

THE CITY OF EDMONTON
PROJECT AGREEMENT
VALLEY LINE WEST LRT

Schedule 21
Direct Lender Agreement

SCHEDULE 21

DIRECT LENDER AGREEMENT

TABLE OF CONTENTS

1. DEFINITION AND INTERPRETATION.....1

1.1 Definition.....1

1.2 Construction and Interpretation6

1.3 Governing Law7

1.4 Attornment.....8

2. CONSENT TO SECURITY.....8

2.1 Consent8

2.2 No Notice of Other Security.....8

2.3 City Obligations8

2.4 City’s Rights not Prejudiced.....8

3. NOTICES9

3.1 Termination Notice9

3.2 Notice of Enforcement Event.....9

3.3 Indicative Notice9

3.4 Lenders’ Agent’s Withdrawal Notice.....9

3.5 Notice of Antecedent Liabilities9

3.6 Subsequent City Notice of Liabilities10

3.7 No Right to Terminate10

4. STEP-IN10

4.1 Step-In Notice.....10

4.2 Contents of Step-In Notice10

4.3 One Step-In Period.....10

4.4 Appointed Representative Rights11

4.5 City Right to Terminate.....11

5. STEP-OUT12

5.1 Step-Out Notice12

5.2 Expiry of Step-In Period.....12

5.3 Project Co Remains Bound12

6. SENIOR LENDER REPLACEMENT OF PROJECT CO12

6.1 Project Co Transfer Notice12

6.2 City Consent.....13

6.3 Withholding of Consent13

6.4 Terms of Transfer13

7. INSURANCE	14
7.1 Release of Insurance Proceeds	14
8. COVENANTS	14
8.1 City Covenants	14
8.2 Lenders' Agent Covenants	15
8.3 Project Co Covenant	16
9. STEP-IN RIGHTS UNDER MATERIAL CONTRACTS	16
9.1 Step-in from Termination Date or Senior Debt Discharge Date	16
9.2 Release of Security	16
9.3 Retention of Security for Senior Debt Deficiency	16
9.4 Limitations on City's Rights	17
9.5 Assignment of Material Contracts by Finance Parties.....	17
10. ASSIGNMENT	17
10.1 Restriction on Assignment.....	17
10.2 Assignment by Lenders' Agent.....	17
10.3 Assignment by Senior Lender	17
10.4 Assignment by City.....	18
10.5 New Agreement.....	18
11. GENERAL	18
11.1 Term	18
11.2 Conflict or Inconsistency.....	18
11.3 Entire Agreement.....	18
11.4 Waiver	18
11.5 Counterparts.....	19
11.6 Confidentiality	19
11.7 Notices.....	19
11.8 No Partnership or Agency	20
11.9 Remedies Cumulative	21
11.10 Disputes.....	21

SCHEDULE 21

DIRECT LENDER AGREEMENT

THIS AGREEMENT is dated as of the 22nd day of December, 2020

AMONG:

THE CITY OF EDMONTON

(the “City”)

AND:

, as administrative agent

(the “Lenders’ Agent”)

AND:

MARIGOLD INFRASTRUCTURE PARTNERS LIMITED PARTNERSHIP

(“Project Co”)

WHEREAS:

- A. The City and Project Co have entered into the Project Agreement (as hereinafter defined);
- B. Pursuant to the Senior Financing Agreements (as hereinafter defined), the Senior Lenders have agreed, subject to the terms and conditions contained therein, to make available to Project Co the loan facility specified therein to finance certain costs to be incurred and expenditures to be made by Project Co in connection with the Project Agreement; and
- C. It is a condition precedent to the obligations of the Senior Lenders under the Senior Financing Agreements and a condition to the Project Agreement that this Agreement be executed and delivered by the parties.

NOW THEREFORE in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITION AND INTERPRETATION

1.1 Definition

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meanings given to such terms in the Project Agreement, and:

*Edmonton Valley Line West LRT
Project Agreement - Execution Version
Schedule 21 - Direct Lender Agreement*

“Agreement” means this agreement including any recitals to this agreement, as amended, supplemented or restated from time to time;

“Antecedent Liabilities” means, as at any time:

- (a) all amounts due and payable by Project Co to the City under the Project Agreement at such time; and
- (b) all obligations which should have, but have not, been performed and outstanding liabilities of Project Co under the Project Agreement, in each case at such time;

“Appointed Representative” means the Senior Lenders’ Representative identified in a Step-In Notice;

“Credit Agreement” means the credit agreement dated as of the 22nd day of December, 2020 between Project Co, the Senior Lenders and the Lenders’ Agent;

“Discharged Obligations” has the meaning set out in Section 6.4;

“Discharged Rights” has the meaning set out in Section 6.4;

“Enforcement Action” means any acceleration of amounts due and owing to the Senior Lenders under any of the Senior Financing Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents;

“Enforcement Event” means an event of default as defined in the Senior Financing Agreements or any other event which permits an Enforcement Action;

“Lenders’ Agent’s Withdrawal Notice” has the meaning set out in Section 3.4;

“Indicative Notice” means either an Indicative Step-In Notice or an Indicative Transfer Notice given in accordance with Section 3.3;

“Indicative Notice Period” means:

- (a) where an Indicative Step-In Notice has been given, the period commencing on the date of delivery of such Indicative Step-In Notice and ending on the earlier of:
 - (1) the Step-In Date;
 - (2) the date of delivery of an Lenders’ Agent’s Withdrawal Notice; and
 - (3) 60 days following the date of delivery of such Indicative Step-In Notice;
- (b) where an Indicative Transfer Notice has been given, the period commencing on the date of delivery of such Indicative Transfer Notice and ending on the earlier of:
 - (1) the date on which any transfer in accordance with Section 6.1 becomes effective;

- (2) the date of delivery of a Lenders' Agent's Withdrawal Notice; and
- (3) 60 days following the date of delivery of such Indicative Transfer Notice.

"Indicative Step-In Notice" has the meaning given to it in Section 3.3;

"Indicative Transfer Notice" has the meaning given to it in Section 3.3;

"Insolvency Law" means any of the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and the *Winding-Up and Restructuring Act* (Canada) and any other applicable insolvency or other similar law of any jurisdiction, including any applicable law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it;

"Insolvency Officer" means any trustee, receiver, receiver and manager, liquidator, sequestrator, administrator or other custodian in connection with the insolvency of Project Co or a Project Contractor or any of their respective assets;

"Insolvency Proceedings" means:

- (a) any:
 - (1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
 - (2) appointment of an Insolvency Officer in connection with;
 - (3) order or resolution passed in connection with; or
 - (4) formal agreement reached regarding,

a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganisation, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Project Co or a Project Contractor (whether voluntary or involuntary) made or commenced by any party under any Insolvency Law; or
- (b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of Project Co or a Project Contractor or any other similar process or event occurring in relation to Project Co's or a Project Contractor's assets in any other jurisdiction;

"Insurance Trust Account" has the meaning set out in the Credit Agreement;

"Liability Report" has the meaning given in Section 3.5;

"Material Antecedent Liabilities" means Antecedent Liabilities that are:

- (a) financial liabilities; or

- (b) non-financial liabilities, the breach of which will trigger any remedy of the City under Section 14.1 [*Project Co's Indemnity*] or Section 14.8 [*Termination Events*] of the Project Agreement;

"Notice Period" means:

- (a) in respect of a Termination Event, the Termination Notice Period; and
- (b) in respect of an Enforcement Event, the Indicative Notice Period;

"Project Agreement" means the agreement dated as of the 22nd day of December, 2020 between Project Co and the City relating to, *inter alia*, the design, construction and financing of the Infrastructure;

"Project Documents" means, collectively, the Project Agreement and any other agreement (other than this Agreement) entered into from time to time by the City and Project Co (with or without other parties) in connection with the Project; and **"Project Document"** means any one of the foregoing;

"Reported Antecedent Liabilities" means the Antecedent Liabilities identified in the Liability Report;

"Revocation of Termination Notice" means a written notice from the City to the Lenders' Agent revoking a Termination Notice;

"Security Documents" means all documents pursuant to which security is granted to the Senior Lenders (or any agent or trustee thereof, including the Lenders' Agent) pursuant to or in connection with the Senior Financing Agreements, including but not limited to: (i) the general security agreement made on or about the date hereof granted by Project Co in favour of the Lenders' Agent for and on behalf of the Senior Lenders; and (ii) [REDACTED]

"Senior Debt Deficiency" means the amount, if any, by which the Termination Payment is less than the Senior Debt Termination Amount;

"Senior Debt Discharge Date" means the date on which all amounts due and owing under the Senior Financing Agreements have been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Lenders are under no further obligation to advance under the Senior Financing Agreements;

"Senior Debt Termination Amount" means the Senior Debt Amount and the Senior Debt Makewhole;

"Senior Financing Agreements" means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the Senior Debt Financing of the Project, including, for greater certainty, the Credit Agreement, the Security Documents and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the financing of the Project or the refinancing of the Project, as each of the foregoing may be amended from time to time;

“Senior Lenders’ Representative” means:

- (a) the Lenders’ Agent, or any Senior Lender;
- (b) a receiver or receiver and manager of Project Co appointed under or in connection with the Security Documents; or
- (c) any other Person approved by the City (such approval not to be unreasonably withheld or delayed);

“Step-In Date” means five Business Days after delivery of a Step-In Notice;

“Step-In Notice” means a notice given by the Lenders’ Agent to the City pursuant to Section 4;

“Step-In Period” means, subject to Section 4.3, the period from the Step-In Date up to and including the earliest of:

- (a) the Step-Out Date;
- (b) the date of any transfer under Section 6;
- (c) the date of any termination under Section 4.5; and
- (d) the Construction Completion Payment date;

“Step-Out Date” means the date that is 20 Business Days after the date of a Step-Out Notice;

“Step-Out Notice” means a notice from the Lenders’ Agent or Appointed Representative to the City pursuant to Section 5;

“Suitable Substitute Project Co” means a Person approved by the City in accordance with Sections 6.2 and 6.3 and:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Project Agreement;
- (b) employing or contracting for the services of Persons having the appropriate qualifications, experience and technical competence and having the resources available to them (including committed financial resources and sub-contracts) which are sufficient to enable them to perform the obligations of Project Co under the Project Agreement,

provided that such Person is not a Restricted Person;

“Termination Notice” means a notice given by the City to the Lenders’ Agent under Section 3; and

“**Termination Notice Period**” means the period beginning on the date of giving of a Termination Notice and ending on the earlier of:

- (a) the Step-In Date;
- (b) the date of service of a Revocation of Termination Notice; and
- (c) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a)) set out in the Termination Notice.

1.2 Construction and Interpretation

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (c) each reference in this Agreement to “**Section**” is to a section of this Agreement;
- (d) each reference to an agreement, document or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned;
- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) each reference to time of day is a reference to Mountain Time;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or

entities which has or have taken over the functions or responsibilities of such public organization;

- (j) unless the context otherwise requires, each reference to “parties” means the parties to this Agreement and each reference to a “party” means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement;
- (k) all monetary amounts are expressed in Canadian Dollars;
- (l) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (m) any consent contemplated to be given under this Agreement must be in writing;
- (n) general words are not given a restrictive meaning:
 - (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (o) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Senior Lenders, the Lenders’ Agent, the Appointed Representative or any other Senior Lenders’ Representative, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person’s own benefit;
- (p) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied;
- (q) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day; and
- (r) each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavour in good faith to

***Edmonton Valley Line West LRT
Project Agreement - Execution Version
Schedule 21 - Direct Lender Agreement***

negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

1.3 Governing Law

This Agreement will be deemed to be made pursuant to the laws of the Province of Alberta and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.

1.4 Attornment

For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of Alberta and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. CONSENT TO SECURITY

2.1 Consent

The City acknowledges notice of, and consents to, the security interest granted by Project Co in favour of the Senior Lenders under the Senior Financing Agreements and Security Documents over:

- (a) Project Co's rights under the Project Agreement and all other Project Documents;
- (b) Project Co's assets; and
- (c) Project Co's rights to Insurance Proceeds and Insurance Receivables.

2.2 No Notice of Other Security

The City confirms that as of the date of this Agreement it has not received written notice of any other security interest granted over Project Co's rights described in Section 2.1 other than pursuant to the Senior Financing Agreements and the Security Documents.

2.3 City Obligations

Except as specifically provided for in this Agreement, the City has no obligations (whether express, implied, collateral or otherwise) to the Lenders' Agent or the Senior Lenders in connection with this Agreement, the Project Agreement or the Project. All of the obligations and liabilities given, undertaken or arising on the part of the City under this Agreement are given solely to the Lenders' Agent on behalf of the Senior Lenders and do not confer any rights on or in favour of Project Co or any Affiliate of Project Co or any other Person.

2.4 City's Rights not Prejudiced

The parties acknowledge that nothing in the Senior Financing Agreements, this Agreement or any other agreement between any of them (including any giving by the Lenders' Agent of a notice hereunder) will,

*Edmonton Valley Line West LRT
Project Agreement - Execution Version
Schedule 21 - Direct Lender Agreement*

except as between the Senior Lenders, the Lenders' Agent and the City as expressly set out in this Agreement, affect the rights of the City under the Project Agreement (but an exercise by the City of those rights will not preclude a proper exercise by the Lenders' Agent of its rights under this Agreement). For greater certainty and without limiting the generality of the foregoing, nothing in this Agreement shall limit, and the City shall be entitled at all times in accordance with the provisions thereof to exercise the City's rights under Section 14.7 [*City's Remedial Rights*] of the Project Agreement.

3. NOTICES

3.1 Termination Notice

The City shall not terminate or deliver any notice terminating the Project Agreement without giving to the Lenders' Agent written notice (a "**Termination Notice**") stating:

- (a) that a Termination Event has occurred and the proposed Termination Date, which will be not sooner than 90 days after the Termination Notice; and
- (b) the grounds for termination in reasonable detail.

3.2 Notice of Enforcement Event

Concurrently with delivery by it to Project Co of any notice of an Enforcement Event, the Lenders' Agent shall provide a copy of such notice to the City, together with reasonable details of such Enforcement Event.

3.3 Indicative Notice

Without prejudice to the Lenders' Agent's rights under the Security Documents, at any time upon or following the occurrence of an Enforcement Event, and where relevant to such Enforcement Event the continuance of such Enforcement Event, the Lenders' Agent may give notice to the City of its intention to nominate a Senior Lenders' Representative to step-in in accordance with Section 4.1 (an "**Indicative Step-In Notice**") or to effect a transfer in accordance with Section 6.1 (an "**Indicative Transfer Notice**").

3.4 Lenders' Agent's Withdrawal Notice

If at any time after the giving of an Indicative Notice or a Termination Notice the Lenders' Agent has determined that it is not, or is no longer, considering appointing a Senior Lenders' Representative or effecting a transfer of Project Co's rights and liabilities under the Project Agreement to a Suitable Substitute Project Co in accordance with this Agreement, the Lenders' Agent shall give notice (an "**Lenders' Agent's Withdrawal Notice**") to the City and thereafter, without prejudice to Section 9, the provisions of this Agreement will not be applicable with respect to the event that led to such Indicative Notice or Termination Notice and the City will be at liberty to take any and all action available to it under the Project Agreement and the other Project Documents.

3.5 Notice of Antecedent Liabilities

Unless an Lenders' Agent's Withdrawal Notice has been given, not later than 30 days after the date of delivery by the City of a Termination Notice or the date of delivery by the Lenders' Agent of an Indicative Notice, as the case may be, the City shall give the Lenders' Agent a notice (the "**Liability Report**") containing details of:

- (a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of which the City is aware (after reasonable enquiry) that will fall due under the Project Agreement on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:
 - (1) in the case of a Termination Notice, the proposed Termination Date set out in that notice; and
 - (2) in the case of an Indicative Notice, 60 days after the date of delivery of the Indicative Notice.

3.6 Subsequent City Notice of Liabilities

After the delivery of the Liability Report, unless a Lenders' Agent's Withdrawal Notice has been given, the City shall, promptly upon becoming aware of them, notify the Lenders' Agent in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

3.7 No Right to Terminate

The City shall not terminate or deliver any notice terminating the Project Agreement during any Notice Period, provided however that until the expiry of that period the City shall be entitled to require Project Co to remedy any Termination Event and shall be entitled to exercise all rights under the Project Agreement other than termination of the Project Agreement.

4. STEP-IN

4.1 Step-In Notice

Subject to Section 4.3 and without prejudice to the Lenders' Agent's rights under the Security Documents, the Lenders' Agent may give the City a notice (a "**Step-In Notice**") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

4.2 Contents of Step-In Notice

In the Step-In Notice, the Lenders' Agent shall:

- (a) state that it intends to exercise its step-in rights under this Agreement; and
- (b) identify the Appointed Representative.

4.3 One Step-In Period

There will be not more than one Step-In Period following any one Indicative Notice or Termination Notice.

4.4 Appointed Representative Rights

On the Step-In Date, the Appointed Representative shall assume jointly and severally with Project Co the rights of Project Co under the Project Agreement, which rights are conditional on and may be exercised subject to performance of Project Co's obligations under the Project Agreement. During the Step-In Period, the City shall deal with the Appointed Representative and not Project Co. No Appointed Representative shall be liable to the City or Project Co for any liabilities or obligations of Project Co. For certainty, an Appointed Representative that is also an Insolvency Officer shall not, and shall not be required to, assume or have any personal liability for any liabilities or obligations of Project Co.

4.5 City Right to Terminate

The City shall not terminate the Project Agreement in whole or in part during the Step-In Period except as set out in this Section 4.5. The City shall be entitled to terminate the Project Agreement during the Step-In Period by written notice to Project Co, the Lenders' Agent and the Appointed Representative:

- (a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to the City on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;
- (b) if amounts, of which the City was not aware (having made reasonable enquiry) at the time of the Liability Report and subsequently discovers prior to delivery of a Step-In Notice, subsequently become payable and are not discharged by:
 - (1) if notice of the liability is given to the Lenders' Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date or, if the due date for payment thereof is after the Step-In Date, the due date; or
 - (2) if notice of the liability is given to the Lenders' Agent less than 20 Business Days before the Step-In Date and such liability is material (as stated by the City, acting reasonably, when it gives such notice or by the Lenders' Agent, acting reasonably, by notice to the City within five Business Days of receipt of the notice from the City), 20 Business Days after the Step-In Date or, if later, the due date;

- (c) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement (other than the occurrence of any of the Termination Events referred to in Sections 14.8(a), (b), (c) or (d) of the Project Agreement), provided that for the purposes of termination under the Project Agreement, any Default Points that were awarded prior to the Step-In Date will not be taken into account during the Step-In Period;
- (d) on grounds arising prior to the Step-In Date (which grounds are continuing at the Step-In Date) in accordance with the terms of the Project Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities (but only to the extent such Antecedent Liabilities are capable of remedy); or
- (e) if the Construction Completion Date does not occur on or before the date falling 180 days after the Longstop Date.

5. STEP-OUT

5.1 Step-Out Notice

The Lenders' Agent or the Appointed Representative may at any time during the Step-In Period deliver to the City a Step-Out Notice which specifies the Step-Out Date.

5.2 Expiry of Step-In Period

Upon the termination or expiry of the Step-In Period:

- (a) the rights of the City against the Appointed Representative and the rights of the Appointed Representative against the City shall be cancelled; and
- (b) the City shall no longer deal with the Appointed Representative and shall deal with Project Co in connection with the Project Agreement.

5.3 Project Co Remains Bound

Subject to Section 6.4, Project Co shall continue to be bound by the all of the terms of the Project Agreement notwithstanding the occurrence or issuance of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Lenders' Agent, the Appointed Representative or the Senior Lenders or any provision of this Agreement, and for greater certainty Project Co shall be liable for any obligations and liabilities arising prior to the expiry of the Step-in Period from actions or inactions of the Lenders' Agent, the Appointed Representative or the Senior Lenders. Project Co shall remain liable for any unpaid amounts due and payable to the City by Project Co and for all other obligations and liabilities of Project Co under the Project Agreement provided that Project Co shall not be required to discharge such liabilities or obligations during the Step-In Period.

6. SENIOR LENDER REPLACEMENT OF PROJECT CO

6.1 Project Co Transfer Notice

Subject to Section 6.2, at any time:

- (a) during a Termination Notice Period;
- (b) during an Indicative Notice Period; or
- (c) during a Step-In Period,

the Lenders' Agent may, on 30 Business Days' notice to the City and any Appointed Representative, take any action available to it to cause the transfer of Project Co's rights and liabilities under the Project Agreement to a Suitable Substitute Project Co in accordance with the provisions of Section 6.4.

6.2 City Consent

The City shall notify the Lenders' Agent as to whether any Person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the Project Agreement is a Suitable Substitute Project Co, not later than 20 Business Days after the date of receipt from the Lenders' Agent of all information reasonably required by the City to decide whether the proposed transferee is a Suitable Substitute Project Co and, if the City fails to notify the Lenders' Agent within such period, the proposed transferee shall be deemed to be a Suitable Substitute Project Co.

6.3 Withholding of Consent

The City shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Co, provided that it shall, without limitation, be reasonable for the City to withhold its consent:

- (a) if there are unremedied breaches under the Project Agreement and no remedial program reasonably acceptable to the City in respect of the breaches has been provided to the City; or
- (b) based on any of the factors set out in Section 22.4 [*Factors the City May Consider*] of the Project Agreement with respect to any transfer, including any assignment, to such Person or Change in Control resulting from the transfer.

6.4 Terms of Transfer

Upon the transfer referred to in Section 6.1 becoming effective:

- (a) Project Co and the City shall be released from their obligations under the Project Agreement to each other, including with respect to indemnification under the Project Agreement whether arising prior to or after such transfer (the "**Discharged Obligations**");

- (b) the Suitable Substitute Project Co and the City shall assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Project Co instead of Project Co;
- (c) the rights of Project Co against the City under the Project Agreement and vice versa (the “**Discharged Rights**”) shall be cancelled;
- (d) the Suitable Substitute Project Co and the City shall acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Project Co instead of Project Co;
- (e) any subsisting ground for termination of the Project Agreement by the City shall be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;
- (f) the City shall enter into a direct lender agreement with the Suitable Substitute Project Co and a representative of the senior lenders lending to the Suitable Substitute Project Co on substantially the same terms as this Agreement; and
- (g) any Default Points that arose prior to that time will not be taken into account after the transfer for the purposes of Sections 14.7(b)(ix), 14.8(j) and 14.8(l) of the Project Agreement.

7. INSURANCE

7.1 Release of Insurance Proceeds

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Financing Agreements, the Lenders’ Agent shall only permit amounts to be released from the Insurance Trust Account in accordance with and as permitted pursuant to the terms of the Insurance Trust Agreement and Schedule 17 [*Insurance Requirements*] of the Project Agreement and shall not exercise any rights under the Senior Financing Agreements or take any other steps to prevent amounts being released from the Insurance Trust Account in accordance with the terms of the Insurance Trust Agreement and Schedule 17 [*Insurance Requirements*] of the Project Agreement.

8. COVENANTS

8.1 City Covenants

The City agrees with the Lenders’ Agent that the City shall:

- (a) as soon as is reasonably practicable, at Project Co’s or the Lenders’ Agent’s expense, take whatever action the Lenders’ Agent, an Appointed Representative or a Suitable Substitute Project Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction

and the making of any registration which, in each case, the Lenders' Agent or Appointed Representative or Suitable Substitute Project Co reasonably requires;

- (b) not, prior to the Senior Debt Discharge Date, unless the Lenders' Agent has (acting reasonably) consented in writing:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Insolvency Proceedings;
 - (3) sanction, by voting or failing to vote, any Insolvency Proceedings and shall, if requested to do so by the Lenders' Agent, vote against any Insolvency Proceedings;
 - (4) without prejudice to its rights of set-off under the Project Agreement, including rights to take amounts owing by Project Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Senior Lender in respect of any monies owing to it by Project Co for or on account of Project Co's liabilities under the Project Documents in the event of any Insolvency Proceedings; or
 - (5) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections (1), (2), (3) or (4) above;
- (c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between the City and a third party, the effect of which would be reasonably likely to render the City unable to satisfy its obligations under the Project Agreement; and
- (d) not issue a step-in notice or proposed transfer notice under any Collateral Agreement at any time that the Senior Lenders are validly exercising under any Senior Financing Agreement any step-in rights with respect to the relevant Project Contract.

8.2 Lenders' Agent Covenants

The Lenders' Agent shall promptly:

- (a) [Intentionally Deleted];
- (b) notify the City when it believes the Senior Debt Discharge Date will occur or has occurred, and in any event will so notify the City no later than 20 Business Days after its occurrence;
- (c) a reasonable time prior to the taking of any such action, notify the City of any decision by the Senior Lenders to take action under [REDACTED] of the Credit Agreement, together with reasonable details of any such action;

- (d) unless notice is already provided under the above provisions, notify the City of any decision by the Senior Lenders to:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Insolvency Proceedings;
 - (3) sanction, by voting or failing to vote, any Insolvency Proceedings; or
 - (4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in Sections (1), (2) or (3) above; and
- (e) upon request by the City, cause all security on any real or personal property comprised in the Infrastructure to be promptly discharged and released on the date requested by the City (which will be on or after the Senior Debt Discharge Date).

8.3 Project Co Covenant

Project Co acknowledges and consents to the arrangements set out in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

9. STEP-IN RIGHTS UNDER MATERIAL CONTRACTS

9.1 Step-in from Termination Date or Senior Debt Discharge Date

Subject to Section 9.3, from (but not before) the earliest to occur of the Termination Date and the Senior Debt Discharge Date, provided that the City has (if applicable) complied with Section 3.7 and Section 4.5 in terminating the Project Agreement, the City shall be entitled to exercise its rights under any Collateral Agreement to step-in and assume (or cause a third party designated by the City to step-in and assume) Project Co's rights and obligations under, or to transfer or assign, any Project Contract in accordance with a Collateral Agreement.

9.2 Release of Security

Subject to Section 9.3, the Lenders' Agent shall release and discharge (or cause to be released and discharged) at no cost to the City, and as soon as reasonably possible, all security in respect of each of the Project Contracts in respect of which any of Project Co's rights or obligations thereunder are assumed, transferred or assigned by or to the City (or by or to a third party designated by the City) pursuant to a Collateral Agreement.

9.3 Retention of Security for Senior Debt Deficiency

If, in the reasonable opinion of the Lenders' Agent, there is likely to be a Senior Debt Deficiency, then until such time as an amount equal to the Senior Debt Deficiency has been recovered by the Senior Lenders, the Senior Lenders shall be entitled to retain the benefit of (and shall not be required to release and/or discharge) the security in respect of claims and losses that Project Co has as against the Project Contractor under the relevant Project Contract (or as against any guarantor of such Project Contract) that

arose prior to the date of the assumption, transfer or assignment of the relevant Project Contract (or guarantee in respect of such Project Contract) by or to the City (or by or to a third party designated by the City) provided that:

- (a) the Senior Lenders shall not, and shall not be entitled to, exercise any rights or enforce any security in respect of any such claim during the period from the date on which such assumption, transfer or assignment occurs to the Termination Date; and
- (b) the rights in relation to the security retained by the Senior Lenders pursuant to this Section 9.3 may only be exercised if and to the extent that there is a Senior Debt Deficiency determined after the City has paid the Termination Payment pursuant to Section 3 of Schedule 27 [*Compensation on Termination*] of the Project Agreement.

Any amounts recovered by the Senior Lenders pursuant to claims referred to in this Section 9.3, from the Termination Date to the date on which the Termination Payment and the amount of the Senior Debt Deficiency, if any, have been determined, shall be held by the Lenders' Agent in a segregated account on terms satisfactory to the Lenders' Agent and the City, each acting reasonably, and, upon determination of the Termination Payment and the amount of the Senior Debt Deficiency, if any, such funds will be distributed to the Lenders' Agent, to the extent of the Senior Debt Deficiency, if any, and the balance of such funds will be paid to the City.

9.4 Limitations on City's Rights

Except in accordance with Sections 9.1 to 9.3 (inclusive) or as otherwise expressly permitted under this Agreement, the City shall not, prior to the termination of this Agreement pursuant to Section 11.1, claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under any Collateral Agreement or Project Contract in respect of a loss for which a Project Contractor is also liable to the Senior Lenders.

The City agrees that if it receives any amount in contravention of the provisions of this Section 9.4 it shall immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Senior Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Senior Lenders.

9.5 Assignment of Material Contracts by Finance Parties

The Senior Lenders shall not transfer or assign any Project Contract except to a Suitable Substitute Project Co in conjunction with a permitted transfer or assignment of the Project Agreement to that Suitable Substitute Project Co in accordance with Section 6.

10. ASSIGNMENT

10.1 Restriction on Assignment

No party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except as provided in this Section 10.

10.2 Assignment by Lenders' Agent

The Lenders' Agent, in its own capacity and not as agent for the Senior Lenders, may assign or transfer its rights and obligations under this Agreement to a successor Lenders' Agent in its own capacity and not as agent for the Senior Lenders, in accordance with the Senior Financing Agreements without the consent of the City provided that the Lenders' Agent delivers to the City not less than 10 Business Days prior to such assignment or transfer a notice setting out such contact information regarding the assignee or transferee as the City may reasonably require and provided the assignee or transferee is not a Restricted Person. For purposes of this Section 10.2, the definition of Restricted Person shall not include sub-paragraph (d) of that definition.

10.3 Assignment by Senior Lender

Any Senior Lender may assign or transfer its rights and obligations under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements without the consent of the City provided the assignee or transferee is not a Restricted Person. For purposes of this Section 10.3, the definition of Restricted Person shall not include sub-paragraph (d) of that definition.

10.4 Assignment by City

The City shall assign or transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Project Agreement concurrently with the assignment of the Project Agreement to such assignee and the Lenders' Agent and the Senior Lenders shall cooperate with the City in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by the City.

10.5 New Agreement

If Section 10.2 applies in relation to the Lenders' Agent, the City and Project Co shall, upon request by the new Lenders' Agent, enter into a new direct lender agreement with the new Lenders' Agent on substantially the same terms as this Agreement.

11. GENERAL

11.1 Term

This Agreement will remain in effect until the earlier of:

- (a) the Senior Debt Discharge Date; and
- (b) subject to compliance with Section 6.4(f) above, the date of transfer of Project Co's rights and liabilities under the Project Agreement to a Suitable Substitute Project Co pursuant to Section 6.

11.2 Conflict or Inconsistency

If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, as between the Lenders' Agent and the City, the provisions of this Agreement shall prevail.

11.3 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

11.4 Waiver

The failure of any party to exercise any contractual right or remedy shall not constitute a waiver thereof and no waiver will be effective unless it is communicated in writing to the other parties. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

11.5 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.

11.6 Confidentiality

The Lenders' Agent shall be bound to comply with the confidentiality obligations on the part of Project Co contained in the Project Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

11.7 Notices

Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

if to the City:

[Redacted]

With a copy to:

[Redacted]

if to the Lenders' Agent:

[Redacted]

if to Project Co:

[Redacted]

With a copy to:

[Redacted]

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible

*Edmonton Valley Line West LRT
Project Agreement - Execution Version
Schedule 21 - Direct Lender Agreement*

representative of the receiving party, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and

- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

11.8 No Partnership or Agency

Nothing in this Agreement shall be construed as creating a partnership or as constituting the Senior Lenders, the Lenders' Agent, the Appointed Representative, any other Senior Lenders' Representative or a Suitable Substitute Project Co as an agent of the City. No such person shall hold itself out as being an agent of the City or as having any authority or power to bind the City in any way.

11.9 Remedies Cumulative

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

11.10 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Agreement shall be resolved in accordance with, and the parties shall comply with, the Dispute Resolution Procedure, and Schedule 20 [*Dispute Resolution Procedure*] of the Project Agreement is deemed to be incorporated, *mutatis mutandis*, in this Agreement.

[signature pages follow]

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

CITY OF EDMONTON

Legally Reviewed and Approved
as to Form:

[REDACTED], Barrister & Solicitor
Legal Services

Approved as to Content:

[REDACTED] Valley Line Director,
LRT Expansion & Renewal

[REDACTED] Branch Manager,
LRT Expansion & Renewal

[REDACTED] Branch Manager,
Corporate Procurement and Supply Services

Per: _____
Name: [REDACTED]
Title: Acting Deputy City Manager,
Integrated Infrastructure Services

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

Per: _____
Name: [REDACTED]
Title: Director

Per: _____
Name: [REDACTED]
Title: Director

I/We have authority to bind the Corporation.

_____, as
administrative agent

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

42808277.1