

THE CITY OF EDMONTON
PROJECT AGREEMENT
VALLEY LINE WEST LRT

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PROJECT AGREEMENT

THE CITY OF EDMONTON - VALLEY LINE WEST LRT

made this 22nd day of December, 2020

BETWEEN:

THE CITY OF EDMONTON

(the “City”)

AND:

MARIGOLD INFRASTRUCTURE PARTNERS LIMITED PARTNERSHIP

(“Project Co”)

PREAMBLE:

Pursuant to the RFQ process and the RFP process, the City has selected Project Co to design, build, finance, test and commission the Infrastructure.

The City and Project Co therefore agree as follows:

1. KEY CLOSING DOCUMENTS

1.1 Document Deliveries

Concurrently with the Commercial Close:

- (a) Project Co has delivered to the City the documents described in Section 2 [*Documents to be Delivered by Project Co*] of Schedule 25 [*Completion Documents*]; and
- (b) the City has delivered to Project Co the documents described in Section 3 [*Documents to be Delivered by the City*] of Schedule 25 [*Completion Documents*].

1.2 Project Contracts

- (a) Project Co will not:
 - (i) terminate, or accept or consent or agree to or permit, the termination of, all or any material part of, any Project Contract except:
 - (A) as required or permitted to do so by the City pursuant to the provisions of this Agreement; or
 - (B) if there is an event of default under a Project Contract and Project Co terminates the Project Contract in order to prevent or cure a Default or a Termination Event hereunder (provided that commercially reasonable alternative measures would not prevent or cure such Default or Termination Event);
 - (ii) make, or consent or agree to or permit, the making of:

- (A) any material amendment of any Project Contract, other than amendments that are the direct and reasonable consequence of a Change Directive or Change Order Confirmation; or
- (B) a material waiver, release, or suspension by any other party from the performance of any provision by a party to any Project Contract;
- (iii) subject to Sections 22.1 [*Limitations on Assignment*], 22.4 [*Factors the City May Consider*] and 22.6 [*Project Co Persons, Subcontractors*] consent or agree to, or permit, any other party to a Project Contract to assign or transfer to any other Person any of such party's rights or obligations under a Project Contract;
- (iv) enter into, or consent or agree to, or permit, the entering into of, any contract in the nature of the Project Contracts, other than those entered into on or before Commercial Close and as listed in Schedule 25 [*Completion Documents*];
- (v) breach any of its obligations (or waive or allow to lapse any rights it may have) under any Project Contract, that would have an adverse effect on Project Co's ability to perform its obligations under this Agreement or that would have the effect of increasing any liability of the City, whether actual or potential,

unless Project Co has, at its earliest practicable opportunity, submitted to the City notice of the proposed course of action and any relevant explanatory documentation and the City has consented to such course of action, such consent not to be unreasonably withheld or delayed.

- (b) For the purposes of this Section 1.2 [*Project Contracts*] a material amendment, waiver, release or suspension of a provision of a Project Contract includes, but is not limited to, any of those events that does, or would be reasonably expected to:
 - (i) alter or modify the allocation of risks or responsibilities of the contracting parties under the Project Contract;
 - (ii) create a conflict or inconsistency with any term of this Agreement or Project Document;
 - (iii) alter, modify, terminate or replace the Performance Security of a Project Contractor; or
 - (iv) affect any right or obligation of the City under this Agreement or under a Project Document,

and as a consequence adversely affect, impair or compromise the performance, or the capacity or capability of Project Co or a Project Contractor to perform the Project Requirements or otherwise adversely affect the Project or the City, including increasing any actual or potential liability of the City.

1.3 Costs of Request for Consent

If Project Co requests City consent to a proposed course of action pursuant to subsections 1.2(a)(i), (iii) or (iv), Project Co will pay, without duplication, the City's reasonable internal administrative and personnel costs, consultants' costs and all reasonable out-of-pocket costs (including in respect of technical, financial and legal advisors) as estimated or quantified by the City in connection with considering any such request. At the time of such request, Project Co will make a payment to the City in the amount of [REDACTED]

as an advance against (and not in satisfaction of) its obligations under this Section 1.3 [*Costs of Requests for Consent*].

Within 30 Business Days after the City renders its decision, the City will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 1.3 [*Costs of Requests for Consent*] and Project Co will promptly pay such amount to the City. Concurrently with providing such refund or invoice the City will provide Project Co with a breakdown of the City's costs in connection with its consideration of Project Co's request for consent.

1.4 Replacement Project Contract

If any Project Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise), unless the goods, services or rights which were the subject matter of such Project Contract are no longer reasonably required for the Project Work, or have been fully delivered or performed and all liabilities and obligations thereunder fully discharged:

- (a) Project Co will forthwith enter into, or cause to be entered into, a replacement Project Contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and
- (b) if the City and the relevant party to the Project Contract had entered into a Collateral Agreement with respect to the replaced Project Contract, Project Co will forthwith enter into, or cause the replacement party to the Project Contract to enter into a Collateral Agreement.

1.5 Notices under Project Contracts

If at any time any amendment, whether resulting from a Change Order Confirmation or otherwise, is made to any Project Contract, or a replacement Project Contract (or any agreement which materially affects the interpretation or application of any Project Contract) is entered into pursuant to Section 1.2 [*Project Contracts*], Project Co will deliver to the City a copy of each such amendment or agreement within 10 Business Days of the date it is made, certified as a true copy by an officer of Project Co. Upon the written request of City, Project Co will deliver or cause to be delivered to the City a copy of any notices delivered or received by Project Co under any of the Project Contracts.

1.6 Early Works Agreement

- (a) The Parties acknowledge and agree that the Early Works Agreement shall terminate effective as of Financial Close and that this Agreement supersedes the Early Works Agreement in its entirety. All activities undertaken pursuant to the Early Works Agreement prior to Financial Close are deemed to have been undertaken by Project Co as Project Work pursuant to this Agreement, notwithstanding that the Early Works may have been executed by Colas Infrastructure Canada GP and Parsons Inc., an unincorporated joint venture (the "**Early Works Contractor**") and not directly by Project Co. Project Co accepts and assumes the risk, responsibility and liability for and in respect of such Early Works in accordance with the provisions of this Agreement.
- (b) None of Project Co, the Early Works Contractor, the City or any other party to the Early Works Agreement shall be entitled to make a claim against each other or against any Project Co Person or against any City Person under or in connection with the Early Works Agreement (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments, unless such claim is permitted under this Agreement.

- (c) Any dispute in connection with or arising out of the Early Works Agreement and existing at Financial Close shall, unless otherwise agreed in writing by the Parties, be resolved in accordance with Schedule 20 *[Dispute Resolution Procedure]*.

1.7 Project Contracts - Records and Reports

- (a) Consistent with Good Industry Practice, Project Co shall maintain a record of all events, developments or circumstances described in Sections 1.2 *[Project Contracts]* to 1.5 *[Notices Under Project Contracts]* above, including in respect of all matters referred to in Section 1.2(a)(ii). Project Co shall provide the City with a summary report in respect of these events, developments, circumstances and matters arising or occurring for each calendar quarter during the Term. These reports, including any nil reports, must be provided to the City pursuant to and in accordance with Section 3.2.1 *[Monthly Progress Report]* of Schedule 4 *[Design and Construction Protocols]*.
- (b) Project Co shall promptly provide a written report to the City in respect of any development or circumstances that arises that triggers, or that could reasonably be expected to trigger after the lapse of time, the right of Project Co or a Project Contractor to exercise a right of termination of a Project Contract, or to suspend a material right or obligation under a Project Contract. This report shall include a description of the development or circumstance and Project Co's planned steps or actions in response, and the timetable proposed or established for such steps or actions being taken.
- (c) Project Co shall maintain, or cause to be maintained by its Project Contractors, proper records in respect of all Project Contracts and all Subcontracts in relation to the Project and shall, on reasonable request by the City, provide the City with prompt access to:
 - (i) Project Contract records in relation to all matters described in this Section 1 *[Key Closing Documents]* or as otherwise specified in this Agreement; and
 - (ii) those Subcontractor records that may pertain to a dispute involving a Subcontractor to which the City is a party or participant.

2. SCOPE OF PROJECT CO OBLIGATIONS

2.1 Overall Obligations

Without limiting any obligations of Project Co in this Agreement, Project Co shall, at its own cost and risk:

- (a) observe and comply with all provisions of this Agreement that apply to Project Co;
- (b) carry out and perform all Project Work:
 - (i) in accordance with this Agreement, including all terms of all Schedules;
 - (ii) in compliance with Applicable Law;
 - (iii) in compliance with all Project Approvals and so as to preserve the existence and continued effectiveness of any such Project Approvals at all relevant times;
 - (iv) so as to satisfy the Project Requirements, including the Proposal Extracts as applicable;
 - (v) in accordance with Good Industry Practice, including Utility Best Practices and Environmental Best Management Practices;
 - (vi) by establishing or arranging for its own support services and facilities; and

- (vii) with due regard to the health and safety and security of Persons, property and the environment; and
- (c) cooperate with the City in the fulfillment of the purposes and intent of this Agreement, provided, however that, for the avoidance of doubt, Project Co shall not be under any obligation to perform any of the City's obligations under this Agreement.

2.2 Restricted Person

Notwithstanding any other provision of this Agreement, at no time shall Project Co be or become a Restricted Person.

2.3 Assumption of Risk

Except to the extent otherwise expressly allocated to the City by the provisions of this Agreement, all risks, costs and expenses in relation to the performance by Project Co of its obligations under this Agreement are allocated to, and as between the City and Project Co are the exclusive responsibility of, Project Co.

2.4 Warranty Periods

Project Co shall perform all Warranty Work required during the Warranty Periods in accordance with Section 7 [*Warranty*].

2.5 Interface Agreement

The City and Project Co shall enter into the Interface Agreement with the Operator and the LRV Supplier no later than the latest of:

- (a) the date the Operator enters into the Services Contract with the City; and
- (b) the date that is 180 days prior to the Target Phase 1 Construction Completion Date.

2.6 Responsibility for Project Management and Integration

Project Co shall be responsible for the complete project management oversight, coordination and integration of all elements and activities comprising the Project Work and for effective Integration.

Project Co shall proactively organize Project team alignment sessions utilizing an experienced professional facilitator, the first such session to occur no later than 30 days following Commercial Close and, thereafter, no less than one full Business Day in each calendar year following the anniversary of Commercial Close throughout the Construction Period, to promote and foster effective, integrated and collaborative working relationships among the designated senior representatives from Project Co, the Project Contractors having responsibility for the Project (including at a minimum all appointed Key Individuals and all appointed members of the working joint committees for the Project), the City's Representative and any other City Persons, Other Contractors and/or such other representatives of the City as the City's Representative may designate from time to time.

2.7 Intellectual Property

Project Co shall provide to the City the Intellectual Property Rights, according to the terms of Schedule 8 [*Intellectual Property*].

3. FINANCING

3.1 Project Financing

Arrangement of the Project Financing is the sole responsibility of Project Co.

3.2 Compliance with Senior Financing Agreements

Project Co will keep the Senior Financing Agreements in good standing and will ensure that none of the terms and conditions of the Senior Financing Agreements conflict with or impair the exercise by the City of its rights under this Agreement, the Collateral Agreements or the Direct Lender Agreement or prevent or impair Project Co from performing its obligations under the Project Documents. If at any time Project Co receives a notice or communication from the Senior Lenders that: (i) an event of default, any event entitling the Senior Lenders to enforce any security or to require a remedial or similar plan has occurred under the Senior Financing Agreements; or (ii) that the Senior Lenders will not advance funds requested by Project Co to perform the Project Work, Project Co will forthwith deliver to the City a copy of such notice.

3.3 Changes to Senior Financing Agreements

Project Co will not without the written consent of the City, not to be unreasonably withheld, or delayed, terminate, amend, assign or otherwise modify the Senior Financing Agreements, or waive or exercise any of its rights under the Senior Financing Agreements or enter into any replacement Senior Financing Agreement or any agreement which affects the interpretation or application of any Senior Financing Agreements if such action would:

- (a) adversely affect Project Co's ability to perform its obligations under this Agreement in a material respect; or
- (b) have the effect of increasing any liability or potential liability of the City, whether actual or potential.

If at any time any amendment is made to any Senior Financing Agreement or Project Co enters into any replacement Senior Financing Agreement (or any agreement which affects the interpretation or application of any Senior Financing Agreement), Project Co will deliver to the City a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

3.4 Direct Lender Agreement

The City and Project Co will enter into a Direct Lender Agreement with a lender or lenders (or any trustee for or other representative of lenders) designated by Project Co who provide all or a substantial portion of the Senior Debt Financing (including the Senior Lenders), subject to the following:

- (a) the Direct Lender Agreement to be entered into under this Agreement must be in all material respects in the form prescribed by Schedule 21 [*Direct Lender Agreement*], and must not include any substantive obligations on the part of the City other than as expressly contemplated by Schedule 21 [*Direct Lender Agreement*]; and
- (b) the City will enter into a replacement Direct Lender Agreement on the terms specified in Section 3.4(a) at Project Co's request, provided Project Co has arranged cancellation of the Direct Lender Agreement previously in effect, it being understood that no more than one Direct Lender Agreement will be in effect at any time.

4. LAND MATTERS

4.1 Access and Use

Effective from the Effective Date and throughout the Term, and subject to the terms, conditions, obligations and limitations set out in this Section 4, the City hereby grants to Project Co a non-exclusive licence to access and use the City Lands and the Infrastructure (other than the WEM Transit Centre Site, Gerry Wright OMF Parcel B and Gerry Wright OMF Parcel C) as is required by Project Co, solely for the purpose of and sufficient for (subject to Project Co performing its obligations described in the Project Approvals) the performance of the Project Work, in accordance with this Section 4 *[Land Matters]* and Schedule 14 *[City Lands]*, provided that Future Acquired Lands shall form part of this licence and shall be available to Project Co in the manner and during the period specified therefor in Schedule 14 *[City Lands]*.

Effective from:

- (a) October 1, 2021 and throughout the Term, the City hereby grants to Project Co a non-exclusive licence to access and use the WEM Transit Centre Site;
- (b) January 31, 2022 and throughout the Term, the City hereby grants to Project Co a non-exclusive licence to access and use Gerry Wright OMF Parcel B, Gerry Wright OMF Parcel C, Gerry Wright OMF East Utility ROW and Gerry Wright OMF West Utility ROW,

in each case, solely for the purpose of performing the Project Work, in accordance with this Section 4 *[Land Matters]* and Schedule 14 *[City Lands]*. Notwithstanding paragraph (b) above, effective from September 1, 2021 the City hereby grants to Project Co a non-exclusive licence to access and use Gerry Wright OMF Parcel B solely for purposes of permitting Project Co to undertake testing (including geotechnical and the performance of a survey) provided that, prior to and as a condition of Project Co exercising the foregoing licence rights of access and use, Project Co shall: (i) provide not less than five days' prior written notice to the City stating the date upon which such proposed rights of access and use would commence and the purpose for which such rights would be exercised; and (ii) enter into coordination arrangements with the City and TransEd Partners regarding the exercise of such rights of access and use to ensure that such exercise does not materially interfere with the activities required to be undertaken on or at Gerry Wright OMF Parcel B by the City or TransEd Partners.

Subject to and in accordance with the terms and conditions of this Section 4 *[Land Matters]* and Schedule 14 *[City Lands]*, Project Co shall be entitled to grant non-exclusive sub-licences (not exceeding the scope of the licence granted to Project Co in this Section 4.1 *[Access and Use]*) to access and use the City Lands and the Infrastructure to Project Co Persons.

For greater certainty the licence in this Section 4.1 *[Access and Use]*:

- (a) applies to all City Lands, but not to the Adjoining Lands;
- (b) applies to the Additional Lands, if and when acquired in accordance with Section 4.5 *[Additional Lands]*;
- (c) applies to the Future Acquired Lands on the date the City notifies Project Co in writing that it has acquired such lands;
- (d) shall provide Project Co with the non-exclusive right to temporarily use and occupy, for a specific purpose and limited duration, Existing Infrastructure (other than Incorporated Infrastructure) owned or held by the City and located on the City Lands to the extent confirmed by the City and Project Co pursuant to and in accordance with Section 4.18 *[Occupancy of Buildings]*; and

- (e) shall provide Project Co with incidental access to Existing Infrastructure (other than Incorporated Infrastructure) owned or held by the City and located on the City Lands to the extent agreed by the City and Project Co on a case-by-case basis and for the sole purpose of carrying out Project Work activities, including the Deconstruction Work.

4.2 Status of City Lands

Except as otherwise expressly set out in this Agreement:

- (a) subject to Section 11 [*Relief Events and Limited Relief Events*] and Schedule 10 [*Environmental Performance Requirements*], the condition of, access to and use of the Lands is being provided to Project Co on an “as is” basis;
- (b) subject to Section 20.4(d), the City provides no representations or warranties with respect to the Lands (including as to their adequacy or suitability for the Project), except for the representations and warranties in Section 13.1 [*City’s Representations*];
- (c) none of the rights in the City Lands granted pursuant to Section 4.1 [*Access and Use*] shall extend beyond the boundaries of the City Lands or exceed any limits on the interests in the City Lands or to any Lands other than the City Lands, other than easements, rights of way, licences and similar interests of the City which benefit the City Lands and are hereafter obtained, to the extent the same are necessary for the Project Work as more particularly described in Schedule 14 [*City Lands*];
- (d) subject to the terms, conditions and protocols referred to in Section 6.2 [*Other Work*], Section 4.13 [*Uninterrupted Access and Use*] and Section 4.18 [*Occupancy of Buildings*] as it relates to the temporary use of certain Existing Infrastructure, the rights granted to Project Co hereunder shall be non-exclusive and the City and any Person authorized by the City or any Person having an interest in the City Lands pursuant to a Permitted Encumbrance may access, use, occupy and possess the City Lands, including the Existing Infrastructure, without the prior consent of Project Co. Project Co shall not, except as permitted under this Agreement, disrupt the occupation, possession or use of the City Lands or Existing Infrastructure by these Persons;
- (e) the licence granted to Project Co hereunder is a personal property right and Project Co acquires no estate, title or ownership interest in the City Lands, including the Existing Infrastructure or the Infrastructure or any other interest in land pursuant to this Agreement or otherwise;
- (f) none of the rights in the City Lands granted pursuant to this Section 4.2 [*Status of City Lands*] shall entitle Project Co to extract any mineral from the City Lands for sale and, as between the Parties and subject to the lawful claims of other Persons, any extracted minerals that should become extracted and that can be sold shall remain the property of the City. Project Co may use soil extracted from the City Lands and other materials salvaged by Project Co from its Deconstruction Work on the Site, other than minerals, in carrying out the purposes of the Project Work and dispose and sell for its own account, any such extracted materials that are excess to the Project Requirements;
- (g) subject to Section 11 [*Relief Events*], any rights Project Co requires to access or use the Adjoining Lands shall be the responsibility of Project Co to obtain, either pursuant to the Adjoining Lands Access Protocol, with City support in accordance with Section 4.16 [*Adjoining Lands Access Protocol*] or otherwise; and
- (h) the Identified Encumbrances and the Existing Utility Agreements contain certain limitations or restrictions and associated obligations with which Project Co must comply in

accessing and using the City Lands to perform the Project Work, all of which are further listed and described in Schedule 14 [*City Lands*] and Part 2 of Schedule 28 [*Project Approvals and Utility Matters*].

4.3 Duration

Subject to Section 4.14 [*Access and Use Rights to Cease*], Project Co's right to non-exclusive access to and use of the City Lands, the Existing Infrastructure and the Infrastructure continues throughout the Term, unless earlier terminated in respect of specific Existing Infrastructure in accordance with Section 4.18. Such right to non-exclusive access and use (together with any sub-licence right of access and use granted by Project Co pursuant to Section 4.1 [*Access and Use*]) automatically terminates upon any termination of this Agreement or of the rights of access granted in respect of specific Existing Infrastructure in accordance with Section 4.18. Subject to the Interface Agreement, access to and use of the City Lands, the Existing Infrastructure and the Infrastructure, from and following Final Completion shall be granted in accordance with and subject to the terms and conditions specified in Section 7 [*Warranty*] of this Agreement.

4.4 No Access Fee

No fee or other amount shall be payable by Project Co to the City for its rights of access to and use of the City Lands, the Existing Infrastructure and the Infrastructure.

4.5 Additional Lands

If, despite Project Co's acknowledgement in Section 5.4 [*Construction Within the City Lands*], Project Co determines that Real Property Interests in addition to the City Lands are required for the Project Work (the "**Additional Lands**"), then:

- (a) Project Co shall, at its earliest practicable opportunity, submit to the City notice of its recommended acquisition by one of Project Co, a Project Contractor or the City of the Additional Lands, including a detailed explanation identifying the requirement and rationale for such acquisition, evidence of investigations respecting possible Contamination and Hazardous Substances remediation requirements or liabilities and all other relevant explanatory documentation, including the legal description and title documentation in respect of such Additional Lands, an explanation of the nature of the interest in the Additional Lands to be acquired, any available environmental reports in respect of such Additional Lands and Project Co's recommendation as to which Party should acquire and pay for these Additional Lands.
- (b) Unless and until the City has consented, in its discretion, to the acquisition of the Additional Lands, Project Co shall not acquire and shall prohibit Project Co Persons from acquiring such Additional Lands. The City will confirm whether it accepts Project Co's recommendation regarding the acquisition of Additional Lands and will give its consent within: (i) 30 Business Days after receipt of notice and all relevant documentation; and (ii) if the City fails to give or deny its consent within such time period it will be deemed to have denied its consent;
- (c) If Project Co requests consent to a proposed acquisition of Additional Lands pursuant to Section 4.5(a), Project Co will pay, without duplication, the City's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs (including in respect of technical, financial and legal advisors) in connection with the City's consideration of such request. At the time of making a request, Project Co will make a payment to the City in the amount of \$15,000 as an advance against (and not in satisfaction of) its obligations under this Section 4.5(c). After the City renders its decision, the City will either refund any overpayment or invoice Project Co for any

additional amounts owing under this Section 4.5(c) and Project Co will promptly pay such additional amount to the City. Concurrently with providing such refund or invoice, the City will provide Project Co with a breakdown of the City's costs in connection with its consideration of Project Co's request for consent;

- (d) Where Project Co, or a Project Contractor, is given consent by the City to acquire Additional Lands, rather than the City, Project Co shall, or shall cause the Project Contractor in question, to grant to the City an option, exercisable upon notice given at any time within 30 Business Days before or after expiry of the Term or sooner termination of this Agreement, to purchase such Additional Lands for a purchase price of one dollar. Project Co shall promptly notify the City of any Additional Lands that Project Co or a Project Contractor acquires pursuant to this Section 4.5 *[Additional Lands]* and shall, in furtherance of the option hereby granted and at the request of the City from time to time, enter into a formal option agreement in such form as the City may reasonably require. Project Co shall not grant or assume any Encumbrance other than a Permitted Encumbrance affecting or against such Additional Lands or do or omit to do, or cause, suffer or permit to be done or omitted to be done, anything that would result in any Encumbrance other than a Permitted Encumbrance against or affecting the Additional Lands;
- (e) Any Additional Lands acquired by the City shall, upon such acquisition, constitute City Lands, provided, however, that, notwithstanding anything to the contrary in this Agreement:
 - (i) Project Co shall be responsible for and shall indemnify and hold harmless the City from and against all costs, risks, obligations and liabilities in respect of, or arising in connection with, such Additional Lands (and any portion of such Additional Lands comprising a Site) and the acquisition thereof, including claims relating to Contamination, fossils, Utility Infrastructure or artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites;
 - (ii) the City provides no representation or warranty, and shall have no obligation to Project Co, in respect of, or arising in connection with, any Additional Lands (and any portion of Additional Lands comprising a Site), including, for certainty and without limitation, pursuant to Sections 4.2 *[Status of City Lands]*, 13.1 *[City's Representations]*, Section 24 of Schedule 10 *[Environmental Performance Requirements]*, City Approvals pursuant to Schedule 28 Part 1 *[Governmental Approvals and Authorizations]*, Schedule 29 *[Security Matters]* and 20.4 *[Project Co's Reliance on Information]*; and
 - (iii) to the extent related to or arising in connection with the Additional Lands, Project Co shall not be entitled to claim any Relief Event, Force Majeure Event or Change; and
- (f) The Parties acknowledge that this Section 4.5 *[Additional Lands]* is not intended to apply to, and does not apply to, Real Property Interests intended to be used by Project Co:
 - (i) on a temporary basis (such as temporary stockpiling or staging areas, marshalling yards, lay-down areas, or similar); or
 - (ii) that will not contain any of the Infrastructure and will not affect the ownership or use of the Infrastructure following expiry of the Term or sooner termination of this Agreement.

4.6 Utility and Pipeline Matters

The allocation of responsibilities, tasks and risks as between the City and Project Co in relation to the use of the City Lands and Existing Infrastructure for Utility Work is set out in Part 2 of Schedule 28 *[Project Approvals and Utility Matters]*.

4.7 Required Condition of the Lands and Infrastructure

Project Co shall maintain the City Lands and Infrastructure in good and proper order, condition and repair and protect the same from damage resulting from the Project Work and in compliance with the Project Requirements throughout the Term up to and including the Phase 1 Construction Completion Date in respect of the Phase 1 Infrastructure and the Construction Completion Date in respect of the Infrastructure other than the Phase 1 Infrastructure.

Subject to Section 9 *[Insurance, Damage and Destruction]* Project Co shall, at its sole cost and expense, promptly repair any damage to the City Lands, Infrastructure or the Adjoining Lands caused by Project Co or any Project Co Person, including resulting from the performance of the Project Work, except for the Deconstruction Work or such other damage expressly included in or contemplated by the Project Work and other normal wear and tear associated with the Project Work.

Project Co's responsibilities regarding the maintenance and repair of the Adjoining Lands will be consistent with its responsibilities regarding the City Lands and Infrastructure, to the extent applicable and as described or contemplated in this Section 4.7 *[Required Condition of the Lands and Infrastructure]* or any other provisions of this Agreement, including Section 4.16 *[Work on Adjoining Lands]* and Section 20.2 *[Approvals and Authorizations]*.

4.8 Permitted Use of Lands

Project Co covenants that it and all Project Co Persons:

- (a) will use the City Lands, the Existing Infrastructure and the Infrastructure only for the purposes of the Project Work and not for any other purposes; and
- (b) will comply with all City protocols for issuing public notices in respect of Construction, as outlined in Section 4.16 *[Work on Adjoining Lands]*, Schedule 5 *[D&C Performance Requirements]* and Schedule 12 *[Communications and Engagement]*.

4.9 Encumbrances

Subject to Section 4.13 *[Uninterrupted Access and Use]* and, if applicable, Part 2 of Schedule 28 *[Project Approvals and Utility Matters]*, Project Co shall recognize and respect the lawful rights of the holders of Permitted Encumbrances and shall not:

- (a) grant, create, incur or, to the extent within its control to prevent the same, permit any Encumbrance that is not a Permitted Encumbrance upon, affecting or against all or any part of the City Lands;
- (b) do or omit to do, or cause, suffer or permit to be done or omitted by any Person for whom Project Co is in law responsible anything that results or could result in any Encumbrance that is not a Permitted Encumbrance upon, against or affecting all or any part of the City Lands; or
- (c) interfere with or disturb the lawful rights of the holders of the Permitted Encumbrances.

Each of Project Co and the City shall promptly notify the other of any Encumbrance as soon as it becomes aware thereof, provided, however, that failure by the City to provide notice to Project Co of any Encumbrance pursuant to this Section 4.9 [Encumbrances] shall not release Project Co from any of its obligations or liabilities under this Agreement, nor shall such failure give rise to a right of Project Co to a Relief Event, a Force Majeure Event, a Change or any other right or remedy under or pursuant to this Agreement.

If any part of the City Lands or any interest therein becomes subject to any Encumbrance due to an act or omission of Project Co or any Project Co Person or arising in relation to the Project Work, other than a Permitted Encumbrance, Project Co shall immediately take all necessary steps to remove, vacate or discharge such Encumbrance. If Project Co fails to remove any such Encumbrance within 15 Business Days (or such longer period as may reasonably be required in the circumstances provided Project Co is proceeding with all due diligence to remove the same) of Project Co becoming aware or when it ought reasonably to have become aware of such Encumbrance then, without prejudice to any other rights or remedies the City may have, the City may take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and to seek immediate recovery of the amount of any such payment and any associated costs, including legal costs, from Project Co, and Project Co will, on demand by City, reimburse all such payments and costs properly attributable to Project Co, having regard to the extent the Encumbrance was caused or contributed to by Project Co.

In the event that the City Lands or any part thereof or any interest therein is or becomes subject to any Encumbrance which is not a Permitted Encumbrance and which is not due to an act or omission of Project Co or any Project Co Person, or which has not arisen in relation to the Project Work, at such time as Project Co became aware (or, acting reasonably, should have become aware) of such Encumbrance and prior to performing obligations under any such Encumbrance, Project Co shall notify the City of any such Encumbrance and the City shall:

- (d) cause the Encumbrance to be removed, vacated or discharged;
- (e) perform the required obligations thereunder; or
- (f) instruct Project Co to perform the required obligations thereunder.

If (i) the City requires Project Co to perform obligations under an Encumbrance pursuant to Section 4.9(f) which performance imposes costs or delays in the performance of the Project Work, or (ii) the Encumbrance affects Project Co's performance of its obligations under this Agreement the impact of which is demonstrated by written evidence and documentation provided by Project Co to the City which is satisfactory to the City, acting reasonably, then such performance shall, subject to Section 11 [Relief Events and Limited Relief Events], constitute a Relief Event under Section 11.1.1(b)(iv).

4.10 Permitted Encumbrances

Notwithstanding Section 4.9 [Encumbrances], Project Co shall perform all obligations under all Permitted Encumbrances other than obligations which Project Co is not legally capable of performing for or on behalf of the City.

All Project Work performed by or on behalf of Project Co shall be performed in a manner which does not breach the Permitted Encumbrances. Subject to Encumbrances that Project Co is required to remove pursuant to Section 4.9 [Encumbrances], no act or omission by Project Co or any Project Co Person shall give rise to a right for any Person to obtain title to or any interest in the Lands or any part thereof, except in accordance with the express terms of this Agreement.

4.11 Builders' Lien Act

- (a) The Parties acknowledge that Section 4.9 *[Encumbrances]* shall apply to claims for liens made against the Lands pursuant to the BLA and shall also apply to claims made against the City or the holdback under the BLA as though such a claim were an Encumbrance against the Lands as referred to therein. For clarity and without limiting the generality of the foregoing, Project Co shall promptly pay all proper accounts for work done or materials furnished under all contracts it enters into relating to the Project Work, subject to payment of those sums required to be retained under, and paid in accordance with, the provisions of Applicable Law, including the BLA, to the extent applicable to the Project Work and the Lands and Project Co shall not, by any act or omission, cause, encourage, suffer or allow any lien or claim under any Applicable Law or in equity to be made against the City or filed or registered against the Lands, the Existing Infrastructure or the Infrastructure by reason of work, services or materials supplied or claimed to have been supplied to Project Co or anyone claiming through or under Project Co. Project Co shall, at its own expense, promptly take all steps required to effect a discharge of any lien so filed or registered
- (b) Project Co shall withhold from each Project Contractor the holdbacks required under the BLA and shall deal with such holdbacks in accordance with the BLA.
- (c) Project Co shall require all Subcontracts to include an obligation to withhold the holdbacks required under the BLA and to deal with such holdbacks in accordance with the BLA.
- (d) Project Co shall, as a condition of final payment under any Project Contract for which lien rights or rights in respect of the holdback may be claimed under the BLA, require that a certificate of substantial performance under section 19 of the BLA for such Project Contract be issued and the relevant Project Contractor provide statutory declarations or other assurances confirming that all those engaged by the Project Contractor have been paid in accordance with Applicable Law.
- (e) Project Co shall follow the requirements of the BLA and Good Industry Practice for posting and advertising certificates of substantial performance and completion when issued.
- (f) Project Co shall promptly provide the City with a copy of any materials which are provided to the Senior Lenders to evidence compliance with the BLA.
- (g) Upon request by the City, Project Co shall perform and deliver to the City a sub-search of title on the Lands or any part thereof. The City shall pay the reasonable costs of any such search except (i) a search that reveals Encumbrances due to an act or omission of Project Co or any Project Co Person or arising in relation to the Project Work, (ii) a search requested based on a reasonable suspicion that an Encumbrance due to an act or omission of Project Co or any Project Co Person or arising in relation to the Project Work has been registered on title to the Lands and such suspicion is verified, and (iii) a search requested for the purpose of confirming that an Encumbrance due to an act or omission of Project Co or any Project Co Person or arising in relation to the Project Work has been discharged from title to the Lands.
- (h) Project Co shall provide to the City a certificate of substantial performance of the Construction Contract in accordance with the BLA.

4.12 Ownership of Improvements and Other Project Assets

4.12.1 Ownership of Improvements

The Infrastructure and all other fixed improvements that Project Co may from time to time construct upon the City Lands shall at all times be the property of the City upon installation or affixation.

4.12.2 Ownership of Equipment

The Equipment shall become the property of the City at the time of delivery to the City Lands, subject to the terms of any applicable Collateral Agreement.

4.12.3 Ownership of Intellectual Property Rights

Except for City Intellectual Property, Project Co shall retain ownership or control over all Intellectual Property Rights, subject however to the Intellectual Property Rights granted by Project Co to the City according to the terms of Schedule 8 [*Intellectual Property*].

4.12.4 Ownership of Inventory, Tools and Support Vehicles

All tangible personal property other than Equipment, including without limitation, all consumables, tools, equipment, vehicles, components, spare parts, materials, supplies, inventory items and all miscellaneous goods and chattels used by Project Co or a Project Co Person in the performance of the Project Work and which is regularly consumed or turned over in the normal course of business shall remain the property of Project Co at all times.

4.12.5 Risk of Loss

Notwithstanding the foregoing provisions of Section 4.12 [*Ownership of Improvements and Other Project Assets*], but subject to Section 9 [*Insurance, Damage and Destruction*], all risk of loss or damage or destruction of the Infrastructure and other fixed improvements constructed upon the City Lands by Project Co, the Equipment, the Intellectual Property Rights and the tangible personal property shall reside with Project Co until (i) Phase 1 Construction Completion in respect of Project Work relating to Phase 1 Infrastructure; and (ii) Construction Completion for Project Work relating to Infrastructure other than Phase 1 Infrastructure, except to the extent such risk has been expressly retained or transferred to the City according to the terms of this Agreement.

4.12.6 City Entitlement to Emission Credits

As provided for in Section 1(g) of Schedule 10 [*Environmental Performance Requirements*], the City owns all GHG and Environmental Benefits.

4.13 Uninterrupted Access and Use

The City covenants that Project Co's access to and use of the City Lands and the Infrastructure pursuant to Section 4.1 [*Access and Use*] shall be without any material disturbance or material undue interference from the City or any City Person, and shall be available throughout the Term as is necessary to enable Project Co to carry out the Design and Construction, subject to the following:

- (a) the Permitted Encumbrances (but subject in each case to the obligations of the City under Section 6.2 [*Other Work*] and pursuant to Schedule 28 [*Project Approvals and Utility Matters*]);
- (b) the exercise by the City of any express right under and in accordance with this Agreement, including the City's right under Section 5.5 [*Stop Work Order*] to direct

Project Co to cease any Project Work; the City's rights under Section 6.2 *[Other Work]* and to undertake additional improvements or expansion; the City's right under Section 12.4 *[Access, Inspection and Testing]*; Section 7.3.5 *[City's Access to Lands]* of Schedule 4 *[Design and Construction Protocols]*; Section 17.7 *[Business Opportunities]* to access and use the Lands and Infrastructure and the City's step-in rights under Section 14.7 *[City's Remedial Rights]*;

- (c) performance of the City Works;
- (d) any express restriction or limitation on Project Co's access to or use of the Lands, including Section 1-3.1 *[Construction Constraints]* of Schedule 5 *[D&C Performance Requirements]* and Section 16.1 *[Restricted Periods for Vegetation Clearing]* of Schedule 10 *[Environmental Performance Requirements]*;
- (e) access granted by Project Co to the Operator and the LRV Supplier pursuant to the Interface Agreement as may be required by the Operator and the LRV Supplier to prepare for Service Readiness; and
- (f) Project Co's responsibilities for prevention of intrusion, trespass and unauthorized access, pursuant to Schedule 29 *[Security Matters]*.

4.14 Access and Use Rights to Cease

Upon termination of this Agreement, Project Co shall cease to have any right of access to and use of the City Lands and the Infrastructure other than as is available to any member of the public and, if Project Co fails to comply with this Section 4.14 *[Access and Use Rights to Cease]*, it shall indemnify the City against any Direct Losses incurred by the City in consequence of such failure.

Notwithstanding the foregoing sentence, if termination of this Agreement occurs prior to the expiry of the Construction Period, the City shall permit Project Co reasonable access and use of the City Lands, as soon as reasonably practical and during the one-month period (or such longer period as Project Co demonstrates is reasonably required) following termination of this Agreement, to demobilize and remove any of Project Co's equipment and materials from the City Lands. If termination of this Agreement occurs following the Construction Period and prior to expiry of the Term, any access by Project Co to and use of the City Lands in order to demobilize and remove any of Project Co's equipment and materials shall be at such times and for such periods as the City may, in its discretion, determine, having regard to potential interference with or effect on the operation of the Valley Line West LRT or access by the public thereto. Project Co shall, in the event this Agreement is terminated pursuant to Section 15.2(a) for a Termination Event, indemnify the City against any Direct Losses incurred by the City in consequence of Project Co accessing and using the City Lands and Infrastructure after termination of this Agreement pursuant to this provision. In all other cases of the early termination of this Agreement, Project Co shall be required to indemnify the City for Direct Losses associated with the foregoing access and use of the City Lands to the extent the Legal Fault of Project Co caused or contributed to the Direct Losses.

4.15 City Lands and Incorporated Infrastructure Adequate

Subject to, and without limiting Project Co's rights under this Agreement, including pursuant to Section 13.1 *[City's Representations]*, Section 11 *[Relief Events]* and Section 20.4 *[Project Co's Reliance on Information]* by entering into this Agreement, Project Co shall be deemed to have: (i) made those enquiries, reviews and assessments in respect of the City Lands, Adjoining Lands, and Incorporated Infrastructure (including the Disclosed Data) as of the Financial Submission Date, (ii) performed all necessary due diligence and investigation on the City Lands, the Adjoining Lands, Incorporated Infrastructure, and (iii) satisfied itself as to the structural, environmental and general condition of any Incorporated Infrastructure as it considered necessary to have satisfied itself with its assessment of these assets in relation to the carrying out of the Project Work and the performance of its obligations under this

Agreement, to accept the City Lands, Existing Infrastructure and the Infrastructure (except as expressly provided to the contrary in this Agreement) on an “as is where is” basis and to accept all risks and related responsibilities relating to the foregoing, including:

- (a) the adequacy of the Lands and of the rights of access to, from and through the Lands for the Project Work, having regard in part to the anticipated utilization of the Adjoining Lands and in accordance with Section 4.16 *[Work on Adjoining Lands]* and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement;
- (b) access and parking;
- (c) temporary storage of building materials and equipment;
- (d) existing Utilities and existing works or infrastructure on and adjacent to the City Lands;
- (e) subject to Schedule 10 *[Environmental Performance Requirements]*, the condition of the City Lands and the Incorporated Infrastructure, including the existence of Contamination and Hazardous Substances on, in or under the City Lands or migrating to or from the City Lands; and
- (f) geotechnical conditions generally,
- (g) the site conditions of:
 - (i) the Adjoining Lands; and
 - (ii) any other lands outside the City Lands which may be affected by the Construction; and
- (h) the form and nature of the City Lands (including the ground and the subsoil and the level and quantity of groundwater), the loadbearing and other relevant properties of the City Lands, the risk of injury or damage to property affecting the City Lands, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Project Work.

Project Co further acknowledges and agrees that, other than as referred to or contained in this Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Person, which would indicate that Project Co would be unable to perform the Project Work in a lawful manner.

4.16 Work on Adjoining Lands

4.16.1 Adjoining Lands

Project Co acknowledges that, in order to complete the Construction, temporary access and remedial construction may be required to the Adjoining Lands and that temporary access easements and remedial construction agreements have not been obtained by the City to such lands.

4.16.2 Project Co Obligations

Subject to Section 11 *[Relief Events]*, if applicable, Project Co will be responsible for all temporary access and remedial construction in respect of the Adjoining Lands, and will utilize the following protocol in managing access to and use of the Adjoining Lands (the “**Adjoining Lands Access Protocol**”) and such

protocol shall be conducted in a manner that will permit Project Co to perform its obligations pursuant to Schedule 12 [*Communications and Engagement*]. Project Co shall:

- (a) determine, prior to the start of Construction, the exact location and elevation of landscaping, structures, or other improvements or fixtures on and otherwise relating to the Adjoining Lands that may be affected by the Project Work and which will require some scope of encroachment or access to, on or over the Adjoining Lands to support the Project Work;
- (b) complete, prior to entering any Adjoining Lands, a comprehensive photographic record of the Site and coordinate all required rights of temporary access with the owners and occupiers of such Adjoining Lands;
- (c) provide, at all times, reasonable alternative and continuous pedestrian and vehicular access to the Adjoining Lands when existing access is impaired by the Construction;
- (d) follow the public notification requirements established in Schedule 12 [*Communications and Engagement*] as they pertain to access onto and use of private property;
- (e) make all reasonable efforts to minimize interference, disturbance or encroachment within or on the Adjoining Lands affected by the Construction;
- (f) remediate or repair the condition (including to tie back in, match existing surface treatments, maintain existing grades or improve drainage patterns to meet the Project Requirements) of any landscaping, improvements, structures and encroachments in respect of the Adjoining Lands that are affected by the Construction to no less than their condition existing prior to Construction, and to a better standard where it may be required in order to improve drainage patterns to meet the Project Requirements; and
- (g) adhere to and follow applicable Good Industry Practice in carrying out and performing all Project Work in relation to the Adjoining Lands, including in a cooperative manner to the extent reasonably possible in the circumstances;

4.17 Development Charges

- (a) Subject to this Section 4.17 [*Development Charges*], the City shall be responsible for paying the following fees, costs and charges (including any applicable taxes thereon) that become due and payable to a City department or agency acting as a Governmental Authority (the “**Development Charges**”):
 - (i) amounts due and payable to the Planning Branch, in respect of the Permanent Area Contributions (PAC);
 - (ii) amounts due and payable to the Planning Branch, in respect of the Sanitary Servicing Strategy Expansion Assessment (EA); and
 - (iii) amounts due and payable to the Planning Branch, in respect of the Sanitary Sewer Trunk Charge (SSTC),

notwithstanding that such Development Charges may be applicable to and arise from one or more development permits for the Project Work included in the Project Approvals for which Project Co is responsible pursuant to Part 1 of Schedule 28 [*Project Approvals and Utility Matters*]. Project Co acknowledges and agrees that this Section 4.17 [*Development Charges*] applies only in respect of the Development Charges and no other fees, costs or charges applicable to or arising from a Project Approval, all of which

Project Co hereby acknowledges are the responsibility of Project Co under this Agreement.

- (b) Promptly, but not less than 10 Business Days, prior to Project Co making an application for a Project Approval for which a Development Charge may become due and payable, Project Co shall notify the City's Representative in writing of:
 - (i) the Project Approval to which the Development Charge relates, and provide City's Representative with all information and documentation relating to the Project Approval as may be required by City's Representative to assess and validate the payment that has become due, including the application for such Project Approval, as applicable;
 - (ii) the amount of the Development Charge, including working papers setting forth the basis for and computation of the amount of the Development Charge; and
 - (iii) the date on which the Development Charge is due and payable;
 - (c) The City shall:
 - (i) pay any applicable Development Charges under a Project Approval on or before the date on which the Development Charge is due and payable; and
 - (ii) provide evidence of making of such payment under the Project Approval to Project Co;
- provided, however, that no such payment shall be made by Project Co on behalf of the City without obtaining the prior written approval of the City and the City shall have no obligation to reimburse or compensate Project Co in the event Project Co makes any such payment without having obtained the prior written approval of the City.
- (d) Without in any way altering or impairing the consultation, cooperation and coordination obligations of the Parties contemplated by Section 3.4(b) [*City LRT Consultation, Cooperation and Coordination*] of Part 1 of Schedule 28 [*Project Approvals and Utility Matters*], in undertaking its obligations in this Section 4.17 [*Development Charges*], Project Co shall have due consideration for the necessary time and information required by the City to review, investigate, arrange for payment of, negotiate and/or challenge the payment of Development Charges, to the extent permissible under Applicable Law.
 - (e) Any refund, partial rebate or credit granted relating to the Development Charges shall be for the benefit of the City.
 - (f) For greater certainty, the City may review and audit and review the Development Charges, a Project Approval associated with a Development Charge and/or any other information or documentation submitted by Project Co to the City pursuant to this Section 4.17 [*Development Charges*] in accordance with Section 12.6 [*General Audit Obligations*].

4.18 Occupancy of Buildings

Project Co acknowledges that there are no unoccupied City-owned or City-held buildings or structures within the City Lands which are available to Project Co for use or occupation to support the performance of specific Project Work activities.

5. DESIGN AND CONSTRUCTION OF THE INFRASTRUCTURE

5.1 Project Co's Obligations

Project Co shall perform and carry out the Design and Construction and the Warranty Work in accordance with this Agreement, including the Design and Construction Requirements and in material conformity with the Construction Schedule, as the same may be amended from time to time in accordance with this Agreement.

5.2 Design and Construction Requirements

Notwithstanding any other provision of this Agreement, Project Co's obligation to conduct the Design and Construction of the Infrastructure in accordance with the Design and Construction Requirements is absolute, and cannot be modified or waived except by amendment of the Design and Construction Requirements made in accordance with Section 6 [*Modifications and Change Orders*], Schedule 13 [*Changes*] or as otherwise expressly permitted in accordance with this Agreement. If Project Co asserts that any aspect of the Design and Construction Requirements is uncertain or ambiguous, either Party may require that the interpretation of that aspect of the Design and Construction Requirements be determined by the Dispute Resolution Procedure if they are not able to resolve the matter through their respective Representatives.

5.3 Project Co Solely Responsible for Costs

Project Co is solely responsible for paying all costs, fees and charges of any nature whatsoever required to complete the Design and Construction and the Warranty Work except: (a) as otherwise expressly set forth in this Agreement, including with respect to the payment of costs, fees and charges payable by the Parties to the Independent Certifier; and (b) except as otherwise expressly required pursuant to this Agreement, costs, fees and charges of the City's own personnel, consultants and professional advisors in respect of the City acting as a counterparty to any Project Document, but not in any other capacity, including the City acting as a Governmental Authority.

5.4 Construction Within the Lands

Project Co agrees to install the Infrastructure entirely within the Lands, and acknowledges that it has fully familiarized itself with the Design and Construction Requirements and the Lands and has satisfied itself that no other land outside the Lands is required.

5.5 Stop Work Order

The City may at any time direct Project Co to cease any Project Work that it considers to be not in accordance with the Project Requirements. If it is subsequently determined that the work was in accordance with the Project Requirements, then such direction shall, subject to Section 11 [*Relief Events and Limited Relief Events*], constitute a Relief Event under Section 11.1.1(a)(ii).

5.6 Phase 1 and Construction Completion

- (a) The requirements for, and achievement of, each of Phase 1 Construction Completion and Construction Completion are as set out in Section 12 [*Construction Completion of Phase 1*] and Section 14 [*Construction Completion*] of Schedule 4 [*Design and Construction Protocols*];
- (b) Unless Project Co obtains the prior written consent of the City (which the City may grant or refuse in its sole discretion),

- (i) Project Co shall not be entitled to the Certificate of Phase 1 Construction Completion prior to, and the Phase 1 Construction Completion Date shall not be earlier than, the Target Phase 1 Construction Completion Date; and
 - (ii) Project Co shall not be entitled to the Certificate of Construction Completion prior to, and the Construction Completion Date shall not be earlier than, the Target Construction Completion Date.
- (c) If Project Co advises the City that it expects to be able to achieve Phase 1 Construction Completion or Construction Completion prior to the Target Phase 1 Construction Completion Date or the Target Construction Completion Date, as applicable, the City's Representative shall be entitled to require Project Co to produce and submit to the City's Representative a proposed revision to the then-current Construction Schedule showing the manner and the periods in which the Project Work shall be performed and what the revised date for Phase 1 Construction Completion or Construction Completion would be so as to enable the City to consider at its sole discretion:
- (i) if applicable, whether to agree to an earlier Phase 1 Construction Completion Date or Target Phase 1 Construction Completion Date;
 - (ii) if applicable, whether to agree to an earlier Construction Completion Date or Target Construction Completion Date; and
 - (iii) what modifications, if any, may be required to this Agreement in order to accommodate such earlier Phase 1 Construction Completion Date, Construction Completion Date, Target Phase 1 Construction Completion Date or Target Construction Completion Date.
- (d) Default Points and liquidated damages shall continue to be applicable in accordance with this Agreement, including for
- (i) failure to achieve Phase 1 Construction Completion on the Target Phase 1 Construction Completion Date as the same may be revised pursuant to this Section 5.6; or
 - (ii) failure to achieve Construction Completion on the Target Construction Completion Date as the same may be revised pursuant to this Section 5.6.
- (e) The City may at any time require monitoring, rectification and/or exercise step-in rights as contemplated in Section 14.7 [*City's Remedial Rights*].

5.7 Construction Milestones

In addition to Phase 1 Construction Completion, ICS Integration Ready Date and Construction Completion, Project Co shall satisfy all requirements and preconditions set out in Schedule 4 [*Design and Construction Protocols*] for each of the Key Dates.

5.8 Term

Unless this Agreement is terminated earlier in accordance with its terms, the term (the "**Term**") shall commence on the Effective Date and shall expire on the date (the "**Expiry Date**") which is the last to occur of:

- (a) the date the Certificate of Final Completion has been issued in accordance with Schedule 4 [*Design and Construction Protocols*] or the Performance Demonstration Longstop Date, whichever is earlier; and
- (b) the expiry of the Warranty Periods.

6. MODIFICATIONS, CHANGE ORDERS AND OTHER WORKS

6.1 Modification and Change Orders

6.1.1 City Change Orders

If the City wishes to modify the Project or the Project Requirements, it shall proceed as provided in Schedule 13 [*Changes*], provided that:

- (a) except as otherwise agreed between the City and Project Co (including without limitation any arrangement proposed by Project Co under Section 6.1.1(b) and agreed to by the City), Project Co shall be entitled to payment from the City, on a progress basis, as part of the Construction Payment, of the costs and adjustments of carrying out the Change calculated in accordance with Schedule 13 [*Changes*] and as set out in the applicable Change Order Confirmation; and
- (b) if Project Co anticipates that the Change will delay Phase 1 Construction Completion, the ICS Integration Ready Date or Construction Completion, as applicable, but is of the opinion the delay can be avoided or mitigated through extraordinary measures, Project Co may propose to the City that such extraordinary measures be taken by Project Co at the City's expense.

Project Co may also submit an Innovation Proposal in respect of the Project or the Project Requirements for consideration by the City in accordance with Schedule 13 [*Changes*].

6.1.2 City Directions

Notwithstanding Section 6.1.1, Project Co shall, subject to and in accordance with Schedule 13 – [*Changes*], be entitled to a Change if a written direction issued by or on behalf of the City to Project Co or any Project Co Person results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Work.

6.2 Other Work

6.2.1 City Responsibilities; Other Works

Where the City:

- (a) enters into a contract with an Other Contractor (other than the Operator and the LRV Supplier) in respect of Other Works;
- (b) undertakes Other Works using its own forces; or
- (c) issues a permission, consent, approval, certificate, license, authorization or permit to an Other Contractor in respect of Other Works,

in each case, where such Other Works will be carried out at the same time as any Project Work, the City shall:

- (d) cooperate with Project Co and Other Contractors in relation to the coordination and scheduling of the Project Work and Other Works;
- (e) participate, upon reasonable request and, where practicable, on not less than one week's advance notice, in coordination and scheduling meetings between Project Co and the Other Contractors;
- (f) make commercially reasonable efforts to include conditions which are compatible with the conditions of this Agreement in the applicable contracts, permissions, consents, approvals, certificates, licences, agreements, authorizations and permits in respect of such Other Works; and
- (g) make commercially reasonable efforts to require the Other Contractors performing such Other Works to:
 - (i) meet with Project Co and to comply, and perform the Other Works in accordance, with Project Co's reasonable scheduling and coordination protocols;
 - (ii) comply, and perform the Other Works in accordance with Project Co's reasonable site rules, access control protocols and instructions relating to health, safety and security, to the extent that such Other Works are being performed on a worksite for which Project Co or a Project Contractor has been designated "Prime Contractor" in accordance with Schedule 11 [*Construction Safety Requirements*];
 - (iii) cooperate, and participate, with Project Co, the City and Other Contractors in the coordination and scheduling of the Project Work and the Other Works; and
 - (iv) provide property damage (if applicable) and commercial general liability insurance coverage as would be required by a prudent owner similarly situated, and coordinate such insurance with the insurance coverage of Project Co, provided that the commercial general liability insurance to be provided by the Other Contractors performing such Other Works shall be not less than \$5,000,000.

6.2.2 Project Co Responsibilities; Other Works

In connection with Other Works, Project Co shall:

- (a) cooperate with the City and Other Contractors, so as to permit the efficient performance of the Other Works, while minimizing the impact to the Project Work;
- (b) use commercially reasonable efforts to coordinate and schedule the Other Works with the Project Work;
- (c) perform, or cause to be performed, its obligations pursuant to this Agreement, including its obligations as "Prime Contractor" in accordance with Schedule 11 [*Construction Safety Requirements*] and its security and site access control obligations in accordance with Schedule 4 [*Design and Construction Protocols*] and Schedule 29 [*Security Matters*];
- (d) provide reasonable and timely access to the City Lands and any Additional Lands in order to permit Other Contractors to perform the Other Works;

- (e) afford Other Contractors reasonable opportunity to introduce and store their equipment, machinery, tools, materials and other products on the Lands and to use their machinery, tools, materials, equipment and other products to execute the Other Works;
- (f) provide reasonable input, upon request from the City, with respect to the proposed terms of any contracts, permissions, consents, approvals, certificates, licences, agreements, authorizations and permits in respect of Other Works;
- (g) make Project Co's site rules, access control protocols and instructions relating to health, safety and security available to the City and Other Contractors; and
- (h) where part of the Project Work is affected by or depends upon, for its proper execution, Other Works, promptly report to the City in writing and prior to proceeding with that part of the Project Work, any deficiencies in the Other Works of which Project Co has knowledge. Failure or delay by Project Co to so report will be taken into account in the determination of any claim for relief under Section 11 [*Relief Events and Limited Relief Events*], if and to the extent such failure or delay, has prejudiced the City's ability to rectify the deficiency or mitigate its impact.

6.2.3 Cooperation; Other Works

For the purpose of Sections 6.2.1 [*City Responsibilities; Other Works*] and 6.2.2 [*Project Co Responsibilities; Other Works*], the obligation to "cooperate" shall mean:

- (a) arranging and participating in meetings with respect to the effective and efficient coordination and scheduling of Other Works and the Project Work;
- (b) establishing mutually acceptable protocols for the effective and efficient coordination and scheduling of Other Works and the Project Work;
- (c) accommodating reasonable requests for adjustments to scheduled activities as required (provided that such adjustments do not adversely affect the critical path) to permit the effective and efficient performance of the Project Work and Other Works;
- (d) providing timely response to inquiries and requests, including reasonable requests for commentary on relevant designs; and
- (e) taking reasonable steps to avoid disputes.

6.2.4 Other Works Relief Event

For clarification, if Project Co is prevented, hindered or delayed from performing its obligations under this Agreement by reason of the Other Works, Project Co may claim a Relief Event if the City is in breach of its obligations under this Section 6.2 [*Other Work*] or as a result of the Legal Fault of the City, a City Person, or Other Contractor in relation to the Other Works (Section 11.1.1(a)) or otherwise for the acts and omissions of an Other Contractor (Section 11.1.1(c)(i)) and regardless of whether or not the City has complied with its Section 6.2 [*Other Work*] obligations.

7. WARRANTY

7.1 Warranty Obligations

- (a) Project Co represents, warrants and covenants that the Infrastructure, including, for greater certainty, all Equipment, parts and workmanship, including those replaced during the applicable Warranty Period, shall:

- (i) conform to the Project Requirements, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Alberta;
 - (ii) be free of Deficiencies; and
 - (iii) be comprised of material and Equipment that is new, of good quality, of merchantable quality and fit for its intended purpose.
- (b) Project Co shall promptly, at its sole cost and expense, correct and Make Good all Deficiencies (whether patent or latent) discovered in respect of the Phase 1 Infrastructure during the Phase 1 Warranty Period and all Deficiencies discovered in respect of the Infrastructure (other than the Phase 1 Infrastructure) during the Remaining Warranty Period. For greater certainty, Project Co is required to correct and Make Good Deficiencies related to any Equipment during the applicable Warranty Period notwithstanding Project Co having obtained on the City's behalf Manufacturer Warranties in accordance with Section 7.1(e).
- (c) Project Co shall promptly, at its sole cost and expense, correct and Make Good each Deficiency discovered during the applicable Latent Defect Warranty Period, that was not and could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the relevant Infrastructure prior to the expiry of the relevant Warranty Period (a "**Construction Latent Defect**").
- (d) The warranties set out in this Section 7.1 [*Warranty Obligations*] shall cover labour and materials, including the costs of removal and replacement of covering materials. None of the warranties shall limit extended warranties on any item of Equipment called for elsewhere in the Project Requirements or otherwise provided by any manufacturer of such item of Equipment.
- (e) Project Co shall obtain warranties from the manufacturers of each item of Equipment (each, a "**Manufacturer Warranty**"):
 - (i) for the duration(s) and in accordance with the applicable requirements specified in the Project Requirements; and
 - (ii) where, in respect of an item of Equipment, the Project Requirements do not specify a specific duration and/or other requirements, industry-standard warranties using commercially reasonable efforts to ensure that such Equipment warranties extend for as long a period from the Phase 1 Construction Completion Date or Construction Completion Date, as applicable, as can be obtained from the applicable manufacturer, but in any event for no less than two years, provided that, Project Co will not have breached this Section 7.1(e)(ii) provision if, having used commercially reasonable efforts, it is unable to obtain a warranty for such period, but Project Co's warranty obligations under this Agreement will continue to apply in respect of such Equipment.

Project Co shall obtain such Manufacturer Warranties in the name of and to the benefit of Project Co and, to the extent possible, the City. Each Manufacturer Warranty shall be issued by the applicable manufacturer and delivered to Project Co no later than 30 days prior to the Phase 1 Construction Completion Date in respect of Manufacturer Warranties relating to Phase 1 Infrastructure and, otherwise, no later than 30 days prior to Construction Completion Date. Project Co shall ensure that each Manufacturer Warranty is fully assigned to the City, at no cost or expense to the City, at the end of the Warranty Period, as such period may be extended in accordance with Section 7.2(a).

- (f) On or before the Phase 1 Construction Completion Date, Project Co shall provide to the City at least two copies of the compilation of warranty certificates for the Phase 1 Infrastructure. Project Co shall update all copies of the compilation from time to time in respect of any extensions of the Warranty Period as each Warranty Period commences. The compilation shall indicate the start and completion date of each Project Co warranty.
- (g) On or before the Construction Completion Date, to the extent not previously provided pursuant to Section 7.1(f), Project Co shall provide to the City at least two copies of the compilation of warranty certificates for the Infrastructure other than the Phase 1 Infrastructure. Project Co shall update all copies of the compilation from time to time in respect of any extensions of the Warranty Period as each Warranty Period commences. The compilation shall indicate the start and completion date of each Project Co warranty.
- (h) Project Co acknowledges that the City may, in its sole discretion, maintain, repair and/or alter (or cause the Operator or any other City Person to maintain, repair or and/or alter) any part or parts of the Project Work during the Warranty Period and the Latent Defect Warranty Period, including the replacement of Equipment, and Project Co agrees that such work shall not affect any of the warranties (or any Manufacturer Warranty) provided by Project Co hereunder, provided that such work is carried out in accordance with Good Industry Practice and, if applicable, the Operating and Maintenance Manuals and that such work does not materially alter the affected part or parts of the Project Work.
- (i) Notwithstanding Sections 7.1(b) and 7.1(c), Project Co shall not be responsible for the repair, replacement or correction of any Deficiencies or any damage to the Infrastructure to the extent such Deficiencies or damage arise out of or result from any of the following causes:
 - (i) improper operation or maintenance of the Infrastructure by the City and/or Operator;
 - (ii) normal wear and tear;
 - (iii) damage to the Infrastructure caused by environmental events (except to the extent caused by Project Co or Project Co Persons) or caused by Persons other than Project Co or Project Co Persons; and
 - (iv) subject to Section 7.1(h), damage to the Infrastructure or work or modifications to the Infrastructure performed by the City or City Persons;

7.2 Warranty Work and Prompt Repair of Warranty Work

- (a) Project Co shall carry out all Project Work, including correction of Deficiencies and Construction Latent Defects, to satisfy the warranties provided pursuant to this Section 7 [Warranty], and in accordance with the applicable Warranty Period or Latent Defect Warranty Period (as the case may be), and Project Co shall also Make Good any damage to other works caused by the repairing of such defects, deficiencies, or failures to comply (collectively, the “**Warranty Work**”). All Warranty Work shall be carried out and completed at Project Co’s sole cost and expense and Warranty Work shall not be the basis of a claim for a Relief Event, a Force Majeure Event, a Change or additional compensation or damages. Each Warranty Period shall be extended for a further two years from the date of the last Warranty Work completed and accepted by the City in respect of the Infrastructure, provided that the maximum aggregate length of all Warranty Periods shall be five (5) years from the Construction Completion Date. For clarity, any extension of a Warranty Period for the purposes of a correction shall only apply to the relevant Warranty Work and not the Project Work as a whole.

- (b) Project Co acknowledges and agrees that the timely performance of Warranty Work is critical to the ability of the City to maintain effective operations of the Valley Line LRT. Project Co shall use commercially reasonable efforts to respond to any requirement by the City to perform Warranty Work within the time periods required by the City to perform the Warranty Work for the Infrastructure. Project Co shall commence and complete Warranty Work as expeditiously as possible and at times convenient to the City, which may require work outside normal working hours at Project Co's expense. Any extraordinary measures required to complete such Warranty Work, as directed by the City to accommodate the operation of the Valley Line LRT or other aspects of the Infrastructure as constructed, shall be at Project Co's sole cost and expense. In relation to critical areas required for effective operations, Project Co shall commence, carry out and complete Warranty Work on an urgent basis with all due haste, taking into account the circumstances and any timelines for commencement and completion as may be communicated by the City to Project Co.
- (c) Project Co acknowledges and agrees that if the City is unable to contact Project Co and/or obtain the performance of the Warranty Work promptly (having regard to whether the Warranty Work is of an urgent nature), the City may take such steps as are reasonable and appropriate (including the engagement of third parties or the use of the City's own forces) to correct any Construction Latent Defects, Deficiencies or failures to comply with the Agreement, at Project Co's sole cost and expense. Except in the case of damage caused by the City's own forces or by third parties engaged by the City, but subject to Section 7.1(h), such steps taken by the City's own forces or by third parties engaged by the City, as applicable, shall not invalidate any Project Co warranties.
- (d) Project Co acknowledges and agrees that all safety requirements set out in Schedule 11 [*Construction Safety Requirements*], and any LRT rules and standard operating procedures established by the Operator (provided such rules and operating procedures are generally consistent with standard industry practice in respect of Canadian LRTs) or otherwise required pursuant to Applicable Law, apply to Project Co's performance of its obligations in accordance with this Section 7 [*Warranty*].
- (e) Subject to Section 14.4(b) the warranties set out in this Section 7 [*Warranty*] shall not deprive the City of any action, right or remedy otherwise available to the City at law or in equity, and the periods referred to in this Section 7 [*Warranty*], shall not be construed as a limitation on the time in which the City may pursue such other action, right or remedy.
- (f) Neither test results, nor selection or approval by the City or the City's Representative of testing entities, nor any other thing in this Agreement shall have the effect of limiting or shortening or otherwise affecting in any way whatsoever the duration, effectiveness or content of any guarantee or warranty set forth in this Section 7 [*Warranty*] or any other document or material forming part of this Agreement and, where Project Co has failed to perform Warranty Work and the City is entitled to perform such Warranty Work itself or using the City's own forces and at Project Co's cost, the City may, at any time and from time to time, fund the cost of completing such Warranty Work by drawing against the Performance Letter of Credit subject to the terms thereof.

8. PAYMENT

8.1 Payment by City

Subject to Project Co meeting the requirements for payment set out in this Agreement, including Schedule 16 [*Payment Mechanism*], the City will pay Project Co amounts the City is expressly obligated to pay under the Agreement, including:

- (a) the Construction Payments as set out in Schedule 16 [*Payment Mechanism*];

- (b) the Phase 1 Construction Completion (OMF-B) Payment;
- (c) the Construction Completion Payment;
- (d) the Legislative Holdback Payment;
- (e) amounts owing under Section 4 [*Land Matters*];
- (f) amounts owing under Section 10 [*Force Majeure*];
- (g) amounts owing under Section 11 [*Relief Events*];
- (h) the Termination Payments as set out in Section 16 [*Termination Payments*];
- (i) amounts owing under Schedule 10 [*Environmental Performance Requirements*];
- (j) amounts owing under Schedule 13 [*Changes*];
- (k) amounts owing under Schedule 15 [*Independent Certifier*];
- (l) amounts owing under Schedule 17 [*Insurance Requirements*];
- (m) amounts owing under Schedule 20 [*Dispute Resolution Procedure*]; and
- (n) amounts owing under Schedule 28 – Part 2 [*Utility Matters*],

in accordance with the provisions of this Agreement.

8.2 Limitations on Payments

- (a) Other than the payments expressly provided for in this Agreement, Project Co will have no right to any further payment from the City in connection with the performance and completion of all or any portion of the Project Work or otherwise under or in relation to this Agreement or the Project.
- (b) No payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Agreement which have not been performed.

8.3 Legislative Holdback Payment

- (a) Subject to Section 15.6(a)(i), the City covenants and agrees with Project Co to pay to Project Co the Legislative Holdback Payment on the Legislative Holdback Payment Date or pay to such Person as otherwise directed by Project Co and shall not accept any redirection without the consent of the Person to whom payment is directed. The City agrees to pay the Legislative Holdback Payment as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by the City of the Legislative Holdback Payment in accordance with this Section 8.3 [*Legislative Holdback Payment*] as Project Co may direct, constitutes payment by the City to Project Co in satisfaction of the City's obligation to pay the Legislative Holdback Payment to Project Co under this Agreement and in satisfaction of any trust obligation of the City with respect to such payments under the BLA.
- (b) After the issuance of the Construction Completion Certificate, Project Co shall:

- (i) submit a written request for release of the Legislative Holdback, including a declaration that no written notice of lien arising in relation to the performance of the Project Work has been received by it that has not been withdrawn by the lien claimant;
 - (ii) submit a Statutory Declaration CCDC Form 9A (2001); and
 - (iii) submit an original Alberta Workers' Compensation Board clearance certificate.
- (c) After the later of (i) the receipt of the documents set out in Section 8.3(b), and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the BLA in respect of this Agreement, the Independent Certifier shall issue a certificate for payment of the Legislative Holdback Payment (the "**Legislative Holdback Payment Certificate**").
- (d) Upon issuance of the Legislative Holdback Payment Certificate, Project Co shall be eligible to issue an invoice to the City for the Legislative Holdback Payment in accordance with Section 3.6.2 of Schedule 16 [*Payment Mechanism*].
- (e) Prior to the Legislative Holdback Payment Date, Project Co shall have removed from the Lands, the City Lands and the Existing Infrastructure all goods, supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion, to Make Good any Deficiencies, to correct any remaining Construction Deficiencies and to satisfy its Performance Demonstration obligations provided that, for clarity, satisfaction of the foregoing obligations shall not constitute a precondition to payment by the City of the Legislative Holdback Payment.
- (f) Payment of the Legislative Holdback Payment is subject to the provisions of Section 4.11 [*Builders' Lien Act*] and the removal of claims for liens preserved or perfected pursuant to the BLA arising in relation to the performance of the Project Work.

8.4 Payment Procedure

- (a) All payments by the City to Project Co shall be made in accordance with this Section 8.4 [*Payment Procedure*] and/or Section 3 [*Payment Reporting, Administration and Invoicing*] of Schedule 16 [*Payment Mechanism*], as applicable.
- (b) All payments under this Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to the bank accounts located in Canada as may be designated by the recipient from time to time by written notice to the other Party (acting reasonably).
- (c) If the due date is not a Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.
- (d) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Agreement, such amounts shall be paid within 30 days of receipt or deemed receipt of a proper invoice therefor.

8.5 Taxes

- (a) Except as otherwise provided in this Agreement, all amounts specified in this Agreement are expressed exclusive of GST and other similar taxes payable by the City but inclusive of all other Taxes. Applicable GST shall be paid in accordance with the Excise Tax Act

(Canada). As required by the Excise Tax Act (Canada), Project Co shall provide to the City appropriate documentation containing all the information necessary for the City to claim an input tax credit or rebate, including the amount of GST payable and the registration number of Project Co.

- (b) Subject to Section 4.4 *[No Access Fee]*, Section 4.17 *[Development Charges]* and Part 1 of Schedule 28 *[Project Approvals and Utility Matters]*, the City shall pay or otherwise be responsible for, when due and payable, all property taxes, local improvement levies or payments in lieu of property taxes that are assessed in respect of ownership or use of the City Lands or Infrastructure.
- (c) Within 3 weeks of the end of the month in which a supply is completed for the purposes of paragraph 168(3) of the Excise Tax Act (Canada) (in this Section an “**Acceleration Event**”), if applicable, the City shall pay to Project Co all GST payable in accordance with paragraph 168(3) of the Excise Tax Act (Canada) in respect of such supply for remittance to the Canada Revenue Agency, which amount, if any, shall be set out in an invoice issued by Project Co to the City upon the occurrence of the Acceleration Event and shall reflect the Total Capital Cost Amount of such supply, which shall serve as a reasonable estimate of the full consideration for such supply. For clarity, the amount of each payment made by the City to Project Co pursuant to paragraph 168(3) of the Excise Tax Act (Canada) does not include any GST amounts already paid by the City to Project Co.
- (d) Subject to Section 8.5(e), in each Payment invoice provided by Project Co to the City, Project Co shall show on a distinct line of the invoice the Previously Paid Monthly GST Amount used to determine the amount of unpaid GST payable by the City on such Payment. For clarity, a Previously Paid Monthly GST Amount must be credited to the City on each Payment invoice.
- (e) The City shall pay all applicable GST properly payable in accordance with the Excise Tax Act (Canada) by the City upon and in connection with payments by the City to Project Co under this Agreement.
- (f) Project Co shall not undertake any action or transaction that, if undertaken, would cause or result in Project Co ceasing to be a partnership for purposes of the Income Tax Act (Canada) or any Partner becoming a Non-Resident without the City’s prior written consent, which consent may be withheld in the City’s discretion.
- (g) Project Co shall not, without the prior written consent of the City, undertake any action or transaction that, if undertaken, would cause the City to have (or result in the City having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co under this Agreement or under any other Project Document.
- (h) If (i) Project Co becomes a Non-Resident, or (ii) the City is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co by the City under this Agreement, then the City shall be entitled to make any applicable deductions or withholdings from any amount paid or credited or to be paid or credited to Project Co on or after the date on which (A) Project Co becomes a Non-Resident and at all times while it remains a Non-Resident; or (B) the City is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by the City under this Agreement to Project Co, shall be paid or credited net of such deductions or withholdings. Any amount deducted and withheld in respect of Taxes shall be deemed to have been paid to Project Co on the due date of the related amount payable.

- (i) If (i) Project Co becomes a Non-Resident, or (ii) the City or any City Party is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Person by the City or any City Party under this Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless the City for (A) the full amount of all Taxes (in this Section “**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by the City in respect of any amounts paid or credited by the City to Project Co under this Agreement as a result of either of the foregoing items less any amount withheld or deducted by the City in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (in this Section “**Associated Liabilities**”).
- (j) Payment of Indemnifiable Taxes shall be made within 30 days from the date the City makes written demand for payment. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by the City shall be conclusive evidence, absent manifest error, of the amount due from Project Co to the City. The City shall be entitled to exercise its rights of set off under Section 8.6 *[Set-off]* of any amounts owing under this indemnification against other amounts owing to Project Co.
- (k) If Section 182 of the Excise Tax Act (Canada) is applicable to any amount payable under this Agreement, such payment will be increased by an amount such that after remitting the applicable GST Project Co will be in the same position as it would have been if Section 182 of the Excise Tax Act (Canada) were not applicable.
- (l) Project Co acknowledges and understands that this Agreement may require the performance of Scientific Research and Experimental Development (“**SR&ED**”) as defined in subsection 248(1) of the Income Tax Act (Canada). The City agrees that, to the extent that SR&ED is required, the SR&ED will be performed by Project Co and Project Co is entitled to claim such credits or incentives.
- (m) GST Adjustment:
- (i) The City will pay to Project Co amounts equal to any GST or similar taxes (e.g. HST, if applicable), incurred by Project Co or a Sub-Contractor in respect of the supply of any good or service to the City that is consumed, used or supplied or to be consumed, used or supplied exclusively by Project Co or a Sub-Contractor in the course of carrying out the Project Work or otherwise performing Project Co’s obligations under this Agreement, to the extent that Project Co or the Sub-Contractor is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such taxes as a result of a change in Applicable Law after the Financial Submission Date related to such taxes, and only to the extent necessary to leave Project Co in no better or worse position than before such change in Applicable Law.
- (ii) Project Co will pay to the City, directly or by way of set-off against Payments, amounts equal to any GST or similar taxes (e.g. HST, if applicable), incurred by Project Co or a Sub-Contractor in respect of the supply of any good or service to the City that is consumed, used or supplied or to be consumed, used or supplied exclusively by Project Co or a Sub-Contractor in the course of carrying out the Project Work or otherwise performing Project Co’s obligations under this Agreement, to the extent that Project Co or the Sub-Contractor is able to recover,

or be credited with, input tax credits, refunds, rebates or exemptions for such taxes as a result of a change in Applicable Law after the Financial Submission Date related to such taxes, and only to the extent necessary to leave Project Co in no better or worse position than before such change in Applicable Law.

8.6 Set-off

The Parties agree that their rights of set-off at law or in equity are limited to the right of:

- (a) the City to set off against any amounts otherwise due to Project Co pursuant to the terms of this Agreement or any other agreement or arrangement between the Parties any amounts which are due to the City by Project Co pursuant to the terms of this Agreement or any other agreement or arrangement between the Parties; and
- (b) Project Co to set off against any amounts otherwise due to the City pursuant to the terms of this Agreement or any other agreement or arrangement between the Parties any amounts which are due to Project Co by the City pursuant to the terms of this Agreement or any other agreement or arrangement between the Parties.

8.7 Interest on Overdue Payments

Except as otherwise provided in Section 15.6(a)(i), any amount payable under this Agreement and not paid when it becomes due shall bear interest daily at the Default Rate of Interest, without compounding, from the due date of the amount payable until the date (or dates) of payment. Where pursuant to the Dispute Resolution Procedure a disputed amount is determined to have been payable, then subject to any contrary determination pursuant to the Dispute Resolution Procedure, interest at the Default Rate of Interest, without compounding, shall be payable from the date when such amount ought to have been paid until the date (or dates) of payment.

8.8 Disputed Amounts

A Party will pay any undisputed portion of any disputed amount payable to the other Party in accordance with this Agreement but any disputed portion or amount will not be payable until the Dispute is resolved in accordance with the Dispute Resolution Procedure. In the event that Project Co disputes the amount of any Payment, Project Co shall bring such Dispute to the attention of the City within 45 days after the date the Payment is received, failing which, in the absence of manifest error, Project Co shall be estopped from later disputing the correctness of the amount so paid.

8.9 Payments by Project Co

Project Co will pay the City amounts Project Co is expressly obligated to pay under the Agreement, including:

- (a) amounts owing under Section 8.5 [*Taxes*];
- (b) amounts owing under Section 14.1 [*Project Co's Indemnity*];
- (c) amounts owing under Section 16 [*Termination Payments*];
- (d) amounts owing under Schedule 10 [*Environmental Performance Requirements*];
- (e) amounts owing under Schedule 13 [*Changes*];
- (f) amounts owing under Schedule 15 [*Independent Certifier*];

- (g) amounts owing under Schedule 16 [*Payment Mechanism*];
- (h) amounts owing under Schedule 17 [*Insurance Requirements*]; and
- (i) amounts owing under Schedule 20 [*Dispute Resolution Procedure*],

in accordance with the provisions of this Agreement.

8.10 Lump Sum Payments

Notwithstanding anything else to the contrary in this Agreement, to the extent a Party:

- (a) is entitled to payment from the other Party under this Agreement, other than a payment expressly described in Section 16 [*Termination Payments*] or Schedule 16 [*Payment Mechanism*]; or
- (b) is entitled to share in a benefit and to receive payment therefor from the other Party expressly provided for under this Agreement;

the entitled Party may make written demand for such payments from time to time after becoming entitled to payment, including in respect of any Direct Losses after such Direct Losses have been incurred, and in respect of any shared benefit, after receipt by the other Party of the shared benefit.

After delivery of written payment demand supported by all relevant information, the City or Project Co as the case may be, shall make such payment by a lump sum amount within 30 days unless:

- (c) the Parties mutually agree to an adjustment to the Payments as the means of structuring the payment; or
- (d) the City requests in writing that Project Co make commercially reasonable efforts to obtain financing for such payment amount and have the same paid for by way of amendment to the Payments. If the City makes such a request, then the City shall be deemed to have issued a Change Enquiry in accordance with Section 2.1 [*Initiating a Change Enquiry*] of Schedule 13 [*Changes*] to this effect. For clarity, if after making commercially reasonable efforts to obtain financing as contemplated by this subparagraph (d), Project Co is unable to obtain commitments to provide the financing, the City will be required to make the payment in question by lump sum and the City shall not have the right to use a Change Directive to compel such financing.

When preparing the Change Estimate, in response to the foregoing City request, Project Co shall take into consideration that as a result of the City's request it is intended that Project Co shall be in no better or worse position at the Expiry Date than had the payments been made on a lump sum basis in accordance with this Section 8.10 [*Lump Sum Payments*].

9. INSURANCE, DAMAGE AND DESTRUCTION

9.1 Insurance Requirements

Subject to Section 5 [*Uninsurability*] of Schedule 17 [*Insurance Requirements*], Project Co shall take out, maintain in force and renew, or cause to be taken out, maintained in force or renewed, all such insurance and Performance Security for the Project as set out in Schedule 17 [*Insurance Requirements*].

9.2 Project Co's Obligations - Damage or Destruction

- (a) Unless this Agreement is terminated or expires in accordance with its terms, if all or any part of the Phase 1 Infrastructure is damaged or destroyed at any time prior to the Phase 1 Construction Completion Date or Infrastructure (other than the Phase 1 Infrastructure) is damaged or destroyed at any time during the Construction Period, Project Co shall, at its own cost and expense, repair or replace, as applicable, the Infrastructure or such part of the Infrastructure, as applicable (the "**Reinstatement Work**"), promptly and in any event as soon as practicable in the circumstances. For clarity, such obligations shall extend to and include Existing Infrastructure only to the extent that any damage or destruction to such Existing Infrastructure arises as a result of the Project Work or any act or omission of Project Co or any Project Co Person.
- (b) Except as otherwise expressly provided, the partial destruction or damage or complete destruction of the Infrastructure by fire or other casualty shall not permit either Party to terminate this Agreement or entitle Project Co to surrender possession of the Infrastructure or to demand any increase in any amounts payable to Project Co under this Agreement and all of the provisions of this Agreement, including Section 10 [*Force Majeure*] and Section 11 [*Relief Events*] shall continue to apply.

9.3 Reinstatement Plan

If the Reinstatement Work is reasonably likely to cost more than \$10 Million (index linked), Project Co shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction (or if, with the exercise of all due diligence more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction as may be reasonably required with the exercise of all due diligence, provided Project Co exercises and continues to exercise all such due diligence) submit to the City's Representative pursuant to Schedule 2 [*Submittal Review Procedure*] a plan (a "**Reinstatement Plan**") prepared by Project Co for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:

- (a) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction;
- (b) Project Co's proposed schedule for the execution of the Reinstatement Work, accompanied by a proposed revision to the then-current Construction Schedule; and
- (c) the information required pursuant to Schedule 13 [*Changes*] as if such plan were a Change Estimate;

and the Reinstatement Work must not be commenced until the City's Representative consents thereto in accordance with Schedule 2 [*Submittal Review Procedure*] except to the extent necessary to address any Emergency or public safety needs.

Project Co shall cause the Reinstatement Work to be carried out in accordance with the Design and Construction Requirements and all other applicable requirements under this Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the City's Representative in accordance with Schedule 2 [*Submittal Review Procedure*].

If requested by the City's Representative, the Persons (and if applicable, a suitable parent entity thereof acceptable to the City) retained by Project Co to design and carry out any Reinstatement Work shall, as a condition of their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a construction contract with Project Co in a form that is satisfactory to the City, acting

reasonably, and a direct agreement with the City in substantially the same form as the applicable Collateral Agreement.

9.4 City's Election Not to Reinstate

Subject to the City's rights under Section 15.4 [*Termination Upon Force Majeure*], the City may, by notice to Project Co not later than 30 days after receipt of the Reinstatement Plan pursuant to Section 9.3 [*Reinstatement Plan*], terminate this Agreement and pay compensation to Project Co in accordance with Section 4 [*Consequences of Non-Default Termination*] of Schedule 27 [*Compensation on Termination*].

9.5 Application of Insurance Proceeds If No Termination

Unless the City has terminated this Agreement (including pursuant to Section 9.4 [*City Election Not to Reinstate*]), Project Co shall cause all:

- (a) applicable Insurance Proceeds which it has received; and
- (b) applicable Insurance Receivables which it is entitled to receive

to be applied to the reinstatement of the Infrastructure in accordance with the terms of this Agreement and the terms of the Insurance Trust Agreement to the extent applicable.

9.6 Application of Insurance Proceeds In Case of Termination

If the City has terminated this Agreement pursuant to Section 9.4 [*City's Election Not to Reinstate*]:

- (a) any Insurance Proceeds received by Project Co prior to the date on which the City must make the Termination Payment and not already applied to the repair of such damage shall first be applied against the Termination Payment and any Insurance Proceeds remaining after such application shall be paid to the City; and
- (b) on the date on which the City must make the Termination Payment, Project Co shall assign to the City the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

9.7 Standards of Replacement, Repair or Reconstruction

Any replacement, repair, or reconstruction of the Infrastructure or any part thereof pursuant to the provisions of Sections 9.2 [*Project Co's Obligations - Damage or Destruction*] shall be made or done in compliance with Schedule 4 [*Design and Construction Protocols*] and/or the Design and Construction Requirements to the extent specified in Section 9.2 [*Project Co's Obligations - Damage or Destruction*], subject to the terms of any Change Order Confirmation or agreement that may be made between the City and Project Co to revise the Design and Construction Requirements as they pertain to any Reinstatement Work.

9.8 Mitigation

Project Co shall take all reasonable steps to mitigate the effects of any risks or claims covered by this Section 9 [*Insurance, Damage and Destruction*] (including minimizing the amount of any costs and expenses which might result).

9.9 Effect on Indemnity and Force Majeure

The foregoing provisions of this Section 9 [*Insurance, Damage and Destruction*] shall not affect:

- (a) Project Co's obligations pursuant to Section 14.1 [*Project Co's Indemnity*]; and
- (b) the Parties' rights to terminate this Agreement pursuant to Section 15.4 [*Termination Upon Force Majeure*].

10. FORCE MAJEURE

10.1 Force Majeure

If a Force Majeure Event occurs, then notwithstanding any other provision of this Agreement:

- (a) subject to Section 10.2(e), no liability or right of termination, other than either Party's right to terminate this Agreement pursuant to Section 15.4 [*Termination Upon Force Majeure*], shall arise under this Agreement by reason of any failure by a Party to perform any of its obligations under this Agreement, but only to the extent that such failure to perform is caused by the occurrence of a Force Majeure Event (it being acknowledged and agreed by the Parties that, except as specifically provided in this Section 10.1 [*Force Majeure*], all other rights and obligations of the Parties under this Agreement remain unaffected by the occurrence of a Force Majeure Event) and a Party shall only be relieved of its obligations under this Agreement arising from any delay or failure in performing any of such obligations to the extent, if any, provided for in this Section 10.1 [*Force Majeure*];
- (b) subject to the provisions of this Section 10 [*Force Majeure*] (including Project Co's mitigation obligations), if the Force Majeure Event or multiple Force Majeure Events cause a delay (as demonstrated by Forensic Schedule Analysis and contemporary records) in achieving Phase 1 Construction Completion by the Target Phase 1 Construction Completion Date, the ICS Integration Ready Date by the Target ICS Integration Ready Date, availability of the Stony Plain Road Bridge by the Target Stony Plain Road Bridge Availability Date or Construction Completion by the Target Construction Completion Date for an aggregate period of at least 21 calendar days within the Construction Period (the "**Force Majeure Waiting Period**") (for clarity, if two or more Force Majeure Events occur concurrently, then for the period of concurrency and for the purposes of calculating the Force Majeure Waiting Period, only one of the Force Majeure Events will be counted), then the Target Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date or the Target Construction Completion Date, as applicable, and the date in Section 14.8(g) shall be extended by a period equal to the period of delay in excess of the Force Majeure Waiting Period caused by the relevant Force Majeure Events; provided, however, that in no event shall any such extension be granted unless the Forensic Schedule Analysis demonstrates that the Force Majeure Event has caused a delay to a Key Date, and then only once all related schedule float is consumed, and provided, however, that in no event shall any such extension exceed the necessary extension of the critical path resulting from the Force Majeure Event;
- (c) where the Target Phase 1 Construction Completion Date or Target Construction Completion Date is adjusted as set out in Section 10.1(b) above, the City shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or that accrued in accordance with the Senior Financing Agreements to the Senior Lenders during the period of adverse interference or failure caused by the Force Majeure Event(s) up to and including the adjusted Target Phase 1 Construction Completion Date or Target Construction Completion Date, as applicable, together with interest thereon at the rate payable on the principal amount of the debt funded under the Senior Financing Agreements which, but for the adverse interference or failure caused by the Force Majeure Event, would not have been paid by Project Co to the Senior Lenders; provided, however, that Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered in connection with the Force Majeure

Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom, which deduction, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy. Such amount shall be paid by the City to Project Co at such time or times as payments of such amount are required to be paid to the Senior Lenders pursuant to the Senior Financing Agreements;

- (d) Project Co shall not be entitled to receive any compensation following the occurrence of a Force Majeure Event other than as expressly provided in Section 10.1(b). For the avoidance of doubt:
 - (i) the Phase 1 Construction Completion (OMF-B) Payment shall in no event be paid to Project Co prior to the Phase 1 Construction Completion Date; and
 - (ii) the Construction Completion Payment shall in no event be paid to Project Co prior to the Construction Completion Date.
- (e) provided that Project Co complies with its obligations under this Section 10 [*Force Majeure*], any failure by Project Co to perform any affected Project Work in accordance with the requirements of this Agreement shall not constitute a Default and: (i) Project Co shall be relieved of any liability or obligations under Section 14.1(a); (ii) the City shall not be entitled to exercise its rights or remedies under Section 14.7 [*City's Remedial Rights*]; and (iii) Construction Payment Adjustments shall not be made pursuant to Section 2.2 [*Construction Payment Adjustment*] of Schedule 16 [*Payment Mechanism*] and Default Points shall not be assessed, in each case only to the extent that and for so long as the relevant Force Majeure Event prevents Project Co from being able to perform such Project Work in accordance with the requirements of this Agreement; and
- (f) if Project Co anticipates that the Force Majeure Event will delay Phase 1 Construction Completion, the ICS Integration Ready Date, Construction Completion or Availability of the Stony Plain Road Bridge, but is of the opinion that the delay can be avoided or mitigated through extraordinary measures, Project Co may propose to the City that such extraordinary measures be taken by Project Co at the City's expense and the City may, in its sole discretion, direct Project Co to take any or all of such extraordinary measures.

10.2 Procedure on Force Majeure Event

- (a) A Party shall provide written notice to the other Party within 5 Business Days of becoming aware of the occurrence of a Force Majeure Event. The Party providing notice shall, within 15 Business Days after such notification, provide further written details to the other Party which shall include:
 - (i) a statement of which Force Majeure Event the claim is based upon;
 - (ii) details of the event or circumstances forming the basis for the Party's claim;
 - (iii) details of the contemporary records which such Party shall maintain to substantiate its claim for relief;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Force Majeure Event may have upon such Party and its obligations under this Agreement, accompanied by copies of all supporting records in such Party's custody or available to such Party which substantiate or support such Party's claim; and

- (v) details of any measures which the Party proposes to adopt to mitigate the consequences of such Force Majeure Event.
- (b) In addition to the requirements of Section 10.2(a), if Project Co provides such notice, then Project Co shall:
- (i) submit to the City a Schedule Update within 15 Business Days (or other timeline as agreed between the Parties on a case-by-case basis) after such notification;
 - (ii) for a Force Majeure Event that continues for longer than 30 calendar days, provide a monthly update of the impact of the Force Majeure Event to the Construction Schedule, which shall include a detailed description of the impact to the satisfaction of the City, acting reasonably;
 - (iii) submit to the City a Schedule Update within 10 Business Days (or other timeline as agreed between the Parties on a case-by-case basis) after the Force Majeure Event ceases to affect Project Co's performance of the Project Work; and
 - (iv) shall submit a forensic schedule analysis (a "**Forensic Schedule Analysis**") in accordance with AACE International Recommended Practice No. 29R-03 within 10 Business Days (or other timeline as agreed to between the Parties on a case by case basis) of the conclusion of the Force Majeure Event or the portion of the Force Majeure Event that impacts the Construction Schedule. The Forensic Schedule Analysis shall include adequate justification for the selected forensic schedule analysis method and demonstrate that it produces an accurate assessment of the event impact.
- (c) As soon as possible, but in any event within 3 Business Days, of the Party providing notice (the "**Notifying Party**") receiving, or becoming aware of, any supplemental information which may further substantiate or support its claim, it shall submit further particulars including copies of all related available records associated with such information to the other Party (the "**Notified Party**").
- (d) The Notified Party shall, after receipt of written details under Sections 10.2(a) or 10.2(b), be entitled by written notice to require the Notifying Party to provide such further supporting particulars as it may reasonably consider necessary. The Notifying Party shall provide the required supporting particulars to the Notified Party as soon as practicable and, in any event, no later than 20 Business Days (failing which the notice of the Force Majeure Event provided by Project Co pursuant to Section 11.3(a) shall be deemed to have been withdrawn), after receiving the written notice and afford the Notified Party reasonable facilities for investigating the validity of its claim, including on-site inspection.
- (e) If a Party is (or claims to be) affected by a Force Majeure Event, it shall, and shall require its respective Project Co Persons or City Persons, as applicable to, take and continue to take commercially reasonable steps:
- (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Agreement
 - (ii) to continue to perform its obligations under this Agreement to the extent possible; and
 - (iii) to resume performance of its obligations under this Agreement affected by the Force Majeure Event as soon as practicable.

- (f) To the extent that a Party does not comply with its obligations under this Section 10.2 *[Procedure on Force Majeure Event]*, such failure (including without limitation, the effect of such failure on the other Party's ability to mitigate such Force Majeure Event) shall be taken into account in determining such Party's entitlement to relief and any compensation or schedule relief that might otherwise be provided under this Section 10 *[Force Majeure]* shall be reduced to the extent the other Party is prejudiced by such failure to comply.

10.3 Exclusions from Force Majeure Event

Notwithstanding any other provision of this Agreement, including the definition of "Force Majeure Event" in Schedule 1 *[Definitions and Interpretation]*, neither Project Co nor the City shall have the right to claim relief (as provided for in this Section 10 *[Force Majeure]*) from any liability or consequence arising from its inability to perform the obligation that is prevented, hindered or delayed by the Force Majeure Event to the extent that:

- (a) in the case of Project Co, the Project Requirements expressly require or contemplate that Project Co was or is expected to perform the obligations in question notwithstanding the occurrence of the Force Majeure Event;
- (b) the Party claiming the relief could have avoided (in whole or in part) the event, occurrence, circumstance or could have mitigated the related liability, consequences or impacts, by complying with its obligations under this Agreement, including any applicable prevention or control obligations and its mitigation obligations; or
- (c) such event, occurrence, circumstance or the related liability, consequence or impact, arises or is contributed to, directly or indirectly, as a result of any Legal Fault of the Party claiming the relief.

11. RELIEF EVENTS AND LIMITED RELIEF EVENTS

11.1 Definitions

11.1.1 Relief Events

In this Agreement, "Relief Event" means any of the following events, conditions, or circumstances if and to the extent that it interferes adversely with, or causes a failure of, the carrying out of the Project Work or causes Direct Losses to Project Co or any Project Co Person:

- (a) **City Events:**
 - (i) breach of any provision of this Agreement by the City (including any delay by the City in acquiring the required Real Property Interests in the City Lands described in Schedule 14 *[City Lands]*, including in the Future Acquired Lands, by such date as is specified in the Schedule);
 - (ii) a stop work order is issued without proper cause by the City as contemplated by and pursuant to Section 5.5 *[Stop Work Order]*;
 - (iii) any Remedial Action taken by the City in the circumstances specified in Section 14.7(c)(iii);
 - (iv) where the City directs Project Co to proceed with a matter in Dispute under Section 7.3.6(c) of Schedule 4 *[Design and Construction Protocols]* and the Dispute is determined in favour of Project Co;

- (v) where the City exercises its rights under Section 7.3.6 [*Inspection*] of Schedule 4 [*Design and Construction Protocols*] and upon inspection it is determined there are no Deficiencies or other Nonconformities in the relevant part of the Infrastructure;
 - (vi) in the circumstances provided for in Section 5.3 of Schedule 20 [*Dispute Resolution*] where the City directs Project Co to carry out additional work and the related Dispute is decided in Project Co's favour;
 - (vii) in the circumstances provided for in Section 2.8.6 of Schedule 28 [*Project Approvals and Utility Matters*] Part 2 [*Utility Matters*];
- (b) **Site Conditions:**
- (i) the presence in, under or on the City Lands, of Historical Resources, which presence could not have been ascertained by Project Co or Project Co Persons by the exercise of Standard Due Diligence prior to the Financial Submission Date;
 - (ii) the presence on or around the City Lands of animal or plant species protected by Environmental Laws, which presence could not have been ascertained by Project Co or Project Co Persons by the exercise of Standard Due Diligence prior to the Financial Submission Date;
 - (iii) a requirement under Section 4.10 for Project Co to perform obligations under a Permitted Encumbrance added after the Financial Submission Date;
 - (iv) a requirement under Section 4.9(f) for Project Co to perform obligations under an Encumbrance or the Encumbrance affects Project Co's performance of its obligations and Project Co has provided satisfactory evidence thereof in accordance with the requirements of Section 4.9(f);
 - (v) factual errors in the borehole log data contained in the reports listed in Section 20.4(d) [*Project Co's Reliance on Information*], and subject to the limitations and qualifications specified in Section 20.4(c) [*Project Co's Reliance on Information*], provided, however, that Project Co shall not be entitled to a Relief Event in respect of factual errors in the borehole log data for any delay or additional costs or expense (A) that result from any interpretation of or extrapolation from or assumption made on the basis of any such interpretation, or from any action taken or omitted on the basis of any interpolation, extrapolation or assumption, or (B) if it was not in all the relevant circumstances and having regard to any other information known to Project Co at the relevant time reasonable in accordance with Good Industry Practice for Project Co to rely on the information containing the factual error or to rely on such information without further investigation or site examination; and provided further that the Relief Event set out in this Section 11.1.1(b)(v) shall be Project Co's sole remedy in respect of any breach of the City's representation and warranty set forth in Section 20.4(d);
 - (vi) the existence of any material defect or deficiency in the Specified Existing Infrastructure discovered during the Construction Period that was not and could not reasonably have been ascertained by a competent and experienced contractor in accordance with Good Industry Practice during a visual inspection of the Specified Existing Infrastructure prior to the Financial Submission Date;

(c) **Third Party Events:**

- (i) the Relief Event referred to in Section 6.2.4 [*Other Works Relief Event*] an act or omission of an Other Contractor engaged in the performance of Other Works during the Term;
- (ii) any interference or disruption with Project Work by Persons claiming aboriginal title or treaty rights in respect of all or any part of the Lands;
- (iii) subject to Project Co and all Project Co Persons complying with their obligations under Section 4.8 [*Permitted Use of Lands*], injurious affection or public nuisance claims made by any Person other than a Project Co Person by reason of the Project;
- (iv) an order granted by a court of competent jurisdiction directly resulting from any proceeding brought by a third party against the City or to which the City is a party;
- (v) except as otherwise contemplated in Schedule 6 [*Interface Agreement*], if Project Co is prevented, hindered or delayed from performing its obligations under this Agreement by reason of the Legal Fault of the Operator or the LRV Supplier;

(d) **Utility Work Relief Events:**

- (i) the existence of undisclosed Utility Infrastructure that could not have been ascertained by Project Co or Project Co Persons from the Disclosed Data at the Financial Submission Date and from other information or data available to Project Co in the course of carrying out Standard Due Diligence in accordance with Utility Best Practices;
- (ii) the existence of Mislocated Utilities;
- (iii) the existence of latent defects in the existing Utility Infrastructure that could not have been ascertained by Project Co or Project Co Persons from the Disclosed Data at the Financial Submission Date and from other information or data available to Project Co in the course of carrying out Standard Due Diligence in accordance with Utility Best Practices. For greater certainty, but without limiting the Relief Event referred to in Section 11.1.1(d)(i), the location of Utility Infrastructure shall not be considered a latent defect;
- (iv) the occurrence of an Extraordinary Delay notwithstanding compliance by Project Co with this Agreement, including the adoption and application of Utility Best Practices; and
- (v) failure by the City to enter into the Pipeline Agreements in the time periods specified in Section 2.5.4 of Schedule 28 [*Project Approvals and Utility Matters – Part 2 – Utility Matters*].

The Relief Events set forth in this Section 11.1.1(d) are sometimes referred to as “**Utility Work Relief Events**”; and

(e) **Other:**

- (i) the Relief Event referred to in Section 9.3(i) of Schedule 4 [*Design and Construction Protocols*];

- (ii) the Relief Event referred to in Section 9.3(j) of Schedule 4 [*Design and Construction Protocols*];
- (iii) the Relief Event referred to in Section 15.6(d) of Schedule 10 [*Environmental Performance Requirements*];
- (iv) the Relief Event referred to in Section 15.7(n) of Schedule 10 [*Environmental Performance Requirements*]; and
- (v) any other matter expressly defined as a Relief Event in this Agreement.

11.1.2 Limited Relief Events

In this Agreement, “Limited Relief Event” means any of the following events, conditions, or circumstances if and to the extent that it interferes adversely with, or causes a failure of, the carrying out of the Project Work:

(a) **Third Party Events:**

- (i) a general strike or other labour disruption in Alberta that is applicable broadly to the transportation construction sector in Alberta or that is specifically directed at the City, but excluding any strike or labour disruption by Project Co Persons against Project Co which is not part of the foregoing scope of general strike or labour disruption;
- (ii) any interference with Project Co access to the Lands caused by a blockade, embargo, civil disobedience or protest action, including any action taken by a Person or Persons protesting or demonstrating against the carrying out of any part of the Project, which interference cannot reasonably be avoided or resolved by means other than injunctive or other judicial remedies from a Court;

(b) **Not used..**

(c) **Other:**

- (i) Epidemic;
- (ii) accidental loss or damage to the Project Work and/or the Infrastructure or any roads servicing the Lands;
- (iii) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation, earthquake, riot or civil commotion, in each case to the extent it does not constitute a Force Majeure Event; and
- (iv) any other matter expressly defined as a Limited Relief Event in this Agreement.

11.1.3 Exclusions from Relief Events and Limited Relief Events

Notwithstanding any other provision of this Agreement, Project Co shall have no right to claim relief (as provided for in this Section 11 [*Relief Events and Limited Relief Events*]) from any liability or consequence arising from a Relief Event or Limited Relief Event to the extent that:

- (a) the Project Requirements expressly require or contemplate that Project Co was or is expected to perform the obligations in question notwithstanding the occurrence of the Relief Event or Relief Event;
- (b) Project Co could have avoided the event, occurrence, circumstance or the related liability, consequences or impacts, by complying with its obligations under this Agreement, including any applicable prevention or control obligations, and its mitigation obligations; and
- (c) such event, occurrence, circumstance or the related liability, consequence or impact, arises or is contributed to, directly or indirectly, as a result of any Legal Fault by Project Co, or a Project Co Person provided that, for clarity, Project Co will not be at Legal Fault if, and to the extent that, it is determined that the Project or the performance of the Project Work according to the terms of this Agreement, constitutes a public nuisance or establishes the basis for an injurious affection claim by third parties, without any other Legal Fault of Project Co or a Project Co Person.

11.1.4 No Limited Relief Event at Commercial Close

Project Co acknowledges and agrees that any circumstances from or relating to the existence of an Epidemic as at the Financial Submission Date will not, in the absence of any change thereto, give rise to or cause the occurrence of a Limited Relief Event.

11.2 Consequences of Relief Event and Limited Relief Event

11.2.1 Consequences of Relief Event

If a Relief Event occurs, then:

- (a) subject to Section 11.3(e), no right of termination shall arise under this Agreement by reason of any failure by Project Co to perform any of its obligations under this Agreement, but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that, except as specifically provided in this Section 11.2.1 [*Consequences of Relief Event*] and Section 11.2.3 [*General Consequences*], all other rights and obligations of the Parties under this Agreement remain unaffected by the occurrence of a Relief Event) and Project Co shall only be relieved of its obligations under this Agreement arising from any delay or failure in performing any of such obligations to the extent, if any, provided for in this Section 11.2.1 [*Consequences of Relief Event*] and/or Section 11.2.3 [*General Consequences*];
- (b) subject to the provisions of this Section 11 [*Relief Events and Limited Relief Events*] (including Project Co's obligations pursuant to Section 11.3(e)), if the Relief Event causes a delay (as demonstrated by Forensic Schedule Analysis and contemporary records) in achieving Phase 1 Construction Completion, the ICS Integration Ready Date, Construction Completion or Availability of the Stony Plain Road Bridge for a period of at least two consecutive days, then the Target Phase 1 Construction Completion Date, Target ICS Integration Ready Date, Target Construction Completion Date or Target Stony Plain Road Bridge Availability Date, as applicable, shall be extended, and where

the Target Construction Completion Date is extended, the date in Section 14.8(g) shall be extended, in each case, by a period equal to the period of delay caused by the relevant Relief Event(s); provided, however, that in no event shall any such extension be granted unless the Forensic Schedule Analysis demonstrates that the Relief Event has caused a delay to a Key Date, and then only once all related schedule float is consumed, and provided, however, that in no event shall any such extension exceed the necessary extension of the critical path resulting from the Relief Event;

- (c) if the Relief Event, when aggregated with the effect of any other Relief Event or Relief Events occurring in the same calendar year and not previously claimed for by Project Co, increases Project Co's net cost of carrying out the Design and Construction by at least ██████ in such calendar year, then subject to Section 11.3 *[Procedure on Relief Event]* and subject in every case to Project Co's obligation to take reasonable steps to mitigate the increase in its costs, the City shall, as soon as practicable following receipt from Project Co of appropriate documentation establishing the amount payable, pay to Project Co compensation in respect of the Relief Event calculated on the basis that Project Co will be placed in no better and no worse position than it would have been in had the relevant Relief Event not occurred and taking into consideration the following (without duplication):
- (i) reasonable Direct Losses incurred by Project Co as a direct result of the Relief Event (including the amount of any applicable insurance deductibles); and
 - (ii) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting directly from the Relief Event;

except that:

- (iii) Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered in connection with the Relief Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom, which deduction, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy; and
- (iv) no Indirect Losses will be taken into consideration.

For greater certainty, in respect of a Relief Event that results in an extension of the Target Phase 1 Construction Completion Date or the Target Construction Completion Date pursuant to Section 11.2.1(b) above, the compensation payable to Project Co pursuant to this Section 11.2.1(c) shall include amounts which, but for the delay attributable to the Relief Event, would have been paid by the City to Project Co, provided, however, that the Phase 1 Construction Completion (OMF-B) Payment shall in no event be paid to Project Co prior to the Phase 1 Construction Completion Date and the Construction Completion Payment shall in no event be paid to Project Co prior to the Construction Completion Date.

11.2.2 Consequences of Limited Relief Event

If a Limited Relief Event occurs, then:

- (a) subject to Section 11.3(e), no right of termination shall arise under this Agreement by reason of any failure by Project Co to perform any of its obligations under this Agreement, but only to the extent that such failure to perform is caused by the occurrence of a Limited Relief Event (it being acknowledged and agreed by the Parties that, except as specifically provided in this Section 11.2.2 *[Consequences of Limited*

Relief Event] and Section 11.2.3 [*General Consequences*], all other rights and obligations of the Parties under this Agreement remain unaffected by the occurrence of a Limited Relief Event) and Project Co shall only be relieved of its obligations under this Agreement arising from any delay or failure in performing any of such obligations to the extent, if any, provided for in this Section 11.2.2 [*Consequences of Limited Relief Event*] and/or Section 11.2.3 [*General Consequences*];

- (b) subject to the provisions of this Section 11 [*Relief Events and Limited Relief Events*] (including Project Co's obligations pursuant to Section 11.3(e)), if the Limited Relief Event causes a delay (as demonstrated by Forensic Schedule Analysis and contemporary records) in achieving Phase 1 Construction Completion, the ICS Integration Ready Date, Construction Completion or Availability of the Stony Plain Road Bridge for a period of at least two consecutive days, then the Target Phase 1 Construction Completion Date, Target ICS Integration Ready Date, Target Construction Completion Date or Target Stony Plain Road Bridge Availability Date, as applicable, shall be extended, and where the Target Construction Completion Date is extended, the date in Section 14.8(g) shall be extended, in each case, by a period equal to the period of delay caused by the relevant Limited Relief Event(s); provided, however, that in no event shall any such extension be granted unless the Forensic Schedule Analysis demonstrates that the Limited Relief Event has caused a delay to a Key Date, and then only once all related schedule float is consumed, and provided, however, that in no event shall any such extension exceed the necessary extension of the critical path resulting from the Limited Relief Event;
- (c) in respect of the Limited Relief Events referred to in Sections 11.1.2(a), 11.1.2(b), 11.1.2(c)(i) and 11.1.2(c)(iv), where the Target Phase 1 Construction Completion Date or Target Construction Completion Date is adjusted as set out in Section 11.2.2(b) above, the City shall pay to Project Co an amount equal to the Senior Debt Service Amount that became payable in accordance with the Senior Financing Agreements to the Senior Lenders during the period of delay caused by such Limited Relief Event(s) up to and including the adjusted Target Phase 1 Construction Completion Date or Target Construction Completion Date, as applicable, together with interest thereon at the rate payable on the principal amount of the debt funded under the Senior Financing Agreements which, but for the delay caused by the applicable Limited Relief Event, would not have been paid by Project Co to the Senior Lenders; provided, however, that Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered in connection with the Limited Relief Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom, which deduction, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy. Such amount shall be paid by the City to Project Co at such time or times as payments of such amount are required to be paid to the Senior Lenders pursuant to the Senior Financing Agreements.

11.2.3 General Consequences

If a Relief Event or a Limited Relief Event occurs, then:

- (a) provided that Project Co complies with its obligations under this Section 11 [*Relief Events and Limited Relief Events*], any failure by Project Co to perform any affected Project Work in accordance with the requirements of this Agreement shall not constitute a Default and: (i) Project Co shall be relieved of any liability or obligations under Section 14.1(a) and (ii) the City shall not be entitled to exercise its rights or remedies under Section 14.7 [*City's Remedial Rights*], only to the extent that and for so long as the relevant Relief Event or Limited Relief Event prevents Project Co from being able to perform such Project Work in accordance with the requirements of this Agreement;

- (b) if Project Co anticipates that the Relief Event or Limited Relief Event will delay Phase 1 Construction Completion, the ICS Integration Ready Date, Construction Completion or the Availability of the Stony Plain Road Bridge, but is of the opinion that the delay can be avoided or mitigated through extraordinary measures which would not otherwise be required under this Agreement, Project Co may propose to the City that such extraordinary measures be taken by Project Co at the City's expense and the City may, in its sole discretion, direct Project Co to take any or all of such extraordinary measures; and
- (c) no Construction Payment Adjustment or Default Points shall be applicable, to the extent that and for so long as the relevant Relief Event or Limited Relief Event interfered adversely with, or caused a failure of, the performance by Project Co of the Project Work.

11.3 Procedure on Relief Event and Limited Relief Event

- (a) Project Co shall provide written notice to the City within 5 Business Days of becoming aware of the occurrence of a Relief Event or Limited Relief Event. Project Co shall, within 15 Business Days after such notification, provide further written details to the City which shall include:
 - (i) a statement of which Relief Event or Limited Relief Event the claim is based upon;
 - (ii) details of the event or circumstances forming the basis of Project Co's claim;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for relief;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Relief Event or Limited Relief Event may have upon Project Co and its obligations under this Agreement, accompanied by copies of all supporting records in Project Co's custody or available to Project Co which substantiate or support Project Co's claim; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Relief Event.
- (b) In addition to the requirements of Section 11.3(a), Project Co shall:
 - (i) submit to the City a Schedule Update within 15 Business Days (or other timeline as agreed between the Parties on a case-by-case basis) after such notification;
 - (ii) for a Relief Event or Limited Relief Event that continues for longer than 30 calendar days, provide a monthly update of the impact of the Relief Event or Limited Relief Event to the Construction Schedule, which shall include a detailed description of the impact to the satisfaction of the City, acting reasonably;
 - (iii) submit to the City a Schedule Update within 10 Business Days (or other timeline as agreed between the Parties on a case-by-case basis) after the Relief Event or Limited Relief Event ceases to affect Project Co's performance of the Project Work; and
 - (iv) shall submit a Forensic Schedule Analysis within 10 Business Days (or other timeline as agreed to between the Parties on a case by case basis) of the

conclusion of the Relief Event or Limited Relief Event or the portion of the Relief Event or Limited Relief Event that impacts the Construction Schedule.

- (c) As soon as possible but in any event within five Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim, Project Co shall submit further particulars including copies of all related available records associated with such information to the City.
- (d) The City shall, after receipt of written details under Sections 11.3(a)(iii) or 11.3(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the City may reasonably consider necessary. Project Co shall provide the required supporting particulars to the City no later than 10 Business Days after receiving the written notice (failing which the notice of the Relief Event or Limited Relief Event provided by Project Co pursuant to Section 11.3(a) shall be deemed to have been withdrawn) and shall afford the City reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (e) At all times, if Project Co is (or claims to be) affected by a Relief Event or Limited Relief Event or any other adverse event or condition, Project Co shall, and shall require all Project Co Persons to take and continue to take commercially reasonable steps:
 - (i) to eliminate or mitigate the consequences of such event or condition upon the performance of its obligations under this Agreement;
 - (ii) to continue to perform the Project Work to the extent possible; and
 - (iii) to resume performance of its obligations under this Agreement affected by the Relief Event as soon as practicable.
- (f) To the extent that Project Co does not comply with its obligations under this Section 11.3 [*Procedure on Relief Event and Limited Relief Event*], such failure (including without limitation the effect of such failure on the City's ability to mitigate such Relief Event or Limited Relief Event, as applicable) shall be taken into account in determining Project Co's entitlement to relief and any compensation or schedule relief that might otherwise be provided under this Section 11 [*Relief Events and Limited Relief Events*] shall be reduced accordingly.

11.4 City Determination of Entitlement

Within 30 days of the City's receipt of all requested information pursuant to Section 11.3 (including any supporting information as the City may reasonably consider necessary to make a determination), the City shall provide Project Co with written notice of the City's determination of Project Co's entitlement to claim relief for a particular event. If the City determines that Project Co is not entitled to claim relief (as provided for in this Section 11 [*Relief Events and Limited Relief Events*]), for a particular event, the City may provide written notice to Project Co of this determination with reasons. Unless Project Co initiates the Dispute Resolution Procedure within 30 days of receiving the City's determination, Project Co will not be entitled to claim relief (as provided for in this Section 11 [*Relief Events and Limited Relief Events*]), for that event.

11.5 Designated Change in Law

- (a) Following any and all Changes in Law, Project Co shall perform the Project Work in accordance with the terms of this Agreement, including in compliance with Applicable Law.

- (b) On the occurrence of a Designated Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Work so as to put such Party in no better and no worse position than it would have been in had the Designated Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 11.5 [*Designated Change in Law*].
- (c) On the occurrence of a Designated Change in Law:
- (i) either Party may give notice to the other of the need for a Change as a result of such Designated Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Designated Change in Law and to reach an agreement on whether a Change is required as a result of such Designated Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Designated Change in Law has occurred or the effect of any Designated Change in Law for resolution in accordance with Schedule 20 [*Dispute Resolution Procedure*]; and
 - (iii) the City shall, within 10 Business Days of agreement or determination that a Change is required, issue a Change Enquiry and the relevant provisions of Schedule 13 [*Changes*] shall apply except that:
 - (A) Project Co may only object to any such Change Enquiry on the grounds that the implementation of the Change would not enable it to comply with the Designated Change in Law or as provided in Section 1.6 of Schedule 13 [*Changes*];
 - (B) Project Co shall be responsible for obtaining all Project Approvals required in respect of the Change;
 - (C) the City shall not be entitled to withdraw any such Change Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Change within such period as will enable it to comply with the Designated Change in Law as soon as reasonably practicable;
 - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Designated Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Designated Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Designated Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Designated Change in Law; and

- (F) any entitlement to compensation payable shall be in accordance with this Section 11.5, and any calculation of compensation shall take into consideration, inter alia:
 - (I) any failure by a Party to comply with Section 11.5(c)(iii)(E);
 - (II) any Avoidable Costs;
 - (III) any increase or decrease in its costs resulting from such Designated Change in Law; and
 - (IV) any Insurance Proceeds and insurance proceeds which Project Co would have received in connection with the Designated Change in Law if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement, which amounts, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.
- (d) Project Co shall not be entitled to any payment or compensation or relief in respect of any Designated Change in Law, or the consequences thereof, other than in accordance with this Section 11.5 [*Designated Change in Law*].
- (e) In relation to a Designated Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Work, taking into consideration, inter alia, Section 11.5(c)(iii)(E), if the cost impact of such Designated Change in Law in a given calendar year (in aggregate with all other such Designated Changes in Law that have a cost impact in the same year) amounts to less than \$10,000 (index linked) in that calendar year, neither the City nor Project Co shall be entitled to any payment or compensation pursuant to this Section 11.5 [*Designated Change in Law*] or otherwise in respect of the cost impact of that Designated Change in Law in that calendar year, or, except as provided otherwise in this Agreement, any other relief in respect of such Designated Change in Law in that calendar year. The foregoing shall not preclude any Construction Schedule amendments that are required in connection with any Change arising from a Designated Change in Law as contemplated by Section 11.5(c) and the relevant provisions of Schedule 13 [*Changes*], notwithstanding that such Designated Change in Law may not exceed the cost impact threshold set out in this Section 11.5(e).
- (f) Where this Agreement requires Project Co to comply with a technical standard in respect of the Project Work, and that standard has changed between the Financial Submission Date and the date that such compliance is required, then Project Co or the City shall give notice to the other Party of such change. If, after such notice, the City requires compliance with the changed standard (rather than the standard applicable as of the Financial Submission Date), then, to the extent such change affects the Project Work and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 13 [*Changes*], result in a Change. If the City does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the Financial Submission Date, without a Change therefor. This Section 11.5(f) shall not apply where a change in a technical standard is also a Designated Change in Law.

12. PROJECT CO'S REPRESENTATIONS AND OBLIGATIONS

12.1 Project Co's Representations

Project Co represents and warrants to the City that, as of the Commercial Close:

- (a) Project Co is a limited partnership, duly created and validly existing under the *Partnership Act* (Alberta) and has full power and capacity to enter into, carry out the transactions contemplated by, and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;
- (b) the General Partner is a duly incorporated and validly existing corporation under the *Business Corporations Act* (Alberta) and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all of Project Co's obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;
- (c) the execution of this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary partnership action on the part of Project Co and corporate action on the part of the General Partner, and this Agreement has been duly executed and delivered by the General Partner on behalf of Project Co and constitutes a legal, valid and binding obligation of Project Co enforceable in accordance with its terms, subject to
 - (i) limitations by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and
 - (ii) the availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (d) Project Co is a "special purpose vehicle" that has not carried on business other than directly in relation to, in anticipation of, and for the purposes of this Agreement;
- (e) except as set out in Schedule 24 [*Project Co's Ownership Information*], there is as at the date of this Agreement no outstanding offer, agreement or other arrangement pursuant to which:
 - (i) any Person is obligated to subscribe for, or take by means of transfer or by conversion, any form of investment, security or voting rights in Project Co or the General Partner; or
 - (ii) the limited partnership agreement governing Project Co will be amended or otherwise altered;
- (f) all required third party consents to the execution by Project Co of, and performance of its obligations under, this Agreement have been received, other than the Project Approvals it is to obtain and other approvals contemplated herein to be obtained following the date of this Agreement in connection with the Project Work;

- (g) Project Co's Proposal, to the extent it consists of statements of fact, is at the time of Commercial Close in every material respect true and not misleading (except as has been disclosed in writing to and accepted in writing by the City prior to Commercial Close);
- (h) Project Co, either in Project Co's Proposal or in formal communications with the City under the RFP, has made accurate and true disclosure to the City of all facts and circumstances regarding Project Co, its Partners, its intended Subcontractors, and the Project Financing and Project Co has not knowingly failed to disclose to the City any fact which if learned by the City would be reasonably expected to be material to the willingness of the City to enter into this Agreement with Project Co having regard to the information requested by the City in the RFP;
- (i) Project Co and the Project Co Persons, collectively, have extensive experience and are knowledgeable in the design and construction of LRT projects similar to the Project in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the Project Work in a timely and professional manner as set out in this Agreement;
- (j) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform its obligations under this Agreement;
- (k) the execution, delivery, and performance by Project Co of this Agreement does not and will not violate or conflict with, or constitute a default under:
 - (i) its constating, formation or organizational documents, including any by-laws;
 - (ii) any Applicable Law; or
 - (iii) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (l) all of the information regarding Project Co set out in Schedule 24 [*Project Co's Ownership Information*] is true and correct in all material respects;
- (m) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Person at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any impairment of its ability to perform its obligations under this Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such impairment;
- (n) Project Co has carefully reviewed the whole of this Agreement, and all other documents made available to Project Co by or on behalf of the City, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Project Work in accordance with this Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Agreement;
- (o) Project Co is able to meet its obligations as they generally become due;
- (p) Project Co is registered under Division V of Part IX of the Excise Tax Act (Canada) and its GST registration number is [REDACTED];

- (q) the Target Phase 1 Construction Completion Date is a realistic date and is achievable by Project Co performing the Phase 1 Project Work in accordance with this Agreement;
- (r) the Target ICS Integration Ready Date is a realistic date and is achievable by Project Co performing the Phase 1 Project Work in accordance with this Agreement;
- (s) the Target Construction Completion Date is a realistic date and is achievable by Project Co performing the Project Work in accordance with this Agreement; and
- (t) Project Co is not a Non-Resident.

12.2 Reporting Requirements

In addition to all specific reports and notices required by Schedule 19 *[Records and Reports]* and the Project Requirements, but subject to Schedule 18 *[Freedom of Information and Protection of Privacy]*, Project Co shall provide to the City the following reporting in relation to any aspect of the business of Project Co, the Project Work or Project Documents to the City:

- (a) supplemental reports requested from time to time by the City, acting reasonably;
- (b) copies of Project Co's quarterly financial statements and annual audited financial statements (each of which may be delivered in confidence), in each case prepared in accordance with generally accepted accounting principles;
- (c) without limiting any obligations under Section 3.3 *[Changes to Senior Financing Agreements]*, copies of all reports (in addition to the reporting under clause (b)) provided from time to time by Project Co to any Senior Lender providing all or any part of the Senior Debt Financing;
- (d) such other reports as the City may from time to time reasonably require in order to provide required reporting to a Contribution Agreement Party; and
- (e) timely responses to any inquiry reasonably made by the City in relation to any aspect of the business of Project Co, the Project Work, or this Agreement in order to reasonably facilitate the City's performance of its obligations under the Agreement; to support the City's communication plans and activities as described in Schedule 12 *[Communications and Engagement]*; and to facilitate the proper exercise of the City's review, inspection, audit, and remedial rights as set out in the Agreement.

Subject to Schedule 18 *[Freedom of Information and Protection of Privacy]*, to the extent that any of the foregoing reporting includes commercially sensitive information, Project Co may deliver such information in confidence and expressly mark or label the parts of the information as confidential according to Section 17.3 *[Confidential Information]*. The City will be deemed to be acting unreasonably for the purposes of this Section 12.2 *[Reporting Requirements]* if the City's request for supplemental reporting as contemplated by Section 12.2(d) and 12.2(e) above would require Project Co to reasonably incur more than ██████ in net aggregate incremental staffing, resource and preparation costs, taking into account any prior or concurrent City directed reduced reporting on the same or different topics. City requests for supplemental reporting that would require Project Co to incur incremental costs in excess of this threshold must be made pursuant to Schedule 13 *[Changes]*.

12.3 Records and Reports

Project Co shall comply with the requirements of Schedule 19 *[Records and Reports]*.

12.4 Access, Inspection and Testing

- (a) Without prejudice to Project Co's rights under Section 4.13 [*Uninterrupted Access and Use*] and Section 6.2 [*Other Work*], Project Co acknowledges and agrees that, at all times until the end of the Term, the City and City Persons, subject to complying with all reasonable safety procedures and reasonable Site rules, shall have full and free access to:
- (i) subject to Section 12.4(a)(ii) below, the Lands; and
 - (ii) on reasonable prior notice, the Site and/or any other site occupied by Project Co or a Project Contractor, or to which Project Co or a Project Contractor has access, where plant, goods, products, commodities, materials, supplies, machinery, equipment, apparatus or other tangible property to be used in the Project Work are fabricated or stored,

for the purpose of inspecting the Lands or any Infrastructure so as to be able to determine compliance by Project Co with the terms of this Agreement, and such access shall not of itself be construed as constituting disturbance or interference with Project Co's uninterrupted access to the Lands.

For the purpose of such inspection, the City may at all reasonable times perform any measurement, test or other observation or investigation. Project Co shall provide reasonable cooperation to arrange and facilitate any such measurements, tests or other observations or investigations. The City shall conduct all such measurements, tests and other observations or investigations at its own expense and in a manner that will not materially disturb, interfere with or disrupt the Project Work.

- (b) Subject to Section 4.13 [*Uninterrupted Access and Use*], to the extent applicable and without limiting, and in addition to any access rights afforded such Persons as members of the general public, pursuant to an express right under this Agreement, or pursuant to Applicable Law, Project Co shall, and shall cause each Subcontractor, to ensure that throughout the Term, the following Persons have full and free access to the Lands and the Infrastructure for the following purposes:
- (i) the City and the City Persons, for the purpose of:
 - (A) undertaking the City's rights and obligations set out in this Agreement;
 - (B) performing security, policing and providing other emergency services in respect of the Infrastructure or the ETS Transit Network;
 - (C) carrying out City Works; and
 - (D) carrying out City Activities;
 - (ii) Emergency Services, for the purpose of carrying out any work (including surveys, inspections, training and provision of emergency response) in accordance with, or to exercise any right or power, or perform any duty or obligation under, any Applicable Law;
 - (iii) Other Contractors, for the purpose of carrying out Other Works;
 - (iv) third parties pursuant to a Permitted Encumbrance, for the purpose of accessing their facilities or infrastructure located on the Lands;

- (v) the Independent Certifier, for the purpose of performing its obligations pursuant to Schedule 15 [*Independent Certifier*];
 - (vi) the IPDC, for the purpose of performing its obligations pursuant to Schedule 6 [*Interface Agreement*];
 - (vii) with the prior authorization of the City, any of the Contribution Agreement Parties, for the purpose of determining compliance by the City with the terms of a Contribution Agreement;
 - (viii) any Governmental Authorities, for the purpose of carrying out any work (including surveys and inspections) in accordance with, or to exercise any right or power, or perform any duty or obligation under any Applicable Law; and
 - (ix) any Utility Companies, for the purposes of performing Utility Work or accessing their facilities or infrastructure within the Lands; and
- (c) As a condition to exercising access pursuant to Section 12.4(b) [*Access, Inspection and Testing*], Project Co may require each Person referred to therein (except in the case of access rights for Emergency Services) to:
- (i) provide reasonable prior notice, appropriate to the circumstances;
 - (ii) comply with all reasonable safety procedures and reasonable Site rules issued by, or on behalf of, Project Co from time to time; and
 - (iii) if reasonably required by Project Co, be accompanied by a representative of Project Co.

12.5 Safety and Security

Project Co shall observe and comply with all safety and security requirements specifically set out in Schedule 11 [*Construction Safety Requirements*] and in Schedule 29 [*Security Matters*].

12.6 General Audit Obligations

- (a) Project Co shall provide and shall cause each Project Contractor to provide to the City all information, reports, documents, records and the like, in the possession of, or available to, Project Co or such Project Contractor as the City may reasonably require from time to time for any purpose in connection with this Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to the Project Contractor shall be available to Project Co and Project Co shall include relevant terms in all Project Contracts to this effect.
- (b) Project Co shall also provide to the City, and shall require each Project Contractor, to provide to the City (at the City's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 12.6(a) which subsequently come into the possession of, or become available to, Project Co or each Project Contractor, as the City may reasonably require from time to time to enable the City to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Infrastructure, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.

- (c) Project Co shall promptly after receipt provide the City with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Project Contractor from any Governmental Authority in relation to any of the Project Work and Project Co shall include relevant terms in all Project Contracts to this effect.
- (d) Project Co shall promptly notify the City of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Person at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co which are required to be provided to or available to the City hereunder, shall be subject and open to inspection and audit by the City upon reasonable notice at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless the City and Project Co otherwise agree. The City shall also have the right to monitor and audit the performance of any and all the activities within the Project Work wherever located, and Project Co shall cooperate with, and shall require each Project Contractor to cooperate with, and provide access to the representatives of the City monitoring and auditing the Project Work, including providing them with access and copies (at the City's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of the activities within the scope of the Project Work. Except as otherwise provided herein, all of the City's costs for the inspections, audits and monitoring shall be borne by the City.
- (f) In conducting an audit of Project Co under Section 12.6(e) or as otherwise provided under this Agreement, the City shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at the City's reasonable cost) of all books and records of Project Co required to be provided to or available to the City hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with the City and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with the City all matters arising from such audits, including the refunding of monies to the City where applicable. At the reasonable request of the City's auditors, Project Co shall provide such information, reports, documents and records as the City's auditors may reasonably require, other than Sensitive Information.
- (g) The City's rights pursuant to this Section shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Agreement.

12.7 General Duty of Project Co to Mitigate

In all cases under this Agreement where Project Co is entitled (or claims to be entitled) to receive from the City any compensation in addition to the payments described in Section 8 [*Payment*], Direct Losses, costs, damages, extensions of time or other relief from its performance obligations, including as contemplated by Section 10.1(b), Project Co shall use all commercially reasonable efforts to mitigate such amount required to be paid by the City to Project Co, or the length of the extension of time or delay in performance. Upon request from the City, Project Co shall promptly submit a detailed description, supported by all such documentation as the City may reasonably require, of the measures and steps taken, and intended to be taken, by Project Co to meet its mitigation obligations under this Section 12.7

[General Duty of Project Co to Mitigate] and any other provision of this Agreement that applies to the circumstance in question.

13. CITY'S REPRESENTATIONS AND OBLIGATIONS

13.1 City's Representations

The City represents and warrants to Project Co, as of the Commercial Close, that:

- (a) the City has full capacity, power and authority to enter into, carry out all transactions contemplated by, and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments, and agreements, required to be executed and delivered by the City hereunder;
- (b) this Agreement has been duly authorized executed, and delivered by or on behalf of the City, and upon execution and delivery constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms subject to (i) limitations by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and (ii) the availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (c) the City has acquired the Real Property Interests in the City Lands described in Schedule 14 *[City Lands]* indicated as being acquired on or prior to the Commercial Close in Schedule 14 *[City Lands]*, except for the lands described in Schedule 14 *[City Lands]* as the "Future Acquired Lands", and as confirmed in Section 4.9 *[No Encumbrance on City Lands]* in each case free and clear of all Encumbrances, except the Permitted Encumbrances;
- (d) the City has not granted any leases that are outstanding in respect of the City Lands, except for the leases forming part of the Permitted Encumbrances and the leases described in Schedule 14 *[City Lands]*; and
- (e) the City has the power, right and authority to grant Project Co the license to the City Lands as set out in Section 4.1 *[Access and Use]*.

13.2 City Roles

The City will participate in the Project in various capacities and for clarification, for the purposes of this Agreement:

- (a) as a counterparty to this Agreement, the City will act through and on the delegated authority of the City's Representative, as a member of the City LRT and no other City department, office, agency or representative shall represent the City as counterparty to this Agreement with any authority to exercise, perform, represent, satisfy any right or obligation or bind the City in any way under or pursuant to this Agreement, except as expressly authorized or confirmed in writing by the City's Representative;
- (b) EPCOR Water Services Inc. and EPCOR Distribution and Transmission shall be considered and treated as arm's length Utility Companies for the purposes of this Agreement, including Schedule 28 *[Project Approvals and Utility Matters]* Part 2 *[Utility Matters]*;

Other City officials, departments, offices, agencies and representatives shall be considered as arm's length Governmental Authorities, including as rail regulatory authorities.

13.3 City Duty to Mitigate

In all cases under this Agreement where the City is entitled to receive from Project Co any compensation, costs or damages, but not in any other case, the City shall use all commercially reasonable efforts to mitigate such amount required to be paid by Project Co to the City (or deducted by the City) under this Agreement, provided that such obligation shall not require the City to:

- (a) take any action which is contrary to the public interest, as determined by the City in its discretion;
- (b) undertake any mitigation measure that might be available arising out of its status as a public body, but which measure would not normally be available to a private commercial party; or
- (c) alter the amount of any NPE Adjustments or Construction Payment Adjustments it is entitled to make in accordance with Schedule 16 [*Payment Mechanism*].

The City shall have no obligation to mitigate, implied or otherwise under this Agreement or Applicable Law, except as set out in this Section 13.3 [*City Duty to Mitigate*] or as otherwise expressly set out in this Agreement. Upon request from Project Co, the City shall promptly submit a detailed description, supported by all such documentation as Project Co may reasonably require, of the measures and steps taken by the City to meet its mitigation obligations under this Section 13.3 [*City Duty to Mitigate*].

13.4 Project Co Recourse

The City acknowledges and agrees that Project Co shall be entitled (without prejudice to any of Project Co's obligations hereunder) to claim and/or otherwise initiate and carry out proceedings against any third party that causes or contributes to any damage to the Infrastructure or otherwise causes or contributes to any Project Co loss. The City shall, in response to any reasonable request by Project Co and at Project Co's cost, provide all reasonable information and assistance to enable Project Co to assert and manage any such claims and/or proceedings.

14. DEFAULT, REMEDIES AND TERMINATION EVENTS

14.1 Project Co's Indemnity

Subject to Section 14.4 [*Exclusivity of Specified Remedies*], Project Co shall indemnify and hold harmless the City and the City Persons against all Direct Losses arising from:

- (a) Project Co's breach of or non-compliance with any provision of this Agreement or a Project Document;
- (b) any Legal Fault of Project Co or any Project Co Person in performing its obligations under this Agreement other than Project Co's breach of or non-compliance with any provision of this Agreement or a Project Document;
- (c) subject to Section 4.2(b) of Schedule 8 [*Intellectual Property*] any third party claim alleging infringement by Project Co or a Project Co Person, in relation to the Project Work, of any Intellectual Property Rights of third parties;
- (d) any physical loss of or damage to all or any part of the Infrastructure or to any Equipment, assets or other property related thereto arising out of or in consequence of or involving or relating to the Legal Fault of Project Co or a Project Co Person;

- (e) the death or personal injury of any Person arising out of or in consequence of or involving or relating to the Legal Fault of Project Co or a Project Co Person;
- (f) any physical loss of or damage to property or assets of any third party arising out of or in consequence of or involving or relating to the Legal Fault of Project Co or a Project Co Person;
- (g) subject to Section 4.8 [*Permitted Use of Lands*] any other loss or damage of any third party, including injurious affection or public nuisance, arising from or in consequence of any act or omission of Project Co or a Project Co Person in respect of the performance of the Project Work that is not in compliance with the requirements set out in this Agreement and Applicable Law;
- (h) Contamination and Hazardous Substances for which Project Co is responsible pursuant to Schedule 10 [*Environmental Performance Requirements*];
- (i) the breach by Project Co of, or non-compliance by Project Co with, Project Approvals or Applicable Law, or the failure of Project Co to obtain all necessary Project Approvals in accordance with this Agreement;
- (j) any claims for occupier's liability in respect of the Lands, including any claims for which the City has liability solely as a result of being the registered owner of the City Lands, except to the extent caused by any Person exercising rights under a Permitted Encumbrance or Future Utility Work and except to the extent caused by the City, City Persons or Other Contractors, carrying out City Works or Other Works;
- (k) any obligations of Project Co to satisfy judgments and pay costs resulting from builders' or construction liens arising from the performance of the Project Work or actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against the City by any Person that provided services or materials which constituted part of the Project Work;
- (l) any other matter for which Project Co shall indemnify the City as set out in this Agreement,

except to the extent the Direct Losses were caused, or contributed to, by non-compliance by the City with any provision of this Agreement or any document, instrument or agreement delivered by the City as required under this Agreement or other Legal Fault of the City or a City Person or compliance by Project Co with a lawful instruction or direction by the City or a City Person.

14.2 City's Indemnity

Subject to Section 14.4 [*Exclusivity of Specified Remedies*], the City shall indemnify and hold harmless Project Co and Project Co Persons against all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (a) the death or personal injury of any Person arising, directly or indirectly, out of Legal Fault of the City or any City Person, except to the extent caused, or contributed to, by the breach of this Agreement by or other Legal Fault of Project Co or any Project Co Person;
- (b) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Person, arising, directly or indirectly, out of, Legal Fault of the City or any City Person, except to the extent caused, or contributed to, by the breach of this Agreement by or other Legal Fault of Project Co or any Project Co Person, and;

- (c) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of Legal Fault of the City or any City Person, except to the extent caused, or contributed to, by the breach of this Agreement by or other Legal Fault of Project Co or any Project Co Person;

provided that there shall be excluded from the indemnity given by the City any liability for the occurrence of risks against which Project Co is required to insure under this Agreement to the extent of the proceeds available or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Agreement.

14.3 No Indirect Losses

Without prejudice to the City's rights under Schedule 16 [Payment Mechanism] and/or Section 8 [Payment], or the Parties' rights in respect of payments provided for herein (including the City's entitlement to liquidated damages pursuant to Sections 12.2 [*Delays in Achieving Phase 1 Construction Completion*], 13.2 [*Delays in Achieving ICS Integration Ready Date*] and 14.2 [*Delays in Achieving Construction Completion*] of Schedule 4 [*Design and Construction Protocols*]), the indemnities under this Agreement shall not apply and there shall be no right to claim damages for breach of this Agreement, in tort or on any other basis whatsoever, for Indirect Losses.

14.4 Exclusivity of Specified Remedies

- (a) The City shall not be entitled to claim Direct Losses (including by way of indemnification Claims) in respect of specific events or circumstances which constitute (or would constitute, if the applicable threshold set out in the Project Requirements were met) grounds for a Construction Payment Adjustment.
- (b) Every right to claim compensation or indemnification or reimbursement under this Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Agreement.
- (c) Notwithstanding anything else in this Agreement, the City's sole remedies for delays in Project Co's Construction Schedule, including failure to achieve Phase 1 Construction Completion by the Target Phase 1 Construction Completion Date, the ICS Integration Ready Date by the Target ICS Integration Ready Date or Construction Completion by the Target Construction Completion Date, shall be the Termination Events set out in Section 14.8(g), (h) and (i), the applicable remedial rights set out in Section 14.7 [*City's Remedial Rights*] and the City's entitlement to liquidated damages pursuant to Section 12.2 [*Delays in Achieving Phase 1 Construction Completion*], 13.2 [*Delays in Achieving ICS Integration Ready Date*] and Section 14.2 [*Delays in Achieving Construction Completion*] of Schedule 4 [*Design and Construction Protocols*].
- (d) Notwithstanding anything else in this Agreement, the City's sole remedy for failure to achieve Infrastructure Performance Demonstration Completion by the Infrastructure Performance Demonstration Longstop Date shall be the City's entitlement to liquidated damages pursuant to Section 4.7 [*Failure to Achieve Infrastructure Performance Demonstration Completion*] of Schedule 7 [*Performance Demonstration Requirements*], and, for certainty, payment by Project Co of such liquidated damages shall constitute full satisfaction of any liability of Project Co to the City for failure to perform its obligations under Schedule 7 [*Performance Demonstration Requirements*] (including failure to achieve Infrastructure Performance Demonstration Completion by the Infrastructure Performance Demonstration Longstop Date).

14.5 Maximum Liability

- (a) Subject to Section 14.5(b), the maximum aggregate liability of Project Co in respect of all claims under Section 14.1 shall not exceed \$50,000,000. This limit shall be index linked and shall be exclusive of any insurance or Performance Security proceeds received or which will be received pursuant to Performance Security (other than the Performance Guarantee of Construction Guarantor) or policies maintained in accordance with Schedule 17 [*Insurance and Performance Security Requirements*].
- (b) The limitation of liability in Section 14.5(a) shall not apply in respect of:
 - (i) Direct Losses arising from or in respect of the head of indemnity set forth in Section 14.1(a);
 - (ii) matters referred to in 14.4(c) for which liquidated damages are stated to be the sole remedy;
 - (iii) wilful misconduct or deliberate acts of wrongdoing;
- (c) The maximum aggregate liability of the City in respect of all claims under Section 14.2 shall not exceed \$50,000,000. This limit shall be index linked and shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 17 [*Insurance and Performance Security Requirements*]. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (d) Nothing in this Section 14.5 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Agreement.

14.6 Exclusivity of Termination Provisions

Neither Party shall have any right to terminate this Agreement except as expressly set out in Sections 15.2 [*Termination by City*], 15.3 [*Termination by Project Co*] or 15.4 [*Termination upon Force Majeure or Limited Relief Event*]; and without limiting the generality of the foregoing neither Party shall in any event be entitled to terminate this Agreement on the basis of fundamental breach.

14.7 City's Remedial Rights

Without limiting any other rights and remedies of the City in this Agreement, including: (i) to issue a stop work order pursuant to Section 5.5 [*Stop Work Order*]; (ii) to make Construction Payment Adjustments and/or to accord Default Points; or (iii) to issue a Notice of Default, the City shall have the following remedial rights at all times during the Term:

- (a) *Increased Monitoring and Reporting.* If the City is of the opinion, acting reasonably, that there are defects in the Project Work or that Project Co has failed to comply, in any material respect, with the requirements of this Agreement, the City may, without prejudice to any other right or remedy available to it, by notice to Project Co, increase the level and frequency of Project Co's reporting and monitoring of its own performance of its obligations under this Agreement to such level as the City considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to the City's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations under this Agreement.

- (b) *Step-in Events.* If at any time during the Term the City reasonably believes that any of the following events or circumstances has occurred, it may exercise the step-in or other remedial rights set out in Section 14.7(c):
- (i) a Default by Project Co, or any act or omission of Project Co or any Project Co Person, does or can reasonably be expected to create or cause a serious threat to the health, safety or security of any Person or a serious risk to the environment;
 - (ii) Project Co or any Project Co Person is preventing or interfering with the discharge or performance by the City or any City Person or other Governmental Authority of a statutory duty;
 - (iii) Project Co, Project Contractors or their Subcontractors are excluding or limiting public use of the Lands or the Infrastructure (other than for purposes expressly contemplated by the Project Requirements or in a manner otherwise consistent with the Agreement);
 - (iv) an Emergency;
 - (v) if Project Co, a Project Contractor, or Key Individual has been identified by the City as a Restricted Person or has committed a Prohibited Act that may result in a material interruption or impairment to the conduct or performance of the Project Work;
 - (vi) receipt by the City of a notice under an applicable Collateral Agreement that entitles the City to exercise step-in rights thereunder;
 - (vii) failure by Project Co to comply with any written direction issued by or on behalf of the City;
 - (viii) undue interference of the Project Work with the City's transit operations or the Project Work does or can reasonably be expected to materially prejudice the performance of any City Activities; or
 - (ix) Project Co has one or more Default Point(s) subsisting at any time during the Term.
- (c) *Remedial Action.* Without prejudice to the City's rights under this Section 14 [*Default, Remedies and Termination Events*] or Section 15 [*Termination*] or any other rights of the City pursuant to this Agreement, the City may, upon notice to Project Co (which notice shall specify pertinent details of the intended action), take such action (the "**Remedial Action**") in relation to the Project Work as the City reasonably considers necessary to mitigate the risk or the impact of one or more of the foregoing developments, and in that event:
- (i) the City shall provide Project Co with written notice of its intentions to exercise its rights under this Section 14.7 [*City's Remedial Rights*] and shall provide Project Co an opportunity to promptly respond to this notice and advise the City of Project Co's willingness, capacity and capability to take the necessary Remedial Action to satisfactorily mitigate and manage the risk and impact of the relevant development as identified by the City. The notice provided by the City shall specify the time by which the City requires this response from Project Co as the City may reasonably determine having regard to the urgency of the situation and

the potential for adverse impacts to occur if Remedial Action is not attended to in a prompt and effective manner;

- (ii) after providing the notice described in the preceding sub-paragraph and considering the Project Co response, if any, the City may either:
 - (A) if it considers that there is sufficient time and that it is likely that Project Co will be willing and able to provide assistance, require Project Co to take such steps as are necessary or expedient to perform the Remedial Action, and Project Co shall use all commercially reasonable efforts to comply with the City's requirements as soon as reasonably practicable; or
 - (B) if it considers, acting reasonably, that there is not sufficient time, or that Project Co is not likely to be willing and able to take the necessary steps, take such steps as the City considers are appropriate, either itself or by engaging others and, to ensure performance of the relevant Project Work to the standards required by this Agreement, or as closely as possible to those standards as the circumstances permit. The City shall carry out such steps as quickly as is practicable, and in such manner as will minimize undue interference with Project Co's performance of its obligations under this Agreement; and
- (iii) if either
 - (A) the need for the Remedial Action does not arise as a result of any breach by Project Co or any Project Co Person of any provision of this Agreement or any other Legal Fault of Project Co or any Project Co Person, or
 - (B) the City exercises its rights pursuant to this Section 14.7 [*City's Remedial Rights*], and it is later acknowledged by the City or determined through the Dispute Resolution Procedure that the City was not entitled to do so under the terms of this Agreement,

then the Remedial Action shall constitute a Relief Event under and be subject to Section 11 [*Relief Events and Limited Relief Events*].

- (d) **Rectification Rights.** Without prejudice to any of its other rights or remedies pursuant to this Section 14.7 [*City's Remedial Rights*], if the City gives notice of Remedial Action to Project Co under Section 14.7(b) and Project Co either:
 - (i) does not confirm, within five Business Days of such notice, or such shorter period as is appropriate in the case of an Emergency, that it is willing to perform the Remedial Action as required in such notice or present an alternative plan to the City to mitigate, rectify and protect against the breach, event, circumstance of other matter described in such notice that the City may, within a further five Business Days, accept or reject, acting reasonably; or
 - (ii) fails to perform the Remedial Action as set out in such notice or as confirmed in an accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as the City, acting reasonably, will stipulate,

then the City may take such steps as it considers necessary or expedient to perform the Remedial Action either itself or by engaging others. Such steps may include the partial or

total suspension of the right and obligation of Project Co to provide the relevant Project Work, but only for so long as the attendant circumstances subsist. If the attendant circumstances no longer subsist or if Project Co has proposed a plan acceptable to the City, acting reasonably, for mitigating, rectifying and protecting against the circumstances that caused the City to give notice to Project Co under Section 15.7(b), any suspension of the right and obligation of Project Co to provide any Project Work will cease and such right and obligation will once again be in full force and effect.

- (e) *Ongoing Performance.* The exercise by the City of any of its rights under this Section 14.7 [City's Remedial Rights] will not reduce or affect in any way Project Co's responsibility and obligations in respect of the Project Work.
- (f) *Deferral of Rights.* Project Co has no right to require a determination of whether or not the City is entitled under the terms of this Agreement to exercise its rights pursuant to this Section 14.7 [City's Remedial Rights] until Project Co has complied with all of the City's requirements by performing or taking the Remedial Action. Only concurrently with or after complying with the City's requirements shall Project Co be entitled, as applicable, to claim a Relief Event, Change or refer any Dispute for resolution in accordance with Schedule 20 [Dispute Resolution Procedure].
- (g) *Costs and Expenses:* Subject to Section 14.7(c)(iii) above and Sections 14.7(h) and 14.7(i) below, Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of the City's rights pursuant to this Section 14.7 [City's Remedial Rights] and Project Co shall reimburse the City for all reasonable costs and expenses incurred by the City in relation to the exercise of the City's rights pursuant to this Section 14.7 [City's Remedial Rights].
- (h) *Reimbursement if Improper Exercise of Rights.* If the City exercises its rights pursuant to this Section 14.7 [City's Remedial Rights], but the City was not entitled to do so, the City shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of the City issued as a result of the City having exercised such rights.
- (i) *Reimbursement for Emergencies.* If the City either takes steps itself or requires Project Co to take steps in accordance with this Section 14.7 [City's Remedial Rights] as a result of an Emergency that is not caused or contributed to by an act or omission of Project Co or any Project Co Person or a breach by Project Co or any Project Co Person of any obligation under this Project Agreement:
 - (i) the City shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of the City's rights pursuant to this Section 14.7 [City's Remedial Rights] that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) the City shall bear all costs and expenses incurred by the City in relation to the exercise of the City's rights pursuant to this Section 14.7 [City's Remedial Rights].
- (j) *Project Contracts.* Project Co shall ensure that the provisions contained in all applicable Project Contracts do not prevent or inhibit the City from exercising its rights under this Section 14.7 [City's Remedial Rights].

14.8 Termination Events

The following shall constitute Termination Events, except where solely caused directly and specifically by (i) the City withholding without lawful cause any amount due and payable under this Agreement except to the extent disputed by the City in good faith; or (ii) Legal Fault of the City or City Person:

- (a) if Project Co is declared or adjudged a bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any legislation in force for (i) protection against creditors, (ii) orderly payment of debts, or (iii) winding up or liquidation;
- (b) if a receiver or receiver-manager is appointed for the business of Project Co (other than by one or more Senior Lenders or any trustee or representative on behalf of such Senior Lender(s)), unless the appointment is canceled within 21 days;
- (c) if any material part of the property of Project Co is seized or attached and such seizure or attachment is not successfully contested by Project Co within 21 days;
- (d) if Project Co ceases active business operations;
- (e) if Project Co carries on any business unrelated to the subject matter of this Agreement and does not cease to carry on such business within two (2) Business Days of receiving notice to do so from the City (in which context neither (i) any lending between Project Co, its Partners and any of their shareholders or any subsidiaries of their shareholders, nor (ii) any other non-arm's-length financial transactions, shall be considered to be carrying on a business unrelated to the subject matter of this Agreement);
- (f) if, during the Term, Project Co abandons the Design or Construction;
- (g) if it is determined by the Independent Certifier (subject to Project Co's right to refer a Dispute in respect of such determination for resolution pursuant to the Dispute Resolution Procedure) that, by the Percent Completion Default Date, the Percent Completion for Construction Payment is less than 20%;
- (h) if Project Co fails to achieve Construction Completion by the Long Stop Date;
- (i) if at any time after the date that is one year prior to the Long Stop Date it is finally determined pursuant to the Dispute Resolution Procedure that Construction Completion is not reasonably expected to occur on or before the Long Stop Date;
- (j) if Project Co, upon receiving a Notice of Default from the City where the specified Default has a Material Adverse Effect, fails to:
 - (i) cure the Default within 21 days;
 - (ii) where the Default cannot by reasonable commercial efforts be cured within 21 days, communicate to the City and initiate within that 21 days a commercially reasonable course of action designed to cure the Default, and thereafter diligently pursue that course of action until the Default is cured; or
 - (iii) where the Default is an Incurable Default, within 21 days communicate to the City and initiate a commercially reasonable course of action designed to mitigate the consequences of the Incurable Default to the maximum extent practicable, and thereafter diligently pursue that course of action until the consequences of the Incurable Default have been so mitigated.

- (k) if Project Co, a Project Contractor or Key Individual is identified by the City in accordance with Section 14.7 [*City's Remedial Rights*] to be a Restricted Person or has committed a Prohibited Act that is not appropriately managed or remedied by Project Co to the City's satisfaction, acting reasonably, as provided for in Section 14.7 [*City's Remedial Rights*];
- (l) if Project Co is assigned a total of four or more Default Points; or
- (m) where any provision of this Agreement expressly provides for a right of termination in favour of the City by reason of Project Co Default.

15. TERMINATION

15.1 Direct Lender Agreement

All rights to terminate this Agreement, and all Termination Payments required to be made under Section 16 [*Termination Payments*], are in every case subject to the provisions of the Direct Lender Agreement.

15.2 Termination by City

The City may terminate this Agreement by notice to Project Co:

- (a) upon or within a reasonable time (having regard to the provisions of the Direct Lender Agreement, and having regard to Section 19.3 [*Termination and Dispute Resolution Procedure*]) after the City becomes aware of the occurrence of a Termination Event;
- (b) at any time upon 30 days advance written notice to Project Co, in the absolute and unfettered discretion of the City and for any reason whatsoever or for no reason at all, and at the convenience of the City; or
- (c) the conditions set out in Section 9.4 [*City's Election Not to Reinstate*] have arisen.

No notice of termination under this Section 15.2 [*Termination by City*] shall be effective unless, in the case of a notice under clause (a), it specifies the Termination Event relied on, in the case of a notice under clause (b), it states that the termination is for convenience, or in the case of a notice under clause (c), it specifies the Section of the Agreement on the basis of which the Agreement is being terminated.

15.3 Termination by Project Co

Subject to Section 15.4 [*Termination Upon Force Majeure*], Project Co may suspend or terminate this Agreement by notice to the City and in accordance with the terms of this Section 15.3 [*Termination by Project Co*] only if:

- (a) the City has failed to pay any sum or sums due to Project Co under this Agreement, which sum or sums are not being disputed in accordance with Schedule 20 [*Dispute Resolution Procedure*] or have not been set off by the City pursuant to Section 8.6 and which sum or sums, either singly or in the aggregate, exceed(s) \$250,000 (index linked) and:
 - (i) in respect of the Phase 1 Construction Completion Payment, the Construction Completion Payment or the Legislative Holdback Payment, such failure continues for 10 Business Days; or
 - (ii) in respect of any other payment due and payable by the City to Project Co under this Agreement, such failure continues for 30 days,

in any such case, from receipt by the City of a notice of non-payment from Project Co;

- (b) the City committing a material breach of its obligations under Section 4.1 (other than as a consequence of a breach by Project Co of its obligations under this Agreement), which breach materially adversely affects the ability of Project Co to perform all or substantially all of its obligations under this Agreement for a continuous period of not less than 60 days;
- (c) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Agreement (other than as a consequence of a breach by Project Co of its obligations under this Agreement) for a continuous period of not less than 60 days (for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Approvals shall not constitute an “act of any Governmental Authority”); or
- (d) the City is in breach of Section 22.7 [*Assignment by City*].

Upon the occurrence of any of the events listed in (a), (b), (c) or (d) above and while the same is continuing, Project Co may give notice to the City of the occurrence of the event and, at Project Co’s option and without prejudice to its other rights and remedies under this Agreement, may: (i) suspend performance of the Project Work until such time as the City has remedied such event; or (ii) if such event has not been remedied within 30 days of receipt by the City of notice of the occurrence of such event, terminate this Agreement in its entirety by notice in writing having immediate effect.

15.4 Termination Upon Force Majeure or Limited Relief Event

Either Party may by notice to the other terminate this Agreement if:

- (a) any Force Majeure Event directly causes Project Co to be unable to perform all or a material part of the Design and Construction for an aggregate of 120 days falling within any 180 day period after the date of delivery of notice of such Force Majeure Event by either Party pursuant to Section 10.2(a) [*Procedure on Force Majeure Event*];
- (b) any Limited Relief Event continues for an aggregate of 120 days falling within any 180 day period after the date of delivery of notice of such Limited Relief Event by either Party pursuant to Section 11.3(a) [*Procedure on Relief Event and Limited Relief Event*];

except that this Section 15.4 [*Termination Upon Force Majeure or Limited Relief Event*] shall not apply if a termination right is available under Section 9.4 [*City’s Election Not to Reinstate*]; or

15.5 City’s Election Not to Terminate

Notwithstanding Section 15.4(b), in respect of a Limited Relief Event for Epidemic only, if Project Co gives notice to the City under Section 15.4(b) terminating this Agreement, the City will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue. If the City gives Project Co such response then:

- (a) Project Co’s termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
- (b) the Limited Relief Event will be deemed to constitute a Relief Event occurring as of the date the Limited Relief Event first occurred;

- (c) at any time so long as the Relief Event referred to in Section 15.5(b) is continuing, the City may terminate this Agreement by notice to Project Co; and
- (d) Project Co may at any time so long as the Relief Event referred to in Section 15.5(b) is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 15.4(b) terminate this Agreement by notice to the City.

15.6 Consequences of Termination

Following the service of a notice of termination of this Agreement under Sections 15.2 [*Termination by City*], 15.3 [*Termination by Project Co*], 15.4 [*Termination Upon Force Majeure or Limited Relief Event*] or 15.5 [*City's Election Not to Terminate*] or termination on the Expiry Date in accordance with Section 5.8 [*Term*]:

- (a) the City shall:
 - (i) pay to Project Co the Termination Payment in the amount and on the date specified under the pertinent Sections of Schedule 27 [*Compensation on Termination*]; or
 - (ii) enter into any alternative arrangement in respect of the Termination Payment that is provided for in the Direct Lender Agreement; and
- (b) Project Co shall, no later than five Business Days following the Termination Date, at no cost to the City, provide the City with copies of all records of any kind whatsoever that pertain to Project Co's performance of, or may otherwise facilitate the City or its contractors assuming responsibility for performing, the Design and Construction Requirements;
- (c) in so far as title shall not have already passed to the City pursuant to this Agreement, Project Co shall, promptly following the Termination Date, hand over to, and there shall vest in, the City, free from all Encumbrances (other than the Permitted Encumbrances and any Encumbrances caused or consented to by the City), the Infrastructure together with all other assets and rights owned or held by Project Co or a Project Co Person capable of being transferred that are necessary for the performance of the Project Work, and to the extent that any such assets or rights are not capable of being transferred by Project Co to the City, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by the City in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Agreement had not been terminated;
- (d) if termination is prior to the Construction Completion Date, without limiting Section 15.6(c), in so far as any transfer will be necessary to fully and effectively transfer property to the City, Project Co shall, on the Termination Date, transfer to, and there shall vest in, the City, free from all Encumbrances (other than the Permitted Encumbrances and any Encumbrances caused or consented to by the City) such part of the Infrastructure as has been constructed and all or any part of the stocks of material and other assets, road vehicles, construction equipment, spare parts and other moveable property owned by Project Co or any Project Contractor and used in respect of the Project Work.
- (e) if termination is prior to the Construction Completion Date, if the City so elects, all construction plant and Equipment owned by a Subcontractor and used in respect of the

Project Work, whether or not on the Lands, shall remain available to the City for the purposes of completing the Project Work, subject to payment by the City of the relevant Subcontractor's reasonable charges:

- (f) subject to the rights and obligations set forth in Schedule 8 [*Intellectual Property*], the City shall be entitled to retain all defined Intellectual Property which may, thereafter be used by the City in accordance with the licences granted herein;
- (g) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to the City, no later than the Termination Date, free from all Encumbrances (other than the Permitted Encumbrances and any Encumbrances caused or consented to by the City), the benefit of all Manufacturer Warranties, including all documentation in respect thereof, in respect of mechanical and electrical and equipment used or made available by Project Co under this Agreement and included in the Infrastructure;
- (h) to the extent permitted by Applicable Law and their respective terms, Project Co shall, no later than the Termination Date, assign all Project Approvals to the City;
- (i) Project Co shall, no later than the Termination Date, deliver to the City all records required to be kept by Project Co hereunder (Project Co having the right to retain copies thereof), unless such documents are:
 - (i) required by Applicable Law to be retained by Project Co, in which case complete copies will be delivered to the City; or
 - (ii) privileged from production pending resolution of any outstanding Dispute under the Dispute Resolution Procedure, in which case such records will be delivered forthwith upon resolution of such dispute, provided that any records that are necessary for the performance of the Project Work will be delivered to the City no later than the date of the Termination Payment;
- (j) Project Co shall cooperate fully with the City and any successors providing services in the nature of any of the Project Work in order to achieve a proper transfer of the manner in which the Project Work is performed;
- (k) Project Co shall as soon as practicable remove from the Lands all property belonging to Project Co that is not acquired or retained by the City pursuant to this Section 15.5 [*Consequences of Termination*] or otherwise, and, if Project Co has not done so within 60 days after any notice from the City requiring it to do so, the City may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
- (l) Project Co shall, no later than the Termination Date, deliver to the City's Representative:
 - (i) all keys to, and any pass cards and other devices used to gain access to any part of the Infrastructure; and
 - (ii) to the extent transferable and in addition to and without prejudice to the City's rights pursuant to Schedule 8 [*Intellectual Property*] or this Section 15.5 [*Consequences of Termination*], any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Infrastructure; and

- (m) Project Co shall as soon as practicable vacate the Lands and, without limiting Project Co's obligations under this Agreement, shall leave the Lands and the Infrastructure in a safe, clean and orderly condition.

15.7 Survival of Rights and Obligations

All rights and obligations under this Agreement that necessarily extend beyond termination of this Agreement in order to fully achieve their intended purpose shall survive termination of this Agreement, including without limiting the generality of the foregoing:

- (a) all indemnification and hold harmless rights and obligations, insofar as they apply to events that occurred prior to termination of this Agreement;
- (b) the rights and obligations of the City and Project Co under Section 15.5 [*Consequences of Termination*];
- (c) the right of Project Co to receive, and the obligation of the City to make the Termination Payment specified in Section 16 [*Termination Payments*];
- (d) the rights and obligations of the Parties in relation to Confidential Information set out in Schedule 18 [*Freedom of Information and Protection of Privacy*] and Sections 17.3 [*Confidential Information*] 17.4 [*Disclosure of Confidential Information*] and 17.5 [*Public Disclosure of Agreement*];
- (e) the rights and obligations of the Parties set out in Section 7 [*Warranty*];
- (f) the rights and obligations set out in Schedule 8 [*Intellectual Property*] and Schedule 10 [*Environmental Performance Requirements*] that expressly or by necessary implication survive termination of this Agreement;
- (g) the right of Project Co to be paid the amounts payable pursuant to Sections 10.1(b) and 11.2.1(c) (as applicable) from the City in respect of Force Majeure Events or Relief Events for which the City is liable to pay compensation in respect of claims made by Project Co prior to the termination of the Agreement;
- (h) the right of Project Co to be paid its Direct Losses resulting from third party claims against Project Co or a Project Co Person made after termination of the Agreement for which the City is liable to pay compensation for such Direct Losses pursuant to Section 11 [*Relief Events*] and as if the Relief Event occurred during the Term;
- (i) the rights and obligations of the Parties in relation to the Dispute Resolution Procedure set out in Section 19 [*Dispute Resolution*] to the extent required to resolve any Disputes in respect of the foregoing; and
- (j) the rights and obligations of the Parties in relation to Section 17 [*Landscape and Vegetation Handback*] of Schedule 4 [*Design and Construction Protocols*] to the extent such rights and obligations have not been performed or satisfied prior to the Expiry Date.

16. TERMINATION PAYMENTS

16.1 Compensation on Termination

- (a) If this Agreement is terminated pursuant to Sections 15.2 [*Termination by City*], 15.3 [*Termination by Project Co*], 15.4 [*Termination Upon Force Majeure or Limited Relief Event*] or 15.5 [*City's Election Not to Terminate*], then Schedule 27 [*Compensation on*

Termination] shall apply and the City shall pay to Project Co any applicable compensation on termination in accordance with the provisions of Schedule 27 [*Compensation on Termination*];

- (b) Project Co hereby irrevocably directs the City to make any Termination Payment to the Lenders' Agent, or as the Lenders' Agent may direct. The City shall pay the Termination Payment as directed by the Lenders' Agent and shall not accept any redirection without the consent of the Lenders' Agent. Project Co acknowledges and agrees that payment by the City of the Termination Payment to the Lenders' Agent in accordance with this Section 16.1(b) constitutes payment by the City to Project Co in satisfaction of the City's obligation to pay the Termination Payment to Project Co under this Agreement and in satisfaction of any trust obligation of the City with respect to such payments under section 22 of the *Builders' Lien Act*.

16.2 Delivery of Information

Upon any termination of this Agreement, each Party shall as soon as practicable deliver to the other Party all information within the possession of, or that thereafter from time to time comes into the possession of, that Party that is relevant to the determination and calculation of the Termination Payment.

Upon the initial closing of the Senior Debt Financing, Project Co shall deliver to the City particulars of:

- (a) the amount of the Senior Debt Financing;
- (b) the basis for determining the amount by which the Senior Debt Financing by its terms can be redeemed in advance of its maturity;
- (c) any hedging transactions material or potentially material to any Termination Payment that may in future become payable under this Agreement; and
- (d) if applicable, the Original Spread as defined in the definition of "Canada Call Redemption Feature" in Schedule 1 [*Definitions and Interpretation*] as well as the benchmark yield to which the Original Spread is applied, including full details on how it was determined;

and after the initial closing of the Senior Debt Financing, Project Co shall deliver to the City particular of any material changes in or additions to the information delivered under clause (a), within five (5) Business Days of those changes or additions being effected.

17. COMMUNICATIONS

17.1 Notices

Any notice, consent, approval or other communication under any provision of this Agreement (each, a "Notice") must be in writing to be effective, and is effective when delivered by any means, including e-mail, to the following respective addresses:

- (a) if to the City:



With a copy to:

[REDACTED]

(b) if to Project Co:

[REDACTED]

With a copy to:

[REDACTED]

Either Party may change its address information by giving notice to the other in the above manner.

17.2 Public Announcements, Communications and Engagement

All communications and engagement with the public and all third parties shall be managed and carried-out in accordance with the protocols and requirements of Schedule 12 *[Communications and Engagement]*. Subject to Schedule 12 *[Communications and Engagement]*, Project Co shall not make and shall not cause or permit any Project Co Person to make, any public announcement relating to this Agreement except as approved in advance by the City, acting reasonably, provided, however, that nothing herein shall preclude Project Co from making such disclosure as may be required pursuant to applicable stock exchange rules and securities laws and further provided that Project Co shall, to the extent practicable, provide reasonable prior notice to the City of any such required disclosure,

17.3 Confidential Information

Each Party shall, upon delivering any information to the other that includes information delivered in confidence, identify the information delivered in confidence (the “**Confidential Information**”). The receiving Party shall maintain (and shall ensure that its City Persons, in the case of the City, and Project Co Persons, in the case of Project Co) the confidentiality of the Confidential Information, with the exception of information that:

- (a) at the time of the disclosure to the receiving Party, without an obligation of confidentiality, was in the public domain;
- (b) after disclosure to the receiving Party became part of the public domain through no fault of the receiving Party or those for whom it is responsible at law;
- (c) was in the possession of the receiving Party without an obligation of confidentiality at the time of disclosure to it, as demonstrated by written records; or
- (d) was received by the receiving Party from a third party who had a lawful right to disclose the information.

17.4 Disclosure of Confidential Information

Neither Party shall disclose Confidential Information delivered by the other except:

- (a) the City or Project Co may disclose or grant access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform, or to cause to be performed, or to enforce its rights or obligations under this Agreement, and provided further that Project Co may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement:
 - (i) provide to the Senior Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers, hedging parties and their respective advisors or agents such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and
 - (ii) provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Project Co to perform, or to cause to be performed, its obligations under this Agreement;
- (b) as required by FOIP or Applicable Law;
- (c) as contemplated in Schedule 18 [*Freedom of Information and Protection of Privacy*];
- (d) subject to the City requesting confidentiality, to a Contribution Agreement Party in connection with any obligations of the City pursuant to a Contribution Agreement, and in the event of such disclosure, Project Co acknowledges that the Contribution Agreement Parties may be subject to FOIP, Access to Information Act (Canada) or other Applicable Law in respect of the use, protection and/or disclosure of such information;
- (e) by the City, to the extent such disclosure is required pursuant to City policy concerning the City's Confidential Information, the details of which have been provided to Project Co in writing prior to the disclosure;
- (f) by the City, in respect of authorizing other Persons to access and use Project Intellectual Property and related Intellectual Property Rights in accordance with this Agreement;
- (g) by the City, to the extent such disclosure is required by the Operator in connection with the operation, maintenance, rehabilitation or improvement of the Project or by the LRV Supplier in connection with the delivery or commissioning of Stage 2 LRVs; or
- (h) where the disclosure is consented to in writing by the other Party.

Without prejudice to any other rights and remedies that the other Party may have, each of the Parties agrees that damages may not be an adequate remedy for a breach of Section 17.4 [*Disclosure of Confidential Information*] and that the other Party will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.4 [*Disclosure of Confidential Information*].

17.5 Public Disclosure of Agreement

Notwithstanding the above Sections 17.3 [*Confidential Information*] and 17.4 [*Disclosure of Confidential Information*], Project Co agrees that the City will be at liberty to disclose all information contained in this Agreement, excepting only any Schedules or portions thereof that Project Co has, prior to signing of this

Agreement, established to the satisfaction of the City, acting reasonably, contain business information that meets the requirements for non-disclosure under FOIP (the “**Sensitive Information**”). In the event of a request under FOIP for access to any of the Sensitive Information, Project Co will be given notice of the request pursuant to FOIP and will be given an opportunity to make representations as to why the Sensitive Information should not be disclosed.

The City acknowledges that the financial, commercial and technical information contained in Project Co’s Proposal has been submitted to the City in confidence.

17.6 Collection, Use and Disclosure of Personal Information

Notwithstanding the above Sections 17.3 [*Confidential Information*] and 17.4 [*Disclosure of Confidential Information*], Project Co shall comply, and shall ensure that all Project Co Persons comply, with Schedule 18 [*Freedom of Information and Protection of Privacy*].

17.7 Business Opportunities

- (a) The City reserves for itself the right to all business opportunities (collectively, the “**Business Opportunities**”) including the right to, from time to time:
 - (i) use or develop, or permit the use or development of, commercial and other opportunities (including, for greater certainty, all retail and parking operations and all naming and re-naming rights) on or associated with the Infrastructure, in, around and above the Stations and/or the Stops, and in, around and above the City Lands; and/or
 - (ii) use or develop (including by way of subdivision), or permit the use or development of, or dispose of, portions of the City Lands other than that portion of the City Lands necessary for the performance of the activities within the Project Work, and
- (b) Notwithstanding Section 17.7(a), to the extent that the development of a Business Opportunity constitutes a Change, such development shall be subject to Schedule 13 [*Changes*].
- (c) Where the City engages, or otherwise permits, an Other Contractor to realize a Business Opportunity, the provisions of Section 6.2 [*Other Work*] shall apply.
- (d) Project Co may at any time propose Business Opportunities for the City’s consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both the City and Project Co. The City may accept any such proposal in its sole discretion and subject to such terms and conditions as the City may require. Notwithstanding that Project Co has proposed a Business Opportunity to the City for its consideration, Project Co acknowledges that the City reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party, and may initiate a separate procurement process for the development of any Business Opportunity and Project Co shall not be entitled to receive any payment or compensation from the City (in any form) except as expressly set out in this Agreement, even if the City proceeds with such Business Opportunity or any similar Business Opportunity with Project Co or any third party.
- (e) Where the City has named the Infrastructure or portions thereof, Project Co shall not publicly refer to it except as so named by the City.

18. CONTRACT ADMINISTRATION

18.1 Contract Administration

- (a) Project Co and the City will each have a Representative, appointed in accordance with, and having the rights and responsibilities set out in, Schedule 26 [*Representatives and Key Individuals*].
- (b) Project Co and the City shall jointly establish the committees and working groups contemplated in this Agreement, including:
 - (i) the Construction Joint Committee, on and subject to the terms set out in Section 3.1 [*Construction Joint Committee*] of Schedule 4 [*Design and Construction Protocols*]; and
 - (ii) all committees of the Construction Joint Committee, on and subject to the terms set out in Section 3.1 [*Construction Joint Committee*] of Schedule 4 [*Design and Construction Protocols*], as sub-committees of the Construction Joint Committee,

and, without limiting any provisions of this Agreement expressly creating a committee or working group, each committee and working group shall have the responsibilities and authorities delegated to it by the City and Project Co.

18.2 Mutual Cooperation

In administering, interpreting and carrying out their respective obligations under this Agreement, the Parties mutually undertake to deal fairly and in good faith, and to act at all times in a spirit of mutual cooperation.

18.3 Conduct of Indemnified Claims

Where either Party to this Agreement is entitled to indemnification, or a claim for compensation for Direct Losses arising from a third party claim against that Party (which for the purposes of this Section 18.3 [*Conduct of Indemnified Claims*] shall be deemed to be a claim for indemnification) under this Agreement, (“**Indemnified Party**”) and determines that an event has occurred giving rise or that may give rise to a right of indemnification in favor of the Indemnified Party (an “**Indemnity Claim**”), the Indemnified Party shall promptly notify the Party obligated to provide indemnification (the “**Indemnifying Party**”) of such Indemnity Claim (a “**Claim Notice**”) describing in reasonable detail the facts giving rise to the claim for indemnification, and shall include in such Claim Notice (if then known) the amount or the method of computation of the amount of such Indemnity Claim; provided that the failure of an Indemnified Party to give timely notice thereof shall not affect any of its rights to indemnification nor relieve the Indemnifying Party from any of its indemnification obligations except to the extent the Indemnifying Party is materially prejudiced by such failure.

Any obligation to provide indemnification under this Agreement shall be subject to the following terms and conditions:

- (a) upon receipt of a Claim Notice the Indemnifying Party shall, at its cost and expense and upon notice to the Indemnified Party within 30 days of its receipt of such Claim Notice (or such shorter time period as the circumstances warrant), assume and control the defence, investigation, compromise and settlement of such Indemnity Claim, including the management of any proceeding relating thereto, and shall employ and engage legal counsel reasonably acceptable to the Indemnified Party; provided that if there exists a material conflict of interest (other than one of a monetary nature) or if the Indemnified Party has been advised by counsel that there may be one or more legal or equitable

defences available to it that are different from or additional to those available to the Indemnifying Party that in either case, would make it inappropriate for the same counsel to represent both the Indemnifying Party and the Indemnified Party, then the Indemnified Party shall be entitled to retain its own counsel at the cost and expense of the Indemnifying Party (except that the Indemnifying Party shall not be obligated to pay the fees and expenses of more than one separate counsel, other than local counsel, for all Indemnified Parties, taken together);

- (b) the Indemnified Party may, at its own cost and expense, participate in the defence of the Indemnity Claim, and shall cooperate with the Indemnifying Party in such efforts and make available to the Indemnifying Party all witnesses, records, materials and information in the Indemnified Party's possession, under its control or to which it may have access as may be reasonably required by the Indemnifying Party. The Indemnifying Party will keep the Indemnified Party reasonably informed of the progress of the defence of the Indemnity Claim. If the Indemnifying Party, contrary to clause (a), fails to assume the defence and investigation of the Indemnity Claim, then:
 - (i) the Indemnified Party shall have the right to undertake the defence, investigation, compromise and settlement of the Indemnity Claim on behalf of, and at the cost and expense of and for the account and risk of the Indemnifying Party;
 - (ii) the Indemnifying Party shall cooperate with the Indemnified Party in such efforts; and
 - (iii) the Indemnified Party will keep the Indemnifying Party reasonably informed of the progress of the defence of the Indemnity Claim.

The Indemnifying Party shall not, without the written consent of the Indemnified Party:

- (a) settle or compromise any Indemnity Claim or consent to any final judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff of a written release or releases from all liability in respect of such Indemnity Claim of all Indemnified Parties affected by such Indemnity Claim; or
- (b) settle or compromise any Indemnity Claim if the settlement imposes equitable remedies or material obligations on the Indemnified Party other than financial obligations for which such Indemnified Party will be indemnified hereunder. No Indemnity Claim that is being defended in good faith by the Indemnifying Party shall be settled or compromised by the Indemnified Party without the written consent of the Indemnifying Party.

19. DISPUTE RESOLUTION

19.1 Dispute Resolution Procedure

Unless otherwise agreed to in writing between the City and Project Co, all Disputes shall be determined in accordance with the Dispute Resolution Procedure set out in Schedule 20 [*Dispute Resolution Procedure*]. The right to refer disagreements to the Dispute Resolution Procedure shall not be limited to provisions of this Agreement that expressly refer to the Dispute Resolution Procedure, and all such express provisions shall be construed as having been included only for greater certainty.

19.2 Exception

Where under the provisions of this Agreement a Party has an unfettered discretion to exercise a right or take an action, the decision of that Party to exercise the right or take the action is not subject to review under the Dispute Resolution Procedure; but where any decision or discretion is expressly required to be

made or exercised reasonably (or is otherwise qualified), then the reasonableness (or other qualification) of the decision made or the discretion exercised may be referred to the Dispute Resolution Procedure for determination.

19.3 Termination and Dispute Resolution Procedure

A Party may refer to the Dispute Resolution Procedure for advance determination the question as to whether it has valid grounds for terminating this Agreement (including, without limitation, whether the circumstances described in Section 14.8(g), (h) and (i) have occurred). However, the submission of that question to the Dispute Resolution Procedure shall not prevent either Party from terminating this Agreement in accordance with its provisions prior to determination of that question by the Dispute Resolution Procedure. If either Party has purported to terminate this Agreement in accordance with its provisions, the other Party may submit to the Dispute Resolution Procedure the question of whether such termination was made in accordance with this Agreement, and request either:

- (a) a ruling that this Agreement has not been terminated; or
- (b) the payment of a Termination Payment as determined pursuant to and in accordance with Schedule 27 *[Compensation on Termination]*.

19.4 Requirements for Project Contracts

Project Co shall ensure that each Project Contract incorporates the provisions of Section 4 of Schedule 20 *[Dispute Resolution Procedure]*.

20. ADDITIONAL PROJECT TERMS

20.1 Key Individuals

In accordance with Schedule 26 *[Representatives and Key Individuals]*, Project Co shall confirm the appointment of its Key Individuals responsible for the Project Work and confirm the roles and responsibilities for these individuals during the Term. Any proposed change to these appointments is subject to the protocols and conditions set out in Schedule 26 *[Representatives and Key Individuals]*.

20.2 Approvals and Authorizations

Except for City Permits, and in accordance with the protocols and terms of Schedule 28 *[Project Approvals and Utility Matters]*, Project Co shall have full responsibility for obtaining the Project Approvals.

20.3 Lobbying, Corrupt Practices and Other Prohibited Acts

- (a) The term "Prohibited Act" means:
 - (i) offering, giving or agreeing to give to the City or any public body (or anyone employed by or acting on their behalf), or to any family member of any such Person, any gift or consideration of any kind as an inducement or reward:
 - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Agreement or any other agreement with the City or any Governmental Authority in connection with the Project; or
 - (B) for showing or not showing favour or disfavour to any Person in relation to this Agreement or any other agreement with the City or any Governmental Authority in connection with the Project,

provided that this Section 20.3(a)(i) shall not apply to Project Co (or a Project Co Person) providing consideration to the City or any Governmental Authority in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Agreement or any other agreement with the City or any Governmental Authority in connection with the Project;

- (ii) entering into this Agreement or any other agreement with the City or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, to the City or any Governmental Authority (or anyone employed by or acting on their behalf, including a Subcontractor), or to any family member of any such Person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the City, provided that this Section 20.3(a)(ii) shall not apply to a fee or commission paid by Project Co (or anyone employed by or acting on its behalf) to the City or any Governmental Authority pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Agreement or any other agreement with the City or any Governmental Authority in connection with the Project without contravening the intent of this Section 20.3(a)(ii);
 - (iii) breaching or committing any offence under Applicable Law in respect of corrupt, fraudulent acts or criminal behaviour or conduct in relation to this Project or any other agreement with the City or any Governmental Authority in connection with the Project; or
 - (iv) defrauding or attempting to defraud or conspiring to defraud the City or any other Governmental Authority.
- (b) If Project Co or any Project Co Person commits any Prohibited Act, such Prohibited Act shall be considered a Termination Event for the purposes of this Agreement unless Project Co demonstrates to the City's satisfaction, acting reasonably, that appropriate remedial action has been taken to ensure that the best interests of the Project and the City are protected.
 - (c) Nothing contained in this Section 20.3 [*Lobbying, Corrupt Practices and Other Prohibited Acts*] shall prevent Project Co or any other Person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise and such commission fee or bonus shall not constitute a Prohibited Act.
 - (d) Project Co shall notify the City of the occurrence and details of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

20.4 Project Co's Reliance on Information

- (a) Neither the City nor any City Person gives any representation, warranty or undertaking of whatever nature in respect of any Disclosed Data and, specifically (but without limitation), neither the City nor any City Person represents or warrants that the Disclosed Data represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the Effective Date) that is or might be relevant or material to or in connection with the Project or the obligations of Project Co under this Agreement or under any of the Project Documents.

- (b) It is Project Co's responsibility to have conducted its own investigations, analysis and review of the Project, the Disclosed Data, the Lands, the Existing Infrastructure, the Infrastructure and the Project Work and the risks it assumes hereunder, and before the execution of this Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness, sufficiency, fitness for purpose and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project, the Lands, the Infrastructure and the Existing Infrastructure, in relation to the Project Work.
- (c) Except as otherwise expressly provided in Section 20.4(d) and Section 20.4(e):
- (i) Neither the City nor any City Person shall be liable to Project Co for, and Project Co shall not, and shall ensure that no Project Co Person shall, make any claim against the City or any City Person (including any claim in damages, for extensions of time or for additional payments under this Agreement) or seek to recover from the City, any damages, losses, costs, liabilities, expenses or other compensation of any nature which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Disclosed Data by, or on behalf of, Project Co or on grounds:
- (A) of any misunderstanding or misapprehension in respect of any Disclosed Data; or
- (B) that the Disclosed Data (or any part thereof) was incorrect, incomplete, inapplicable or insufficient; or
- (C) that information relating to the Disclosed Data given to Project Co by any Person other than the City was inaccurate, incomplete, insufficient or inapplicable,
- nor shall Project Co be relieved from any of its obligations under this Agreement on any such grounds.
- (ii) Neither the City nor any City Person shall be liable to Project Co in respect of any failure, whether before, on or after Commercial Close:
- (A) to disclose or make available to Project Co any information, documents or data;
- (B) to review or update the Disclosed Data or any part thereof; or
- (C) to inform Project Co of any inaccuracy, error, omission, defect or inadequacy in the Disclosed Data or any part thereof.
- (d) The City hereby represents and warrants there are no factual errors in the bore hole log data contained in (and with effect as of the reporting dates contained therein) the following reports:
- (i) Southeast to West LRT Extension – AECOM Intrusive Geotechnical Investigation, Preliminary Geotechnical Report – Final. AECOM Report dated December 13, 2013.
- (ii) Edmonton LRT Valley Line Stage 2 (Downtown to Lewis Farms), Overall Appraisal of Geotechnical Conditions. Thurber Report dated August 10, 2017.

- (iii) Edmonton Light Rail Transit, Valley Line West – Geotechnical Data Report. Thurber Report dated February 28, 2019.
- (iv) Edmonton LRT Valley Line West (Stage 2), Lewis Farms Storage Facility – Geotechnical Investigation for Soil Stockpiles – Revision 1. Thurber Report dated September 19, 2019.
- (e) The City agrees that if, at Commercial Close, except as disclosed in any Disclosed Data or as otherwise disclosed by the City or any City Person, or known by Project Co or any Project Co Person, there is relevant information in the possession or control of the City which the City has knowingly not disclosed to Project Co which, if disclosed to Project Co, would make any of the information in the Disclosed Data incorrect, then, to the extent such undisclosed information would reasonably be expected to materially adversely affect Project Co's cost of performing the Project Work, such incorrect information shall, subject to and in accordance with Schedule 13 [*Changes*], result in a Change.

21. INSURANCE AND PERFORMANCE SECURITY

21.1 General Requirements

- (a) Project Co and the City shall comply with the provisions of Schedule 17 [*Insurance Requirements*].

21.2 No Relief from Liabilities and Obligations

- (a) Neither compliance nor failure to comply with the insurance provisions of this Agreement shall relieve Project Co or the City of their respective liabilities and obligations under this Agreement.

21.3 Performance Guarantee of Construction Guarantor

- (a) At all times during the Term and, in respect of the provisions described in Section 7, following the Term, Project Co shall ensure that a valid and binding Performance Guarantee of Construction Guarantor in favour of the City from the Construction Guarantor (or a party of comparable financial strength, capacity and stability, as determined by the City acting in its sole discretion) and in the form of guarantee attached as Schedule 31 Form of Performance Guarantee of Construction Guarantor, is in place and enforceable by the City.

21.4 Performance Letter of Credit

- (a) As security for Project Co's warranty obligations during the Warranty Period following Construction Completion and for the successful completion of Infrastructure Performance Demonstration by the Infrastructure Performance Demonstration Longstop Date, Project Co shall deliver, or cause to be delivered, to the City no later than Construction Completion, one or more irrevocable letters of credit (the "**Performance Letter of Credit**") substantially in the form of Schedule 30 [*Letter of Credit*]. The Performance Letter of Credit shall be in an aggregate amount equal to forty five million dollars (\$45,000,000) (the "**Required Amount**"). Upon the issuance of the Certificate of Infrastructure Performance Demonstration Completion prior to: (i) the Infrastructure Performance Demonstration Longstop Date, and (ii) the expiry of all Warranty Periods, the Required Amount shall be reduced to an aggregate amount equal to thirty million dollars (\$30,000,000) and the Performance Letter of Credit may be reduced accordingly.

- (b) The Performance Letter of Credit must be issued by a Permitted Letter of Credit Provider. Project Co may at any time replace or substitute the Performance Letter of Credit with another letter of credit issued by any one or more Permitted Letter of Credit Provider(s) and in a form acceptable to and approved by the City, acting reasonably.
- (c) In the event that the Performance Letter of Credit must be renewed at any time, Project Co agrees to provide to the City reasonable evidence of the renewal of such Performance Letter of Credit no later than 10 Business Days prior to the renewal date, if any, of such Performance Letter of Credit.
- (d) In the event that Project Co does not deliver the Performance Letter of Credit in accordance with Section 21.4(a), the City may withhold from any amount otherwise due to Project Co by the City, including without limitation, any release of the Construction Completion Payment or the Construction Completion Deficiencies Holdback, an amount equal to the Required Amount (the “**Performance Letter of Credit Holdback**”), which holdback shall be held in an interest bearing account until such time as Project Co delivers the Performance Letter of Credit.
- (e) The City shall release the Performance Letter of Credit Holdback, less the amount of any claims previously satisfied by a draw in accordance with Section 21.4(f) and together with all interest accrued thereon, no later than five days following delivery of the Performance Letter of Credit to the City.
- (f) The City shall be entitled to draw on the Performance Letter of Credit or the Performance Letter of Credit Holdback, as applicable, (i) in the amount contemplated in Section 4.7 *[Failure to Achieve Infrastructure Performance Demonstration Completion]* of Schedule 7 *[Performance Demonstration Requirements]*, if Project Co fails to achieve Infrastructure Performance Demonstration Completion by the Infrastructure Performance Demonstration Longstop Date; and (ii) subject to the City first utilizing the Completion Deficiencies Holdback with respect to the rectification of any Construction Completion Deficiencies, in an amount equal to the amount of the costs incurred by the City for the rectification of Deficiencies or non-compliant items in the Works during the Warranty Period following Construction Completion, together with all other damages suffered by the City, including any costs incurred by the City as a result of Project Co’s breach of its obligations under this Section 21.4.
- (g) Notwithstanding anything to the contrary in this Section 21.4, the City shall be entitled to draw on the Performance Letter of Credit:
 - (i) upon the failure of Project Co to renew the Performance Letter of Credit pursuant to Section 21.4(c);
 - (ii) upon the downgrading of any of the banks or other financial institutions that issued the Performance Letter of Credit below the thresholds set out in Section 21.4(b) where the Performance Letter of Credit has not been replaced by Project Co with a replacement Performance Letter of Credit in a form acceptable to the City, acting reasonably, and issued by a Permitted Letter of Credit Provider within 30 calendar days of such downgrading; or
 - (iii) upon the bankruptcy or insolvency of any of the banks or other financial institutions that issued the Performance Letter of Credit,

provided that the City shall provide Project Co at least two Business Days prior written notice before drawing on the Performance Letter of Credit pursuant to this Section 21.4(g).

- (h) In the event that the Performance Letter of Credit is drawn down in accordance with Section 21.4(g), the City shall hold the cash proceeds thereof in a segregated interest bearing account (provided that such account must be at a bank that meets the thresholds described in Section 21.4(b) and such cash proceeds shall thereupon stand in place of the Performance Letter of Credit until Project Co delivers (or causes the delivery of) a replacement Performance Letter of Credit to the City. All interest earned on such cash proceeds shall be for the benefit of Project Co. The City shall be entitled to withdraw such cash proceeds in the same manner that it is permitted to draw upon the Performance Letter of Credit pursuant to Section 21.4(f). Upon delivery of a replacement Performance Letter of Credit by Project Co, the City shall return all remaining cash proceeds and all accrued interest thereon from such segregated bank account to Project Co or as Project Co may direct within five Business Days.
- (i) The City may make multiple calls on the Performance Letter of Credit in accordance with this Section 21.4.
- (j) Unless the Performance Letter of Credit is fully drawn by the City in accordance with the provisions of this Agreement, the City shall, upon receipt of a written request from Project Co, release and deliver the Performance Letter of Credit to Project Co on the next business day following the receipt of such request; provided that such request shall not be made prior to the later of (i) the expiry of the Warranty Period; and (ii) the Infrastructure Performance Demonstration Completion Date.
- (k) In lieu of the provision of the Performance Letter of Credit, Project Co may propose an alternative form of comparable liquid security which the City may accept or reject in its discretion. If the City accepts the proposed alternate form of liquid security, such amendments shall be made to the foregoing provisions of this Section 21.4[*Performance Letter of Credit*] as may be reasonably required and as the Parties shall agree.
- (l) In the event that the City obtains funds (the “**Draw Amount**”) as a result of a call by the City on the Performance Letter of Credit and, pursuant to a final determination under Schedule 20 [*Dispute Resolution Procedure*] subsequent to the time of such call by the City, it is determined that such call was in breach of the terms and conditions of this Agreement or that the Draw Amount (or a portion thereof) exceeded the amount that the City was entitled to draw pursuant to the terms and conditions of this Agreement, the City shall repay such Draw Amount (or portion thereof, as applicable) and the Direct Losses of Project Co that Project Co can demonstrate resulted directly resulted from such wrongful or excess call within five Business Days of such final determination under Schedule 20 [*Dispute Resolution Procedure*]; provided, however, that such repayment by the City shall be conditional upon (and take place concurrently with) the restoration of the Performance Letter of Credit (if and to the extent that the Performance Letter of Credit has not been released by such date in accordance with the terms and conditions of this Agreement) having a face amount equal to the Draw Amount (or applicable part thereof).

22. GENERAL PROVISIONS

22.1 Limitations on Assignment

Project Co will not assign, transfer or otherwise dispose of any interest in this Agreement or a Project Contract, except:

- (a) as security for any loan made to Project Co under any Senior Financing Agreement and provided the Senior Lenders enter into the Direct Lender Agreement;

- (b) in connection with the exercise of rights of the Senior Lenders pursuant to the Senior Financing Agreements and in accordance with the Direct Lender Agreement;
- (c) by way of a sub-contract that is not a subcontract of all or substantially all of the obligations under the Project Contract; or
- (d) with the written consent of the City, which may be given or withheld in the City's discretion, and

provided that in the case of an assignment under 22.1(b) or 22.1(d) above the assignee assumes all the obligations of Project Co under this Agreement. Notwithstanding any other provision of this Agreement, Project Co shall not assign, transfer or otherwise dispose of any interest in this Agreement or a Project Contract to a Person that is a Restricted Party. Project Co shall also comply with Sections 1.2 [*Project Contracts*] and Section 22.5 [*Costs of Request for Consent*] to the extent applicable to the proposed assignment, transfer or disposition.

22.2 Limitations on Change in Ownership

No Change in Ownership of Project Co, or any Person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such Person, shall be permitted to occur, except in respect of a transaction referred to in Section 22.3(b), where the Person acquiring the ownership interest is a Restricted Person.

22.3 Limitations on Change in Control

No Change in Control of Project Co will be permitted (whether by Project Co or otherwise) to occur during the Term, except:

- (a) in connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Direct Lenders Agreement;
- (b) arising from any bona fide open market transaction in any shares or other securities of Project Co, Project Contractor, Affiliate, Partner or of any Holding Company of a Partner, effected on a recognized public stock exchange; or
- (c) otherwise with the written consent of the City, which may be given or withheld in the City's discretion.

Project Co shall comply with the requirements of Section 22.5 [*Costs of Request for Consent*] to the extent applicable to the change of control event.

22.4 Factors the City May Consider

In determining whether to provide its consent under Section 22.1(d) or Section 22.3(c), and without limiting the City's discretion thereunder, it will be reasonable for the City to refuse its consent if:

- (a) the proposed assignee or the new party in control of Project Co, as the case may be, or any of their Affiliates, is a Restricted Person or a Person who has been found by a lawful authority to have committed, or who is being investigated at the time, in respect of a Prohibited Act with the City, any Governmental Authority or any other Person unless Project Co and the proposed assignee have demonstrated to the City's satisfaction, acting reasonably, that appropriate remedial action has been taken to properly manage this circumstance or development;

- (b) by reference to the qualification requirements and criteria applied by the City in the selection of Proponents to participate in the RFP stage of the public procurement process leading to Commercial Close (including the confirmation of any applicable Performance Security), the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of the City, not sufficiently creditworthy or financially stable to perform or support and cause the performance of Project Co's obligations under this Agreement or if the value of any Performance Security might be impaired or diminished as a consequence of the proposed assignment or Change in Control;
- (c) the assignment or Change in Control could, in the reasonable opinion of the City, have a material adverse effect on the Project, the City or the Infrastructure;
- (d) the City is of the opinion that the proposed assignment or Change in Control might hinder or prevent Project Co from achieving Phase 1 Construction Completion by the Target Phase 1 Construction Completion Date or Construction Completion by the Target Construction Completion Date or might have a material adverse effect on the critical path;
- (e) by reference to the qualification requirements and criteria applied by the City in the selection of Proponents to participate in the RFP stage of the public procurement process leading to Commercial Close (including the confirmation of any applicable Performance Security), the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of the City, not reasonably, technically or commercially capable of performing or causing the performance of the Project Co obligations under this Agreement.

22.5 Costs of Request for Consent

If Project Co requests consent to an assignment, transfer or disposition pursuant to Section 22.1 *[Limitations on Assignment by Project Co]* or to a Change in Control pursuant to Section 22.2 *[Limitations on Change of Control]*, Project Co will pay the City's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Project Co will make a payment to the City in the amount of \$15,000 as an advance against (and not in satisfaction of) its obligations under this Section 22.5 *[Costs of Requests for Consent]*. After the City renders its decision, the City will either refund any over payment or invoice Project Co for any additional amounts owing under this Section 22.5 *[Costs of Requests for Consent]* and Project Co will promptly pay such amount to the City. Within 30 Business Days after the City renders its decision, the City will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 22.5 *[Costs of Requests for Consent]* and Project Co will promptly pay such amount to the City. Concurrently with providing such refund or invoice the City will provide Project Co with a breakdown of the City's costs in connection with its consideration of Project Co's request for consent.

22.6 Project Co Persons, Subcontractors

- (a) Project Co will, as between itself and the City, be responsible for, and not relieved of its obligations hereunder by, the acts, omissions and Legal Fault of each Project Co Person and all references in this Agreement to any act, omission or Legal Fault of Project Co will be construed accordingly to include any such act, omission or Legal Fault of or committed by a Project Co Person.
- (b) Without limiting clause (a), the City acknowledges that Project Co shall carry out the Design and the Construction by contracting such obligations to the Project Contractors pursuant to Project Contracts who in turn may contract all or part of their obligations under any Project Contract to one or more Subcontractors. Notwithstanding the use of Project Contractors or Subcontractors, Project Co:

- (i) will not be relieved or excused from any of its obligations or liabilities under this Agreement; and
 - (ii) will remain principally liable to the City for the due observance and performance of all the covenants, obligations, agreements and conditions of this Agreement that are to be observed and performed by Project Co.
- (c) For clarification, any assignment or subcontracting of all or substantially all of a Project Contract is subject to the consent of the City, not to be unreasonably withheld or delayed.
 - (d) In respect of the Project, Project Co will not contract with, or allow any of its Project Contractors or any Subcontractors to contract with, any Person that is a Restricted Person.

22.7 Assignment by City

The City may assign, transfer, dispose of or otherwise alienate any interest in this Agreement or any agreement in connection with this Agreement to which Project Co and the City are parties:

- (a) as may be required to comply with Applicable Law;
- (b) to a corporation, all of the shares of which are owned by the City, provided that in such event, the City shall remain liable for all its obligations under this Agreement;
- (c) to a regional services commission created under the Municipal Government Act (Alberta), or other similar entity, provided that in such event, the City shall remain liable for all its obligations under this Agreement;
- (d) to any minister or agency of the Province of Alberta or the Government of Canada having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the City under this Agreement; or
- (e) with the prior written consent of Project Co.

22.8 Applicable Law and Jurisdiction

This Agreement shall be governed by the laws in force in Alberta, including the federal laws of Canada applicable therein. Subject to Section 19 *[Dispute Resolution]*, Alberta courts shall have exclusive jurisdiction over all matters arising in relation to this Agreement, and each Party accepts the jurisdiction of Alberta courts.

22.9 Amendment and Waiver

No amendment of this Agreement is effective unless made in writing and signed by a duly authorized representative of each of the City and Project Co. No waiver of any provision of this Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by either of the Parties with respect to the performance of any obligation under this Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

22.10 Additional Assurances

The City and Project Co each agree to from time to time do all such acts and provide such further assurances and instruments as may reasonably be required in order to carry out the provisions of this

Agreement according to their spirit and intent; but this Section 22.10 *[Additional Assurances]* shall not in any event be construed as obligating the City to amend or enact any statute or regulation.

22.11 Counterparts

This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by electronic transmission of a pdf copy shall constitute good delivery.

22.12 Joint and Several

Where two or more Persons execute this Agreement as Project Co, the liability under this Agreement of such Persons executing this Agreement shall be joint and several.

22.13 No Derogation of City's Separate Obligations

Project Co acknowledges and agrees that although the City is a Party to this Agreement, the City is and shall remain an independent planning authority and municipality with all requisite powers and discretion provided under Applicable Law.

22.14 Interpretation

In this Agreement, unless the context otherwise requires, capitalized terms will have the meanings set out in Schedule 1 *[Definitions and Interpretation]*. This Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1 *[Definitions and Interpretation]*.

22.15 Order of Precedence

- (a) In the event of any ambiguity, conflict or inconsistency 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:
 - (i) the provisions of amendments in writing to this Agreement signed by the Parties and Change Order Confirmations shall govern and take precedence only over those specific provisions of this Agreement expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance, quality or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance, quality or service;
 - (iii) the body of this Agreement;
 - (iv) Schedule 1 Definitions and Interpretation;
 - (v) Schedule 20 Dispute Resolution Procedure;
 - (vi) Schedule 16 Payment Mechanism;
 - (vii) Schedule 4 Design and Construction Protocols;
 - (viii) Schedule 5 Design and Construction Performance Requirements;
 - (ix) Schedule 10 Environmental Performance Requirements

- (x) Schedule 17 Insurance Requirements;
 - (xi) Schedule 13 Changes;
 - (xii) Schedule 2 Submittal Review Procedure;
 - (xiii) Schedule 9 Quality Management;
 - (xiv) Schedule 27 Compensation on Termination;
 - (xv) Schedule 19 Records and Reports;
 - (xvi) the other Schedules in the order in which they are listed under the heading "Schedules" on page 1 of this Agreement; and
 - (xvii) Schedule 23 Extracts from Proposal.
- (b) Subject to Section 22.15(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Work, the provision that applies to the specific part of the Project Work shall govern for that specific part of the Project Work.
 - (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 22.15, then either Party, upon discovery of same, shall immediately give notice to the other Party's Representative. The City's Representative shall, within 10 Business Days after the giving or receipt of such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
 - (d) The City and Project Co shall comply with the determination of the City's Representative pursuant to this Section 22.15 unless the City or Project Co disputes the decision of the City's Representative in which event such Dispute may be referred for resolution in accordance with Schedule 20 *[Dispute Resolution Procedure]*.

22.16 Choice of Language

It is the express wish of the Parties that this document and any related documents be drawn up and executed in English. Les parties aux présentes ont expressément demandé que ce document et tous les documents s'y rattachant soient rédigés et signés en anglais.

[signature pages follow]

The Parties have therefore signed this Agreement, by their respective duly authorized officers, as of the day and year first above written.

Legally Reviewed and Approved
as to Form:



Barrister & Solicitor
Legal Services

Approved as to Content:



Valley Line Director,
LRT Expansion & Renewal



Branch Manager,
LRT Expansion & Renewal



Branch Manager,
Corporate Procurement and Supply Services

CITY OF EDMONTON

Per: 

Name: _____
Title: Acting Deputy City Manager,
Integrated Infrastructure Services

**MARIGOLD INFRASTRUCTURE PARTNERS LIMITED
PARTNERSHIP, by its general partner, MARIGOLD
INFRASTRUCTURE PARTNERS INC.**

Per: _____
Name: _____
Title: Director

Per: _____
Name: _____
Title: Director

I/We have authority to bind the Corporation.

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Title: Director

Per:

Name: _____
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