC and Hamilton.

11.04 Performance to Continue

In the case of a dispute between the Parties, each Party agrees to fulfill its contractual obligations under the terms of this Agreement to the best of their abilities until the dispute is resolved.

ARTICLE 12. NOTICE

12.01 Notice, Delivery of notice in writing, and Addresses

Any notice required to be given under this Agreement shall be in writing, and shall be delivered by personal delivery, fax or by prepaid mail to the following address:

AMLPC: 690 Stratheame Ave. N.
Hamilton, Ontario
L8H 7N8
Fax : TBD

Attn: General Manager, Wire Mills

Hamilton: 77 James Street North, Suite 400
Hamilton, ON
L8R 2K3
Fax: 905-546-3658

Attn: Director of Hamilton Water

12.02 Delivery of the notice

Notice will be deemed to have been given:

- (a) in the case of postage-prepaid mail, five Business Days after the notice is mailed; or
- (b) in the case of personal delivery or fax, one Business Day after the notice is delivered.

12.03 Postal disruption

Despite subsection 12.02(a), in the event of a postal disruption, notice by postage-prepaid mail will not be deemed to be received and the Party giving notice will provide notice by personal delivery, by fax, or by e-mail.

12.04 Special Provisions Respecting Notification of an Interruption in Supply of Raw Water

The Parties agree to work together to develop a communication strategy that will better satisfy the needs of the parties when notice needs to be given in respect of an interruption in the supply of Raw Water. If the parties conclude that such arrangements are feasible and appropriate, they may record the arrangements in a separate document that shall be deemed to be part of this Agreement when signed and approved by appropriate staff having authority. The said separate document shall thereafter prevail over section 5.03 and the normal notice provisions contained in this Article to the extent that its requirements differ therefrom.

12.05 Data sharing protocol

The Parties agree to work together to consider whether it is feasible to implement a data sharing protocol to transfer data from the SCADA System (SCADA is an acronym for supervisory control and data acquisition, a computer system for gathering and analyzing real time data) of the Raw Water Pumping Station to AMLPC or for AMLPC to install its own system within the Raw Water Pumping Station for the transfer of data to their operations. If the parties conclude that such an arrangement is feasible and appropriate, they may record the arrangements in a separate document that shall be deemed to be part of this Agreement when signed and approved by appropriate staff having authority.

12.06 Changes in Address

The parties may change their addresses in section 12.01 through notice given in accordance with this Article.

ARTICLE 13. GENERAL PROVISIONS

13.01 Binding Agreement

This Agreement shall not be in force, or bind any of the Parties, until executed by both AMLPC and Hamilton. This Agreement shall enure to the benefit of and be binding upon the Parties and their successors.

13.02 No Assignment

The rights of either party to this Agreement are not capable of being sold or assigned without the approval of the other party, which approval may be either given or withheld in the discretion of the party from whom approval is required, acting reasonably.

13.03 Amendments Must Be Equally Formal

This Agreement may not be amended except by an instrument in writing of equal formality signed by the Parties to this Agreement or by their successors or assigns as limited in this Agreement.

13.04 Independent Legal Advice

The Parties acknowledge that they have read, understood and obtained independent legal advice respecting this Agreement and the terms thereof.

13.05 Waiver

AMLPC and Hamilton agree that any actions of either or both Parties in contravention of this Agreement shall not be relied upon as a waiver of any term of this Agreement and no approvals given by any employee of either Party shall constitute a waiver by the respective Party of its rights under this Agreement.

13.06 Further Assurances

AMLPC and Hamilton agree that they will, upon the reasonable request of each other, make, do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices and assurances whatsoever to effect all of the terms, provisions and conditions of this Agreement.

13.07 Survival

The rights and obligations of the Parties, which by their very nature, extend beyond the termination of this Agreement including, without limitation, the following sections and subsections, and all applicable cross-referenced sections and subsections, will survive any expiry or termination of this Agreement and continue in full force and effect: Article 7 (Exclusion of Liability), Article 8 (Indemnity), Section 10.04 (Termination and Removal or Abandonment), and this section 13.07.

13.08 Invalid or Unenforceable

If any term of this Agreement is found to be invalid, illegal, or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from this Agreement and the rest of this Agreement shall remain in force unaffected by the severance of that term.

13.09 References to Law

All references to statutes or by-laws in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.

13.10 MFIPPA

AMLPC acknowledges that Hamilton is bound by the *Municipal Freedom of Information and Protection of Privacy Act (Ontario)*, and that the information provided to Hamilton in connection with this Agreement may be subject to disclosure in accordance with the provisions of that Act.

13.11 Force Majeure

Notwithstanding anything contained in this Agreement, neither Party shall be liable for any failure or delay on its part to perform any of the terms, conditions, covenants or obligations of this Agreement to the extent that such failure or delay is the result of a cause beyond its reasonable control including such things as unavailability of material, equipment, utilities, services, an act of God, a fire, an act of the public enemy, an act of Her Majesty in her sovereign capacity, laws, a flood, a quarantine restriction, an epidemic, a labour dispute, a riot, a civil commotion, vandalism, malicious mischief or other similar cause beyond its control and not avoidable by the exercise of reasonable foresight (excluding the inability to pay for the performance of such obligation) and which occurs without the default or negligence of the Party seeking relief. The Party being delayed shall be entitled to extend the time for fulfillment of such obligation by a time equal to the duration of such delay and the other Party shall not be entitled to any

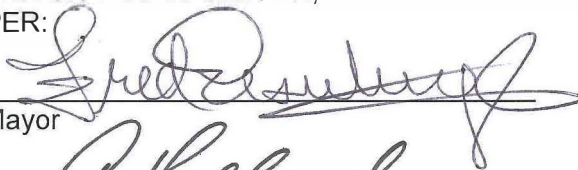
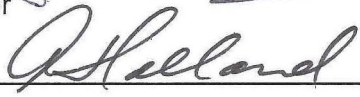
compensation for any loss or inconvenience occasioned thereby. The Party delayed shall however, use commercially reasonable efforts to fulfill the obligation in question as soon as reasonably possible.

13.12 Entire Agreement

This Agreement and the documents and instruments to be executed and delivered under it constitute the entire agreement between the Parties and supersede any previous agreement or arrangement, oral or written, between the Parties. This Agreement and the documents and instruments to be executed and delivered under it, contain all the covenants, representations, and warranties of the respective Parties. There are no oral representations or warranties between the Parties of any kind.


IN WITNESS WHEREOF the Parties have, by the signature of their representatives duly authorized in that behalf, entered into this Agreement.

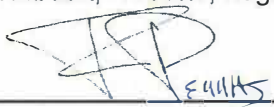
THE CITY OF HAMILTON,
PER:

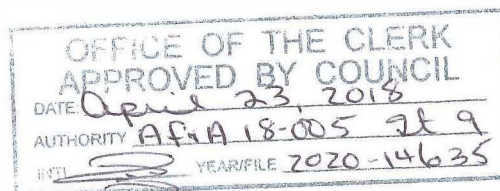

Mayor

Clerk

Approved
as to form
Legal
Services

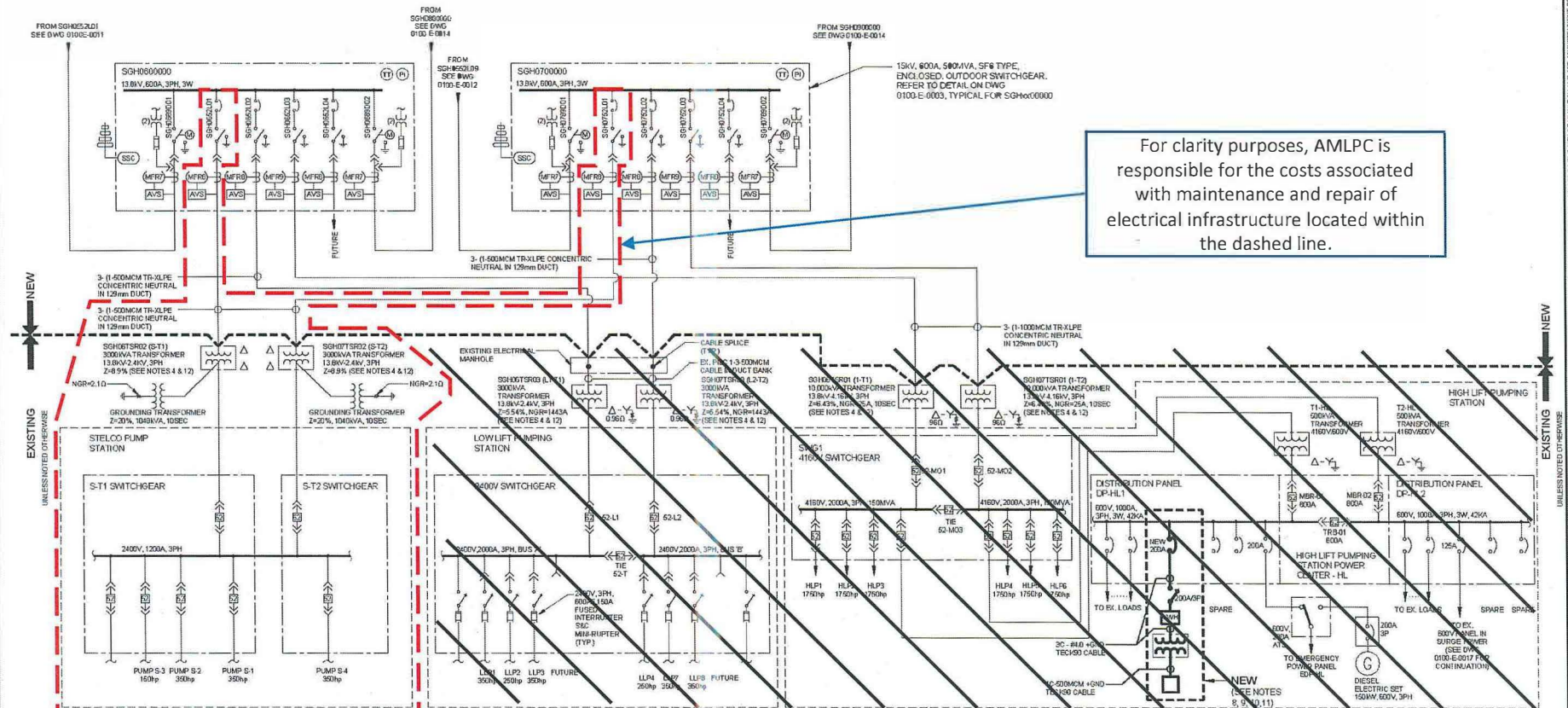
ARCELORMITTAL LONG PRODUCTS CANADA G.P.,
PER:


Nadia Thibault, Director, Legal Affairs & Compliance


Francois Perras, President and Chief Executive Officer



Schedule A **Electrical Single Line Diagram** **Raw Water Pumping Station** **(formerly referred to as Stelco PS)**



NO.	DATE	REVISION	BY	APPROVED	DATE
2	2011-10	ISSUED FOR CONSTRUCTION	M.D.	M.D.	
1	2011-08	ISSUED FOR ADDENDUM #8	M.D.	M.D.	
0	2011-08	ISSUED FOR TENDER	M.D.	M.D.	

CH2MHILL
AECOM



WOODWARD AVENUE WWTP UPGRADE PROGRAM -
ELECTRICAL & CHLORINATION UPGRADE PROJECT
ELECTRICAL
SINGLE LINE DIAGRAM 10
NEW LOOP DISTRIBUTION

DATE	2015-06-01
PROJ	C13-26-17
DWG	0100-E-0013
SHEET	262

AMLPC
NT/FP

