

**THE CITY OF EDMONTON**  
**PROJECT AGREEMENT**  
**VALLEY LINE WEST LRT**

***Schedule 17***  
***Insurance and Performance Security Requirements***

## TABLE OF CONTENTS

<b>1.</b>	<b>INSURANCE REQUIREMENTS .....</b>	<b>1</b>
1.1	VLWCIP .....	1
1.2	Other Insurance .....	1
<b>2.</b>	<b>OTHER INSURANCE REQUIREMENTS.....</b>	<b>1</b>
2.1	Other Insurance .....	1
<b>3.</b>	<b>GENERAL INSURANCE PROVISIONS .....</b>	<b>1</b>
3.1	Insurance Act .....	1
3.2	Liability Not Limited by Insurance .....	1
3.3	Insurers and Terms of Policies .....	1
3.4	Additional and Elective Insurance .....	2
3.5	Other Requirements of Policies .....	2
3.6	Waiver of Subrogation .....	3
3.7	Subcontractor Insurance .....	3
3.8	Evidence of Insurance.....	4
3.9	Project Co Deductibles and Self-Insured Retentions.....	4
3.10	No Indemnification for Insured Claims .....	4
3.11	Compliance .....	4
3.12	Incident Reporting and Insurance Claim Settlement .....	5
3.13	Insurance Trust Agreement.....	6
3.14	Insurance Representative .....	6
3.15	Cooperation with Insurer’s Consultant .....	6
3.16	Failure to Insure.....	7
<b>4.</b>	<b>INSURANCE PREMIUM PAYMENT.....</b>	<b>7</b>
<b>5.</b>	<b>UNINSURABILITY .....</b>	<b>7</b>
<b>6.</b>	<b>PERFORMANCE SECURITY REQUIREMENTS .....</b>	<b>8</b>
	<b>APPENDIX 17A: INSURANCE REQUIREMENTS .....</b>	<b>10</b>
	<b>APPENDIX 17B: INSURANCE TRUST AGREEMENT .....</b>	<b>27</b>
	<b>APPENDIX 17C: FORM OF PERFORMANCE BOND .....</b>	<b>43</b>
	<b>APPENDIX 17D: FORM OF LABOUR AND MATERIAL PAYMENT BOND .....</b>	<b>47</b>

## SCHEDULE 17

### INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS

#### 1. INSURANCE REQUIREMENTS

##### 1.1 VLWCIP

Subject to Section 5 [*Uninsurability*] of this Schedule, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained in force and renewed, the insurance covers set out in Section 1.1, 1.2, 1.3 and 1.4 of Appendix 17A [*Insurance Requirements*] exclusively through the Valley Line West Construction Insurance Program (VLWCIP).

##### 1.2 Other Insurance

Subject to Section 5 [*Uninsurability*] of this Schedule, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained in force and renewed, the insurance covers set out in Section 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12 and 1.13 of Appendix 17A [*Insurance Requirements*].

#### 2. OTHER INSURANCE REQUIREMENTS

##### 2.1 Other Insurance

Project Co shall take out, maintain in force and renew, or cause to be taken out, maintained in force and renewed, insurance required by Section 3.4 [*Additional and Elective Insurance*] of this Schedule.

#### 3. GENERAL INSURANCE PROVISIONS

##### 3.1 Insurance Act

All of the insurance policies required to be taken out, maintained in force and renewed by or caused to be taken out, maintained in force and renewed by Project Co pursuant to this Agreement shall comply with Applicable Law, including but not limited to the *Insurance Act* (Alberta).

##### 3.2 Liability Not Limited by Insurance

Except to the extent otherwise expressly provided in this Agreement, none of the insurance coverage amounts, values, limits or sublimits specified in this Schedule shall limit Project Co's liability or obligations to the City arising under this Agreement.

##### 3.3 Insurers and Terms of Policies

- (a) Project Co shall ensure that all policies for the insurance that it is required to obtain, maintain and renew pursuant to this Schedule are obtained, maintained and renewed with Qualified Insurers authorized or licensed to insure the risks in question in Alberta and, subject to this Schedule, are in such forms and contain such terms and conditions which are equal to or better than those that would be obtained, maintained and renewed by prudent owners and operators of projects of similar scope and magnitude to the Project and, in addition to the required inclusions or permitted exclusions for each policy specifically described in this Schedule, include such other inclusions and exclusions as such prudent owners and operators would require or permit.
- (b) Project Co shall ensure that all insurance policies that it is required to obtain, maintain and renew pursuant to this Schedule must be in forms and with terms and conditions acceptable to the City, acting reasonably. The purpose of this Section 3.3(b) is to give the

City the right to have modified or deleted from the actual insurance policies terms and conditions that the City becomes aware of, including those that the City becomes aware of only after receiving certified copies of the insurance policies, that are contrary to the express intent or the spirit of the insurance requirements in this Agreement, including this Schedule.

- (c) Subject to this Section 3.3, the insurance covers required under this Agreement may be structured as single policies or as combinations of primary, excess, and umbrella policies.

### 3.4 Additional and Elective Insurance

- (a) Project Co shall obtain and maintain, or cause to be obtained and maintained, at its cost, all such other policies of insurance required by Applicable Law to be obtained and maintained by Project Co in connection with the performance of its obligations under this Agreement (“**Additional Insurance**”); and may increase the limits or decrease the deductibles of the insurance policies it is required to take out, maintain and renew under this Schedule, provided that such increase or decrease does not reduce the amount or extent of cover available, and may obtain and maintain all such other policies of insurance which Project Co deems necessary having regard to the policies of insurance which prudent owners and operators of projects of similar scope and magnitude to the Project would obtain and maintain, or cause to be obtained and maintained (together “**Elective Insurance**”), including directors and officers liability and corporate indemnification insurance.
- (b) The City reserves the right to require Project Co to purchase such additional insurance coverage as the City may reasonably require. The City also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the required operations, maintenance and rehabilitation for the Infrastructure, contract value, industry standards, and/or availability of insurance) as the City may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by the City and any costs savings resulting from the implementation of such additional and/or amended insurance shall be for the account of the City.

### 3.5 Other Requirements of Policies

Without limiting the generality of this Schedule and the provisions of Section 9 [*Insurance, Damage and Destruction*]:

- (a) each policy of insurance required to be taken out, maintained and renewed by Project Co shall:
  - (1) be primary and not require the sharing of any loss or contribution by any insurer of the City or any other named insured;
  - (2) contain an endorsement to the effect that the insurer will not effect any material adverse change or amendment to the policy or any cancellation of the policy without first giving at least 90 days prior written notice by registered mail to the City and each of the other named insureds and loss payees, except that this clause (2) shall not apply to the automobile liability insurance described in Section 1.5 [*Automobile Liability Insurance*] of Appendix 17A [*Insurance Requirements*] where 60 days prior written notice of cancellation of the policy by registered mail to the City and loss payees shall be given, and except that this clause (2) shall not apply to any cyber risk insurance described in Section 1.11 [*Cyber Risk Insurance*] of

Appendix 17A *[Insurance Requirements]*, provided that: (i) the applicable insurer agrees to provide such notice on a best efforts basis; or (ii) in the absence of such best efforts agreement, Project Co shall forward any such notice to the City within two Business Days of receipt; and

- (3) contain an endorsement to the effect that the policy will not be invalidated and coverage thereunder will not be denied to any insureds by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policy other than as a result of a negligent act, misrepresentation or omission of such insured, except that this clause (3) shall not apply to the following insurance policies:
  - (i) the automobile liability insurance described in Section 1.5 *[Automobile Liability Insurance]* of Appendix 17A *[Insurance Requirements]*; and
  - (ii) the workers compensation insurance described in Section 1.13 *[Workers' Compensation Insurance]* of Appendix 17A *[Insurance Requirements]*;

### **3.6 Waiver of Subrogation**

Except with respect to the insurances required under Section 1.3 *[Project-Specific Professional Liability]*, Section 1.5 *[Automobile Liability]*, Section 1.10 *[Employee Dishonesty (Crime)]*, 1.11 *[Cyber Risk Insurance]*, 1.12 *[Directors' and Officers' Liability Insurance]* and Section 1.13 *[Workers' Compensation]* of Appendix 17A *[Insurance Requirements]*, each policy of insurance shall contain a waiver of subrogation as against the City, City Parties, their respective shareholders, officials, directors, officers, employees, elected officials, servants, consultants (other than design consultants) and agents.

### **3.7 Subcontractor Insurance**

- (a) Except with respect to the insurances required under Section 1.10 *[Employee Dishonesty (Crime)]*, 1.11 *[Cyber Risk Insurance]* and 1.12 *[Directors' and Officers' Liability Insurance]* of Appendix 17A *[Insurance Requirements]*, Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 17 *[Insurance and Performance Security Requirements]*, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which the City may suffer as a direct result of Project Co's failure to comply with the foregoing.
- (b) If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 17 *[Insurance and Performance Security Requirements]* to be obtained (or cause to be obtained) by Project Co, Project Co shall:
  - (1) ensure that such insurance coverage is immediately put in place;
  - (2) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Project Work until after such insurance coverage is put in place; or
  - (3) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 17 *[Insurance and Performance Security Requirements]*, replace the Subcontractor with a new Subcontractor who can be covered by insurance required by this Schedule 17 *[Insurance and Performance Security Requirements]* or who can obtain the required insurance coverage; it being acknowledged by Project Co

that the requirements of and restrictions set forth in this Agreement regarding new and replaced Subcontractors shall be complied with.

### **3.8 Evidence of Insurance**

Prior to the execution of the Project Agreement, Project Co will provide the City with certified copies of policies, confirming that the insurance specified in Section 1.1, Section 1.2, Section 1.3 and Section 1.4 of Appendix 17A [*Insurance Requirements*] are in full force and effect.

Prior to the execution of the Project Agreement, Project Co will provide the City with certificates of insurance confirming that the insurances specified in Section 1.5, Section 1.6, Section 1.7, Section 1.8, Section 1.9, Section 1.10, Section 1.11, Section 1.12 and Section 1.13 of Appendix 17A [*Insurance Requirements*] are in full force and effect.

Project Co shall provide or cause to be provided, not less than 30 days prior to expiration of any then current policy, documentation evidencing to the satisfaction of the City (acting reasonably) the renewal, extension or replacement of such insurance and as soon as reasonably practicable, and in any event within 30 days after expiration of any then current policy, certified copies of policies evidencing to the satisfaction of the City (acting reasonably) the renewal, extension or replacement of such insurance.

No delivery to, or review or approval by, the City of any insurance certificate, insurance policy or other documentation evidencing insurance cover shall derogate from or diminish the City's or Project Co's obligations under this Agreement.

### **3.9 Project Co Deductibles and Self-Insured Retentions**

The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 17 [*Insurance and Performance Security Requirements*]. In the event that responsibility for the matter giving rise to the claim is indeterminable, the first named insured under the policy of insurance is responsible and liable for the payment of deductibles.

### **3.10 No Indemnification for Insured Claims**

Project Co shall not be entitled to claim compensation, indemnification or reimbursement from the City under this Agreement to the extent that Project Co:

- (a) is entitled to recover any such amounts under any insurance in force at the time of loss; or
- (b) would have been entitled to recover any such amounts under any insurance if it had complied with its obligation to take out and maintain, or cause to be taken out and maintained, insurance in accordance with this Agreement.

### **3.11 Compliance**

- (a) Project Co shall comply with the warranties, terms, conditions and requirements of all policies for the insurance required by this Schedule 17 [*Insurance and Performance Security Requirements*] and shall not do, or omit to do, or permit to be done or omitted by any Project Co Person, anything with respect to the Project or the Lands that could reasonably be expected to result in the cancellation or voidance of any insurance required by this Schedule, or that would reasonably be expected to entitle any insurer to partially or fully refuse to pay any claim under any policy for any such insurance.

- (b) The City and Project Co shall, and Project Co shall cause the Project Contractors and Subcontractors to:
  - (1) comply with all insurance policy warranties, terms and conditions made known to them; and
  - (2) take any and all special precautions necessary to prevent loss or damage occurring in or about the Project as required by the terms of the course of construction property policy required pursuant to Section 1.1 [*Course of Construction All Risk Property Insurance*] of Appendix 17A [*Insurance Requirements*] of this Schedule.

### 3.12 Incident Reporting and Insurance Claim Settlement

Project Co shall:

- (a) maintain a written register of all damages, events, losses, circumstances, situations, claims or occurrences, including but not limited to incidents which might result in a claim under any of the policies of insurance required under this Schedule and of all claims made by third parties involving bodily injury, illness, death, personal injury or property damage in respect of the Project (each such incident, an “**Incident**”). Such register shall indicate the date of the Incident, the type of Incident, the circumstances giving rise to the Incident, and quarterly updates reflecting developments in such Incident until each such Incident is resolved, completed and designated as closed;
- (b) allow the City to inspect such register at any time and provide a copy of such register to the City quarterly and on the City’s reasonable request;
- (c) in collaboration with the City appoint a claims adjuster (the “**Claims Adjuster**”) to investigate and adjudicate Incidents falling or likely to fall within the insurance deductibles;
- (d) arrange and attend quarterly claims meetings with City representatives, the Claims Adjuster and insurers’ representatives to review the status of all such Incidents, including but not limited to any disputed or denied Incidents or claims arising therefrom;
- (e) meet with the City at the City’s reasonable request to discuss any such Incident;
- (f) promptly upon becoming aware of an Incident, but in any event no later than 5 days after Project Co becomes aware of such Incident, notify the City’s Representative, the City’s LRT Project Manager, the City’s Director of Insurance & Claims Management, the Claims Adjuster and the insurers’ claim representatives assigned to the Project of the full particulars of such Incident; Project Co shall be solely responsible and liable for any claims denied by Insurers, or any deductibles and self-insured retentions which the City may suffer or become responsible for as a direct result of Project Co’s failure to comply with the foregoing;
- (g) provide reasonable access, support, documents and information to City representatives, including City insurance and risk management personnel, and the Claims Adjuster in respect of any Incident;
- (h) as soon as practicable but no later than 7 days after becoming aware of the Incident, provide reasonable access, support, documents and information to the Claims Adjuster and any adjuster assigned by the insurer(s) to investigate any Incident;
- (i) comply with the City’s reasonable requests regarding the investigation, negotiation and settlement of any such Incident or claim arising therefrom;

- (j) without prejudice to the provisions of this Agreement, including but not limited to Schedule 12 *[Communications and Engagement]*, comply with the City's reasonable requests regarding communication, including but not limited to communication with claimant(s) and members of the public, in respect of any such Incident and claim arising therefrom;
- (k) upon receiving recommendations on liability and quantum from the Claims Adjuster, settle any claims falling within the deductibles, self-insured retentions or waiting periods of the policies of insurance required under this Agreement, using a release on terms reasonably required by the City, and including Project Co, the City, and any parties reasonably required by the City, as releasees thereunder; and
- (l) ensure that the adjuster assigned by insurers or the Claims Adjuster, as applicable, shall provide recommendations on liability and quantum in respect of such Incidents to Project Co, the insurers (for losses in excess of the policy deductible) and to the City representatives assigned in accordance with this Section 3.12. For clarity, the City shall have no responsibility for the costs of any such adjuster, which shall be borne by Project Co or the insurer(s).

Wherever the requirements of this Section 3.12 are at variance with the terms and conditions of the actual insurance policy(ies), the terms and conditions of the actual insurance policy(ies) will prevail.

The address for provision of notice of Incidents to the City's Director of Insurance & Claims Management is as follows:



### **3.13 Insurance Trust Agreement**

The parties agree to enter into the Insurance Trust Agreement in the form attached as Appendix 17B *[Insurance Trust Agreement]* to this Schedule.

### **3.14 Insurance Representative**

Before commencing Construction, Project Co shall appoint an insurance representative who shall communicate with the City and keep the City advised of all material matters of insurance, including claims, possible claims and policy changes or amendments. Project Co shall at all times maintain such a representative throughout the Term. Such representative shall be an individual located in Edmonton and Project Co shall advise the City promptly of any change in such representative during the Term.

### **3.15 Cooperation with Insurer's Consultant**

If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then the City and Project Co shall, and shall require the City Person and the Project Co Person, respectively, to:

- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and



- (b) allow the insurer and its consultant to attend meetings between Project Co and the City (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

### **3.16 Failure to Insure**

Subject to Section 5 [*Uninsurability*] of this Schedule, if Project Co at any time fails or refuses to obtain, maintain in force or renew any insurance required to be effected by it under this Schedule, or to furnish the City with evidence of any required insurance or renewals in relation thereto as and when required and in accordance with this Schedule, the City shall, upon 5 days' written notice to Project Co, without prejudice to any of its other rights under this Agreement or otherwise, have the right itself to procure such insurance, in which event Project Co shall immediately reimburse the City for all amounts paid by the City for that purpose together with all reasonable costs incurred by the City in procuring such insurance.

Without prejudice to this Section 3.15 [*Failure to Insure*], the City may, acting reasonably, require that any Person, including but not limited to Project Co or any Subcontractor, shall not access the Site if any insurance relating to such access or Person is not obtained or maintained as required under this Agreement.

## **4. INSURANCE PREMIUM PAYMENT**

Project Co shall pay or cause to be paid all premiums payable in respect of the policies of insurance required to be taken out, maintained in force or renewed by Project Co pursuant to this Schedule.

## **5. UNINSURABILITY**

- (a) Notwithstanding Section 1 [*Insurance Requirements*] of this Schedule but subject to compliance by Project Co with all of its obligations pursuant to this Section 5 [*Uninsurability*], Project Co shall not be obligated to maintain insurance against a risk that has become uninsurable. A risk shall be considered to have become uninsurable only if and for so long as Project Co can demonstrate to the City's satisfaction (acting reasonably) that:
  - (1) insurance against that risk is generally not available with Qualified Insurers; or
  - (2) the insurance premium payable or the terms and conditions generally required by Qualified Insurers for insuring such risk are such that the risk is generally not being insured against.

Upon Project Co becoming aware of an uninsurable risk, Project Co shall in a timely manner, and in any event within 15 Business Days of becoming aware of same, give the City notice of the uninsurable risk, including all relevant details in relation to such risk, including such details as may be reasonably requested by the City.

- (b) Project Co and the City shall, as soon as possible following the provision of the notice referred to in Section 5(a) above, meet to discuss, in good faith, the appropriate means by which the uninsurable risk should be managed and, if Project Co and the City are able to agree to alternative arrangements, the uninsurable risk shall be managed in accordance with such alternative arrangements.
- (c) In the event that Project Co and the City, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an uninsurable risk within 15

Business Days of the expiry of the period referred to in Section 5(a) above, the City may, in its discretion, either:

- (1) elect to assume responsibility for the uninsurable risk and, in respect of the year in which the relevant risk becomes uninsurable and every year thereafter, withhold in equal instalments over the course of such year, from the Construction Period Payment(s) otherwise due to Project Co in that year an amount equal to the annual premium (index linked) relating to the uninsurable risk as was current on the day immediately prior to the date on which the relevant risk became an uninsurable risk, in which case this Agreement shall continue in full force and effect; or
- (2) terminate this Agreement pursuant to Section 15.4 [*Termination Upon Force Majeure or Limited Relief Event*] and, in accordance with the provisions of Schedule 27 [*Compensation on Termination*], pay to Project Co an amount equal to the Non-Default Termination Sum;

provided further that if the City has not exercised or does not exercise its right to terminate the Agreement pursuant to Section 5(c)(2) above, and if a loss occurs in respect of that uninsurable risk, then the City may, in its discretion, either:

- (3) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such uninsurable risk had the relevant insurance continued to be available (having regard to the coverage limits specified in this Schedule and any applicable deductibles), in which case this Agreement shall continue in full force and effect; and, in the event that the loss includes damage to the Infrastructure, then Project Co shall proceed as if the repairs necessitated by the loss were required by the City pursuant to a Change Directive under Schedule 13 [*Changes*]; or
  - (4) terminate this Agreement pursuant to Section 15.4 [*Termination Upon Force Majeure or Limited Relief Event*] of the Agreement and, in accordance with the provisions of Schedule 27 [*Compensation on Termination*], pay to Project Co an amount equal to the Non-Default Termination Sum.
- (d) With respect to any uninsurable risk, Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the uninsurable risk as can be insured in the available insurance market from time to time.
  - (e) Where a risk which was previously an uninsurable risk ceases to be so, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule 17 [*Insurance and Performance Security Requirements*] in respect of the risk and the provisions of this Section 5 [*Uninsurability*] shall no longer apply to such risk.
  - (f) If the City makes a payment to or on behalf of Project Co in place of insurance proceeds that would have been payable pursuant to Section 5(c)(3) of this Section 5 [*Uninsurability*], then the City, to the extent of the amount paid, shall be subrogated to Project Co's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the uninsurable risk before it became uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

## **6. PERFORMANCE SECURITY REQUIREMENTS**

**6.1** Project Co shall obtain or cause to be obtained and deliver or cause to be delivered to the City, original executed and sealed Bonds, as stipulated in Section 6.4 on Commercial Close. Each of the Bonds shall be properly executed by a surety or by an agent or attorney in fact for the Surety, in which latter case, Project Co is required to submit with such bonds a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to the City to evidence the authority of the agent or the attorney in fact.

**6.2** Such Bonds shall be maintained in good standing until the date that is two (2) years following the Construction Completion Date and shall be issued by a duly licenced surety company authorized to transact a business of suretyship in the Province of Alberta having:

- (a) a Financial Strength Rating of not lower than "A-" for three out of the previous five years but not lower than "B" at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (Best); or
- (b) a Long-Term Financial Strength Rating of not lower than "A-" for three out of the past five years but not less than "BBB" at any time during those five years, a Short-Term Financial Strength Rating of not lower than "A-3" for three out of the previous five years and a Financial Enhancement Rating of not lower than "A-" for three out of the previous five years but not less than "BB+" at any time during those five years, such ratings being those established by Standard and Poor's (S&P).

**6.3** For greater certainty, the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Senior Debt Financing or Cost of the Financing and it is agreed that the Parties intend to benefit the Surety by this Section 6.3 and that the Surety may rely upon and enforce the provisions of this Section 6.3.

**6.4** On Commercial Close, Project Co shall deliver or cause to be delivered to the City either:

- (a) a performance bond, in the form attached as Appendix 17C to this Schedule 17 [*Insurance and Performance Security Requirements*], which shall be in an amount that is not less than thirty (30) percent of the contract price under the Construction Contract; or
- (b) a performance bond with a loss advance payment, liquidated damages advance payment or similar feature which shall:
  - (i) be in the form acceptable to the City, acting reasonably;
  - (ii) be in an amount that is no less than thirty (30) percent of the contract price under the Construction Contract, with such amount being net of any deduction of the loss advance payment, liquidated damages advance payment or similar feature; and
  - (iii) not bind the City to any alternative dispute resolution, arbitration or other similar requirement.

**6.5** On Commercial Close, Project Co shall deliver or cause to be delivered to the City a labour and material payment bond, in the form attached as Appendix 17D to this Schedule 17 [*Insurance and Performance Security Requirements*], which shall be in an amount that is not less than thirty (30) percent of the contract price under the Construction Contract.

**APPENDIX 17A: INSURANCE REQUIREMENTS**

**Insurances to be provided, or caused to be provided, by  
Project Co**

Type	Amount	Maximum deductibles	Principal cover
<b>1.1 “All Risks” Course of Construction Insurance</b>	<p>Limit of Liability of [REDACTED] including property of every description for incorporation into the Project Work, including Light Rail Vehicles.</p> <p>For clarity, coverage does not extend to include Existing Infrastructure.</p> <p>For clarity, Project Co’s obligation to insure Light Rail Vehicles and Light Rail Vehicle equipment commences once the Light Rail Vehicle and Light Rail Vehicle equipment is delivered at Gerry Wright OMF or other location.</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Flood and earth movement</li> <li>• Cold and hot testing of all machinery including HVAC (120 days per component)</li> <li>• Electronic data processing equipment and media, including the cost to restore or recreate data</li> <li>• Margin of profit extension for contractors</li> <li>• Escalation as percentage of sum insured</li> <li>• Interruption by civil authority or apparent civil authority (8 weeks) (\$5 million sub-limit) (time element and sublimit applicable only to non-physical damage losses)</li> <li>• Prevention of ingress or egress (8 weeks) (\$5 million sub-limit) (time element and sublimit applicable only to non-physical damage losses)</li> <li>• Non-vitiation cause</li> <li>• Increased costs due to bylaws or ordinances including demolition, increased costs of repairs and replacement</li> </ul>	<p>Deductibles and waiting periods not to exceed the following maximums and, if more than one deductible applies, the highest one shall apply:</p> <p>Flood and water damage, \$500,000 per occurrence</p> <p>Testing and commissioning \$500,000 per occurrence</p> <p>Earthquake, 3% of loss value, subject to \$500,000 per occurrence</p> <p>All other insured perils \$250,000 per occurrence</p> <p>Applicable waiting period of not more than 60 days per occurrence</p>	<p>“All Risks” course of construction insurance covering the full insurable replacement cost of the Project Work, including physical loss or damage including boiler and machinery covering all materials property, structures and equipment purchased for, entering into or forming part of the Project Work, including any Equipment being moved by Project Co while located anywhere within Canada or the United States of America during construction, erection, installation and testing of the Project Work.</p> <p>Coverage shall be maintained continuously from Commercial Close until Phase 1 Construction Completion and Construction Completion Date, as applicable.</p>

- Soft costs, not less than 100% of recurring/continuing soft costs, including cost of carrying project financing for not less than 18 months
- Debris removal and cleanup (\$25 million minimum sub-limit)
- Off premises service interruption (\$15 million minimum sub-limit)
- Expediting expense (\$10 million minimum sub-limit)
- Extra expense (\$10 million minimum sub-limit)
- Professional fees, including costs to establish quantum of any covered loss (\$10 million minimum sub-limit)
- Off-site property or property in transit (\$10 million minimum sub-limit)
- Firefighting expense (\$10 million minimum sub-limit)
- Green building and LEED upgrades (\$5 million minimum sub-limit)
- Valuable papers (\$2.5 million minimum sub-limit)
- Accounts receivable (\$2.5 million minimum sub-limit); and
- Costs of cleanup and removal of contamination (\$250,000 minimum sublimit)
- Unnamed locations (\$2 million minimum sub-limit)
- LEED rectification, commissioning and testing expenses (\$500,000 minimum sub-limit)

Coverage shall be primary without any right of contribution of any insurance carried by the City.

Principal Exclusions and Special Clauses:

- Cyber risk
- Mould, fungi and fungal derivatives
- Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum LEG 2 standard
- Exclusion for contractor's equipment, except scaffolding and hoarding
- War risk
- Terrorism
- Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use
- Contractors' equipment (unless values are declared, and risk accepted by Insurers)
- Sanctions Clause
- Munich Re 121 Endorsement

- Communicable disease

**Comments:**

- Include as Named Insureds the following entities: Project Co, the City, City Person, the Construction Contractor, all Sub-Contractors, sub-subcontractors, consultants and sub-consultants, Operator and Operator Person
- Senior Lenders and Lenders' Agent as Additional Insureds and loss payees
- No provision permitted allowing a coinsurance penalty
- Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured
- Additional key extensions of coverage:
  - Underground services, temporary works involved in the Project Work such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the construction of the Project
  - Losses payable in accordance with the Insurance Trust Agreement
  - Waiver of subrogation against all Named, Additional and unnamed Insureds other than with respect to design professionals where the loss arises from their professional services
  - Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded
  - Errors and omissions clause
  - Breach of conditions
  - Interim claims payment clause
  - No early occupancy restrictions
  - Permit use and occupancy of the incomplete Project Work by the City
  - Permission for immediate repairs
- The City to be entitled to bring claims under policy directly against insurer (no alternative dispute resolution provisions)

Type	Amount	Maximum deductibles	Principal cover
<b>1.2 Wrap-Up Commercial General Liability Insurance</b>	<p>\$250,000,000 each occurrence, and in the aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• Non-owned automobile liability (\$50 million minimum sub-limit)</li> <li>• Sudden and accidental pollution and hostile fire pollution liability (\$50 million minimum sub-limit)</li> <li>• “All risks” tenants’ legal liability (\$5 million minimum sub-limit)</li> <li>• Forest fire fighting expenses (\$20 million minimum sub-limit)</li> <li>• Employee benefits administrative errors and omissions (\$5 million minimum sub-limit)</li> <li>• Legal liability for damages to non-owned automobiles (SEF 94) (\$100,000 minimum sub-limit)</li> <li>• Medical payments (\$10,000 per occurrence/\$50,000 aggregate)</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Premises and operations liability</li> <li>• Damage to existing structures, including Existing Infrastructure forming part of the Project Work</li> <li>• Products and completed operations</li> <li>• Owner’s and contractor’s protective liability</li> <li>• Broad form property damage</li> <li>• Broad form completed operations</li> <li>• Personal injury (nil participation)</li> <li>• Direct and contingent employer’s liability</li> <li>• Use of attached machinery</li> <li>• Sudden and accidental pollution, on terms not less favourable than 240 hour detection / 240 hour notice coverage structure</li> <li>• Shoring, blasting, excavating, underpinning, demolition, pile-driving and caisson work, work below ground surface, tunneling and grading and similar operations, as applicable</li> <li>• Elevator and hoist liability</li> <li>• Towing/on-hook coverage</li> </ul>	<p>Deductibles not to exceed the following maximums, and if more than one deductible applies, the highest one shall apply:</p> <p>Physical damage to non-owned automobiles, tenants’ legal liability and employee benefits administrative errors and omissions, \$1,000 per occurrence</p> <p>Prairie or forest fire fighting expenses, \$25,000 per occurrence</p> <p>All other claims, \$500,000 per occurrence</p>	<p>Wrap-Up Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability, extended for a period of not less than 24 months, effective from the Phase 1 Construction Completion and Construction Completion Date, as applicable.</p> <p>Coverage shall be maintained continuously from Commercial Close until Phase 1 Construction Completion and Construction Completion Date, as applicable.</p> <p>Coverage shall be primary without any right of contribution of any insurance carried by the City.</p>

Type	Amount	Maximum deductibles	Principal cover
	<ul style="list-style-type: none"> <li>• Non-owned automobile liability</li> <li>• Physical damage to non-owned automobiles</li> <li>• Loading and unloading of automobiles</li> <li>• Unlicensed equipment</li> <li>• Permission for unlicensed vehicles (partial road use)</li> <li>• Blanket contractual liability (written and oral)</li> <li>• Cross liability and severability of interests</li> <li>• “All Risks” tenant’s legal liability</li> <li>• Intentional injury committed to protect persons or property</li> <li>• Watercraft liability 500-ton limitation</li> <li>• Voluntary medical payments</li> <li>• Employee benefits administrative errors and omissions</li> <li>• Prairie or forest fire fighting expenses</li> <li>• Non-vitiation clause</li> <li>• Worldwide territory (suits brought in Canada/US)</li> <li>• Limited UAV Endorsement</li> </ul>		
	Principal Exclusions:		
	<ul style="list-style-type: none"> <li>• Supervisory inspection limited to liability arising out of technical or professional advice other than in respect of bodily injury or third-party property damage</li> <li>• Injury to employees where Workers Compensation provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except during the Broad Form Products and Completed Operations extension period and damage to Existing Infrastructure as noted</li> <li>• Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the site</li> <li>• Physical damage to the Project Work, except damage to Existing Infrastructure and during the Broad Form Products and Completed Operations extension period as noted</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects and other consultants</li> </ul>		



Type	Amount	Maximum deductibles	Principal cover
	<ul style="list-style-type: none"> <li>• Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Asbestos</li> <li>• Sanctions clause</li> <li>• Terrorism</li> <li>• War risks</li> <li>• Communicable disease</li> </ul>		

**Comments:**

- Include as Named Insureds the following entities: Project Co, the City, City Person, the Construction Contractor, all Sub-Contractors, sub-subcontractors, consultants and sub-consultants, Operator and Operator Person
- Senior Lenders and the Lenders' Agent as Additional Insureds
- Directors, officers, shareholders, employees of the insured parties involved in the Project Work as Additional Insureds.
- Insurance is primary without right of contribution of any other insurance carried by any Named Insured.
- Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted
- Waiver of subrogation of insurers' rights of recovery against all Named and/or Additional Insureds, including Project Co, the City, City Person, Construction Contractor, all subcontractors, sub-subcontractors, professional consultants, engineers and architects (other than for their professional liability), Senior Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing, Operator, Operator Person

Type	Amount	Maximum deductibles	Principal cover
<b>1.3 Project Specific Professional Liability</b>	\$50 million per claim and in the aggregate (inclusive of defence and related costs and supplementary payments)	\$1,000,000 per claim with respect to Mitigation losses	Project Specific Professional Liability Insurance in connection with the design and construction of the Project Work from beginning of first design, until Phase 1 Construction Completion and Construction Completion Date, as applicable plus coverage for an extended reporting period of not less than 36 months effective from Phase 1 Construction Completion and Construction Completion Date, as applicable.  Coverage shall be primary without any right of contribution of any insurance carried by the City.
	<p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Primary insurance extension</li> <li>• Automatic addition of firms</li> <li>• Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured</li> <li>• Any individuals or personal corporations retained by the named insured under a personal services contract, subject to reporting and individual acceptance of each one by the insurer</li> <li>• Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services by a named insured and resulting from a single error, omission or negligent act</li> <li>• Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims</li> <li>• Duty to defend, even if the allegations are groundless, false or fraudulent</li> <li>• Worldwide territory (suits brought in Canada)</li> </ul> <p>Principal Exclusions:</p> <ul style="list-style-type: none"> <li>• Express warranties or guarantees</li> <li>• Estimates on profit, return</li> <li>• Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project Work or the construction documents</li> <li>• Design or manufacture of any good or products sold or supplied by the Named Insured</li> <li>• Terrorism</li> <li>• Nuclear Liability</li> <li>• Judgments and awards deemed uninsurable by law</li> </ul>	\$1,000,000 per claim, all other losses	

Type	Amount	Maximum deductibles	Principal cover
	<ul style="list-style-type: none"> <li>• Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement</li> <li>• Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees</li> <li>• Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies</li> <li>• Sanctions Clause</li> <li>• LRV design and transit</li> <li>• Communicable disease</li> </ul>		

**Comments:**

- Include as Named Insureds the following entities: Construction Contractor (as appropriate), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project (subject to any reporting provision)
- Professional services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier
- Coverage from first design activity, including without limitation preliminary design, until Construction Completion Date plus extended reporting period of not less than 36 months
- Coverage not to exclude environmental impairment liability
- Cover provided to present, former partners, executive officers, directors and shareholders of named insureds, and to individuals or personal corporations retained by named insureds
- The City to have right to bring claims if City property is damaged as a result of design or other professional error or omission
- Policy to be non-cancellable except for premium non-payments, material misrepresentation or concealment of facts or a material breach of any condition of the policy

Type	Amount	Maximum deductibles	Principal cover
<b>1.4</b> <b>Project Specific</b> <b>Pollution Liability</b> <b>(combined</b> <b>Contractors’</b> <b>Pollution Liability</b> <b>and Pollution</b> <b>Legal Liability)</b>	\$25 million per claim/ \$25 million in the aggregate (inclusive of defense and related costs and supplementary payments)  Principal Extensions: <ul style="list-style-type: none"> <li>• Premises and operations liability</li> <li>• On-site and off-site clean-up and remediation expense and restoration costs without the need for a third-party claim</li> <li>• Prior knowledge/known condition/pre-existing conditions exacerbated, aggravated or worsened by insured operations</li> <li>• Coverage for non-owned disposal sites, including transportation</li> <li>• Emergency response costs</li> <li>• Contractual liability</li> <li>• Underground/above ground storage tanks</li> <li>• Non-vitiating clause</li> <li>• Automobile difference in conditions</li> <li>• Microbial matter (including fungus or mould)</li> <li>• Worldwide territory (suits brought in Canada/US)</li> </ul> Principal Exclusions: <ul style="list-style-type: none"> <li>• Terrorism</li> <li>• War</li> <li>• Intentional non-compliance</li> <li>• Prior Knowledge / Known Condition / Pre-Existing Condition (exception for exacerbation, aggravation, worsening)</li> <li>• Workers Compensation</li> <li>• Employers’ Liability</li> <li>• Professional Liability</li> <li>• Nuclear Liability</li> <li>• Property Damage to Motor Vehicles during Transportation</li> <li>• Sanctions Clause</li> <li>• Communicable disease</li> </ul>	\$250,000 per claim	Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and off-Site, as required.  Coverage shall be maintained continuously from Commercial Close until Phase 1 Construction Completion and Construction Completion Date, as applicable, plus coverage for an extended reporting period of not less than 36 months effective from Phase 1 Construction Completion and Construction Completion Date, as applicable.  Coverage shall be primary without any right of contribution of any insurance carried by the City.

Type	Amount	Maximum deductibles	Principal cover
<b>Comments:</b>			
<ul style="list-style-type: none"> <li>• Include as Named Insureds the following entities: Project Co, the City, City Person, the Construction Contractor, all Sub-Contractors, sub-subcontractors, consultants and sub-consultants, Operator and Operator Person</li> <li>• Senior Lenders and the Lenders' Agent as Additional Insureds</li> <li>• Directors, officers, shareholders, employees of the insured parties involved in the Project Work as Additional Insureds</li> <li>• Waiver of subrogation of insurers' rights of recovery against all Named and/or Additional Insureds, including Project Co, the City, City Person, Construction Contractor, all subcontractors, sub-subcontractors, Senior Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing, Operator, Operator Person</li> <li>• Insurance is primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Diminution of third-party property value and natural resource damage included in the definition of property damage</li> <li>• Cover not restricted by time element</li> </ul>			

Type	Amount	Maximum deductibles	Principal cover
<b>1.5 Automobile Liability Insurance</b>	<p>Automobile liability insurance for third party property damage and bodily injury, including accident benefits, arising out of the use of any automobile in connection with the Project, including all vehicles owned, operated or licensed in the name of Project Co.</p> <p>Insured limits of not less than \$25 million per occurrence in respect of Project Co and Project Contractors' vehicles.</p> <p>Insured limits of not less than \$5 million per occurrence in respect of vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen or other persons working on or at the Site.</p>		<p>Standard Owners Form For all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, operated in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Coverage shall be maintained continuously</p>

Type	Amount	Maximum deductibles	Principal cover
			from Commercial Close until the later of the termination or expiry of the Infrastructure Performance Demonstration Period and the termination of the LRV Performance Demonstration Period.
<b>1.6 Aircraft Liability and or Watercraft Liability (if an exposure exists)</b>	<p>If aircraft or watercraft are used in connection with the Project, and except to the extent covered under the Wrap-up Commercial General Liability insurance set out in Section 1.2 [<i>Wrap-Up Commercial General Liability</i>] of this Appendix 17A, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, liability insurance for damage to property and bodily injury or death (including passenger liability) arising in respect of the use of owned and non-owned aircraft and watercraft by Project Co or Subcontractors in connection with the Project.</p> <p>Insured limits of not less than \$50 million per occurrence, including not less than \$10 million per passenger for aircraft liability insurance, as applicable.</p>	\$100,000 per occurrence	<p>Aircraft Liability and or Watercraft Liability</p> <p>Coverage shall be maintained continuously from Commercial Close until the later of the termination or expiry of the Infrastructure Performance Demonstration Period and the termination of the LRV Performance Demonstration Period.</p> <p>Coverage shall be primary without any right of contribution of any insurance carried by the City.</p>
<b>Comments:</b>			
<ul style="list-style-type: none"> <li>• The City, the Senior Lenders and the Lenders' Agent as Additional Insureds</li> <li>• Insurers to waive their rights of recovery and subrogation against the City</li> </ul>			
<b>1.7 "All Risks" Ocean Marine Cargo (if applicable)</b>	If marine transport is used to transport any materials, equipment or property destined to be supplied under or used during the Project, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, all risks marine cargo transit	\$25,000 for physical damage	"All Risks" Ocean Marine Cargo

Type	Amount	Maximum deductibles	Principal cover
	<p>property insurance for such materials, equipment or property, which will include the following terms:</p> <ul style="list-style-type: none"> <li>• An insured value of not less than the full replacement value of materials, equipment or property in transit</li> <li>• No co-insurance provisions</li> </ul>		<p>Coverage shall be maintained during marine transit, on a full replacement value basis, with no coinsurance provision.</p> <p>Coverage shall be primary without any right of contribution of any insurance carried by the City.</p>
<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>• Include as Named Insureds the following entities: Project Co, the City, the Construction Contractor, all Sub-Contractors, sub-subcontractors, consultants and sub-consultants</li> <li>• Senior Lenders and the Lenders' Agent as Additional Insureds</li> </ul>			
<p><b>1.8</b> <b>"All Risks"</b> <b>Contractors'</b> <b>Equipment</b></p>	<p>"All Risks" property insurance for equipment owned, leased, rented or borrowed for use on the Project which will include the following terms with an insured value of not less than the actual cash valuation of insured equipment.</p>		<p>All Risks coverage on all owned, rented, leased or borrowed contractors' equipment, used at the Site.</p> <p>Coverage shall be maintained continuously from Commercial Close until the later of the termination or expiry of the Infrastructure Performance Demonstration Period and the termination of the LRV Performance Demonstration Period.</p> <p>Coverage shall be primary without any right</p>

Type	Amount	Maximum deductibles	Principal cover
			of contribution of any insurance carried by the City.
<b>Comments:</b>			
<ul style="list-style-type: none"> <li>Insurers to waive their rights of recovery and subrogation against Project Co, the City, the Construction Contractor, all Sub- Contractors, sub-subcontractors, consultants and sub-consultants Senior Lenders, Lenders' Agent and the shareholders, officials, directors, officers, employees, servants, consultants and agents of the foregoing</li> </ul>			
<b>1.9 Commercial General Liability and Non-Owned Automobile Liability (including Off- Site Operations and performance of Project Co obligations under Schedule 7 [Performance Demonstration Requirements])</b>	\$25 million per occurrence and in the annual aggregate with respect to Project Co and the Project Contractors  Principal Extensions: <ul style="list-style-type: none"> <li>Owner's and contractor's protective liability</li> <li>Blanket contractual liability (written)</li> <li>Direct and contingent employer's liability</li> <li>Personal injury (nil participation)</li> <li>Cross liability and severability of interests</li> <li>Hazardous operation XCU (blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading and similar operations</li> <li>Permission for unlicensed vehicles</li> <li>Permission to occupy an incomplete facility</li> <li>Loss of use without property damage</li> <li>Broad form property damage</li> <li>Broad form completed operations</li> <li>Tenant's legal liability</li> <li>No exclusion for abuse/molestation, or a specific endorsement to</li> </ul>		Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use) and including Broad Form Products and Completed Operations Liability  This Commercial General Liability Insurance will include cover for off-site activities connected to the Project and Products and Completed Operations Liability



Type	Amount	Maximum deductibles	Principal cover
	<p>the policy providing coverage for abuse/molestation</p> <ul style="list-style-type: none"> <li>• Intentional injury committed to protect persons or property</li> <li>• Watercraft (not in excess of 10 meters) unless insured elsewhere, as applicable</li> <li>• Worldwide territory subject to claims being brought in Canada or the U.S.</li> </ul> <p>Principal Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where Workers Compensation provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>• Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Lands</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Asbestos</li> <li>• Sanctions clause</li> <li>• Communicable disease</li> </ul> <p>Coverage in the amount of not less than \$5,000,000 per occurrence and in the annual aggregate with respect to broad form completed operations for any other contractors, subcontractors, sub-subcontractors, consultants, and sub-consultants, workpeople or tradespeople or other persons involved in the Project.</p>		<p>beyond the “Wrap-Up” Commercial General Liability Insurance policy’s Products and Completed Operations extension period.</p> <p>Coverage shall be maintained continuously from Commercial Close until the later of the termination or expiry of the Infrastructure Performance Demonstration Period and the termination of the LRV Performance Demonstration Period.</p> <p>Coverage shall be primary without any right of contribution of any insurance carried by the City.</p>

**Comments:**

- Include as additional insureds the City, the Senior Lenders and Lender’s Agent

Type	Amount	Maximum deductibles	Principal cover
<b>1.10 Employee Dishonesty (Crime)</b>	<p>Employee Dishonesty insurance against the fraudulent acts of employees of Project Co and its Affiliates which will include the following terms:</p> <p>Coverage in the amount of not less than \$1 million per occurrence and will include the following principal extensions:</p> <ul style="list-style-type: none"> <li>• Broad form money and securities</li> <li>• Money orders and counterfeit paper</li> <li>• Depositors' forgery</li> <li>• Computer fraud and funds transfer fraud</li> <li>• Audit expenses</li> <li>• Credit card forgery</li> <li>• Custodial endorsement extension to third parties</li> </ul>		<p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and its Affiliates including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses, Credit Card Forgery and Custodial Endorsement Extension to Third Parties.</p> <p>Coverage shall be maintained continuously from Commercial Close until Construction Completion Date.</p> <p>Coverage shall be primary without any right of contribution of any insurance carried by the City or Senior Lenders.</p>
<b>1.11 Cyber Risk Insurance</b>	<p>Cyber Risk Insurance coverage covering all Damages, Claims Expenses, Penalties, Cyber Extortion Loss, Data Protection Loss, Business Interruption and Forensic Expenses subject to a minimum limit of \$5 million</p>		<p>Cyber Risk Insurance for all Damages, Claims Expenses, Penalties, Cyber Extortion Loss, Data Protection Loss, Business Interruption and Forensic Expenses</p>

Type	Amount	Maximum deductibles	Principal cover
	<p>Project Co has the discretion to have in place a cyber risk limit higher than the minimum limit of \$5 million based on Project Co's assessment of the cyber risk</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• Regulatory defense and penalties (\$5 million minimum sub-limit)</li> <li>• Website media content liability (\$5 million minimum sub-limit)</li> <li>• Cyber extortion (\$5 million minimum sub-limit)</li> <li>• Data protection (\$5 million minimum sub-limit)</li> <li>• Business interruption (\$5 million minimum sub-limit)</li> <li>• Forensic expenses (\$1 million minimum sub-limit)</li> <li>• Dependent business (\$1 million minimum sub-limit)</li> </ul>		<p>including coverage for third party claims alleging bodily injury or property damage caused by a security failure or a privacy event.</p> <p>Coverage shall be maintained continuously from Commercial Close until Construction Completion Date.</p> <p>Coverage shall be primary without any right of contribution of any insurance carried by the City or Senior Lenders.</p>
<p><b>1.12 Directors' and Officers' Liability Insurance</b></p>	<p>Directors' and Officers' Insurance covering liability for directors and officers arising from their wrongful acts when acting within the scope of their duties.</p> <p>Minimum limit \$10 million per claim and in the aggregate for cover for entity (Side C)</p>		<p>Directors' and Officers' Insurance coverage shall be maintained continuously from Commercial Close until Construction Completion Date plus coverage for an extended reporting period of not less than 24 months.</p> <p>Coverage shall be primary without any right of contribution of any insurance carried by the City or Senior Lenders.</p>
<p><b>1.13 Workers' Compensation</b></p>	<p>In accordance with Alberta statutes established benefits and schedules</p>		

Type	Amount	Maximum deductibles	Principal cover
			<p>Cover in accordance with Applicable Law and the requirements of any Governmental Workers' compensation insurance coverage for all employees of Project Co, the Construction Contractor, all Sub-Contractors, sub-subcontractors, consultants and sub-consultants engaged in the performance of the Project Work, in accordance with Applicable Law and the requirements of any Governmental Authority.</p>
			<p>Coverage shall be maintained continuously from Commercial Close until the later of the termination or expiry of the Infrastructure Performance Demonstration Period and the termination of the LRV Performance Demonstration Period.</p>

**APPENDIX 17B: INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the 22<sup>nd</sup> day of December, 2020

**AMONG:**

**THE CITY OF EDMONTON**

(the “City”)

**AND:**

[REDACTED]

(the “Lenders’ Agent”)

**AND:**

**MARIGOLD INFRASTRUCTURE PARTNERS LIMITED PARTNERSHIP**

(“Project Co”)

**AND:**

[REDACTED]

(the “Insurance Trustee”)

**WHEREAS:**

- A. The City and Project Co have entered into the Project Agreement.
- B. The City, the Lenders’ Agent and Project Co have entered into the Direct Lender Agreement.
- C. The City, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Insurance Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

**1. DEFINITIONS**

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) “**Assignment of Insurance**” means the assignment of insurance between Project Co and the Lenders’ Agent dated as of the date hereof.
- (b) “**Bank**” means Toronto-Dominion Bank.

- (c) **“Business Day”** has the meaning given in the Project Agreement.
- (d) **“Change of Authorization Event”** has the meaning given in Section 7(a) of this Insurance Trust Agreement.
- (e) **“Change of Authorization Notice”** has the meaning given in Section 7(b)(ii) of this Insurance Trust Agreement.
- (f) **“City Event of Default”** means the occurrence of any event set out in Section 15.3 of the Project Agreement.
- (g) **“Default Notice”** means a written notice given by the Lenders’ Agent to the Insurance Trustee that an event of default under the Senior Financing Agreements has occurred and is continuing or by the City to the Insurance Trustee that an event of default under the Project Agreement has occurred and is continuing.
- (h) **“Default Period”** means the period commencing on the date upon which the Insurance Trustee receives a Default Notice and ending on the date upon which the Insurance Trustee receives written notice from the Lenders’ Agent or the City as the case may be that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (i) **“Direct Lender Agreement”** means the direct lender agreement made on or about the date hereof between the City, Project Co and the Lenders’ Agent.
- (j) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (k) **“Infrastructure”** has the meaning given in the Project Agreement.
- (l) **“Insurance Policies”** has the meaning given in Section 4(a) of this Insurance Trust Agreement.
- (m) **“Insurance Proceeds”** means:
  - (i) all proceeds of any Insurance Policy that are paid over to the Insurance Trustee by any insurer, Project Co, the Lenders’ Agent or the City; and
  - (ii) any amounts paid by the City or Project Co to the Insurance Trustee for a claim arising in respect of an uninsurable risk pursuant to Section 5 of Schedule 17 [*Insurance and Performance Security Requirements*] of the Project Agreement, which would otherwise have been covered by an Insurance Policy.
- (n) **“Insurance Receivables”** has the meaning given in the Project Agreement, if required.
- (o) **“Insurance Trust Account”** means Account No. [REDACTED] at the Bank.
- (p) **“Insurance Trust Agreement”** means this insurance trust agreement.
- (q) **“Order”** has the meaning given in Section 6(k) of this Insurance Trust Agreement.
- (r) **“Party”** means any of the City, Project Co, the Lenders’ Agent or the Insurance Trustee, and **“Parties”** means all of the City, Project Co, the Lenders’ Agent and the Insurance Trustee.
- (s) **“Project”** has the meaning given in the Project Agreement.

- (t) **“Project Agreement”** means the project agreement made on or about the date hereof between the City and Project Co.
- (u) **“Senior Financing Agreements”** has the meaning given in the Project Agreement.
- (v) **“Senior Lenders”** has the meaning given in the Project Agreement.
- (w) **“Service Commencement”** has the meaning given in the Project Agreement.
- (x) **“Security Documents”** means any security agreements that may be granted in favour of the Lenders’ Agent from time to time pursuant to or in connection with the Senior Financing Agreements.
- (y) **“Termination Payment”** has the meaning given in the Project Agreement.
- (z) **“Trust Property”** means all of the property held in trust by the Insurance Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

## 2. INTERPRETATION

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders includes all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.

- (g) References containing terms such as:
  - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
  - (ii) (“includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Insurance Trust Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach apply to the construction of this Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Edmonton, Alberta.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

### **3. INSURANCE TRUST ACCOUNT**

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Insurance Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Insurance Trustee for the benefit of the Lenders’ Agent and the Senior Lenders, provided that, upon receipt by the Insurance Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Insurance Trustee for the benefit of the City.
- (b) The Insurance Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement but without limiting Project Co’s obligations under the Project Agreement, the Lenders’ Agent, the City, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Insurance Trustee to advance funds



in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:

- (i) the completion, repair, reinstatement, restoration or replacement of the Infrastructure or any other assets, materials or goods necessary or desirable for the carrying out of the Project Work in respect of which such Insurance Proceeds have been paid;
- (ii) towards a Termination Payment in accordance with the Project Agreement;
- (iii) indemnification for any City loss for which the subject Insurance Proceeds were paid under the Insurance Policies; or
- (iv) to the City if the relevant Insurance Proceeds arise from Insurance Receivables that are payable to the City or are assigned to the City under the Project Agreement.

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs insurance or business interruption insurance shall be applied in accordance with the terms of the Senior Financing Agreements so as to enable Project Co to carry out the Project.

#### **4. INSURANCE**

- (a) Project Co shall deliver, or cause to be delivered, to the Insurance Trustee originals of all property and asset related insurance policies that it is required to maintain under the Project Agreement (collectively, the "Insurance Policies"), and the Insurance Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Insurance Trustee shall distribute any Insurance Proceeds as follows:
  - (i) subject to the last paragraph of Section 3(c) and Section 4(c), in the case of the all risks course of construction (builders' risk), boiler and machinery insurance or property insurance policies that is required to be maintained under the Project Agreement:
    - (A) if the Insurance Trustee has not received a Default Notice and:
      - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$2,000,000, to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
      - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$2,000,000, to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
    - (B) if the Insurance Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Insurance Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Insurance Trustee has

received a Change of Authorization Notice, the Insurance Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such Persons as the City may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and

- (ii) in the case of any other Insurance Policies, as directed by the Lenders' Agent (pursuant to the terms of the Senior Financing Agreements), or, following receipt by the Insurance Trustee of a Change of Authorization Notice, as directed by the City, to be distributed to the parties entitled thereto.
- (c) Notwithstanding anything in this Insurance Trust Agreement, all losses under (i) all risks course of construction (builders' risk) including boiler and machinery insurance carried prior to Construction Completion; (ii) property insurance carried after Construction Completion; and (iii) boiler and machinery insurance carried after Service Commencement, which in each case relate to equipment purchased, owned or leased by the City, shall be payable solely to the City and shall not be payable to the Insurance Trustee or distributed pursuant to this Insurance Trust Agreement.
- (d) The Insurance Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
  - (i) if the Insurance Trustee has not received a Default Notice, directly to Project Co; and
  - (ii) if the Insurance Trustee has received a Default Notice, to such persons as the Lenders' Agent or, following receipt by the Insurance Trustee of a Change of Authorization Notice, the City, may at any time or from time to time direct in writing.
- (e) In the case of any dispute over such direction, the Parties agree to resolve such dispute in accordance with the Dispute Resolution Provisions of the Project Agreement, a copy of which will be provided to the Insurance Trustee upon request.

## **5. ACCOUNT AGREEMENT**

- (a) The Insurance Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Insurance Trustee by the Bank pursuant to the relevant account agreement. The Insurance Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Insurance Trustee hereby agrees to promptly provide to the City all monthly statements and other information with respect to the Insurance Trust Account provided to the Insurance Trustee by the Bank pursuant to the relevant account agreement. The Insurance Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the City may from time to time request in writing.

## **6. THE INSURANCE TRUSTEE**

- (a) The Insurance Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Insurance Trustee shall carry out all written directions

given by the Lenders' Agent, the City or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Insurance Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction in writing from the Lenders' Agent, the City or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Insurance Trustee).

- (b) The Insurance Trustee will exercise its powers and carry out its obligations hereunder as insurance trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Insurance Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Insurance Trustee from liability for its own dishonesty, negligence (including negligence in the handling of funds), wilful misconduct, fraud, bad faith or reckless disregard of any duty hereunder.
- (c) The Insurance Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Senior Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Insurance Trustee (including any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with negligence, reckless disregard of duty, wilful misconduct, fraud or bad faith by the Insurance Trustee. The Insurance Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Insurance Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Insurance Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.
- (d) The Insurance Trustee shall not:
  - (i) be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Senior Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it;
  - (ii) be under any duty to enquire as to the correctness of any amounts received by it on account of the proceeds of any insurance or be under any obligation to take any steps to enforce the payment thereof to it; or

- (iii) be responsible for the obtaining, placing or renewal of any policies of insurance or for the enforcement or observance of any such policy and shall only be responsible under the terms of this Insurance Trust Agreement with respect to money actually received from time to time by it representing the proceeds of any such insurance.
- (e) Notwithstanding the foregoing, the Insurance Trustee shall not be liable for any action or failure to act other than where such act or failure arises from or in connection with the dishonesty, negligence (including negligence in the handling of funds), wilful misconduct, fraud, bad faith or reckless disregard of any duty hereunder by the Insurance Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
  - (i) the Insurance Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
  - (ii) the Insurance Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Insurance Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Insurance Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Insurance Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Insurance Trustee with respect to the performance of this Insurance Trust Agreement by the Insurance Trustee or any of the Insurance Trustee's directors, officers or employees, unless arising from its or their own dishonesty, negligence (including negligence in the handling of funds), wilful misconduct, fraud, bad faith or reckless disregard of any duty hereunder. This indemnity shall survive the resignation or removal of the Insurance Trustee and the termination of this Insurance Trust Agreement.
- (h) Subject to the terms and conditions set forth in the Insurance Trustee fee letter, the Insurance Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel) incurred in connection with this Insurance Trust Agreement. This section shall survive the resignation or removal of the Insurance Trustee and the termination of this Insurance Trust Agreement.
- (i) The Insurance Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Senior Lenders or the City for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Insurance Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Insurance Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way

affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "Order"), the Insurance Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Insurance Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Insurance Trustee complies with any Order, the Insurance Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Insurance Trustee is served with any Order, it shall forthwith and, in any event, within 3 Business Days, deliver a copy of such Order to each of the Lenders' Agent, the City and Project Co.

- (l) Unless otherwise specifically set forth herein, the Insurance Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Insurance Trustee's usual collection practices or terms regarding items received by the Insurance Trustee for deposit or collection. Except and to the extent provided herein, the Insurance Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Insurance Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent, or, where the Insurance Trustee has received a Change of Authorization Notice, the City, is ambiguous or uncertain, the Insurance Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Insurance Trustee has received written instructions, signed by the Lenders' Agent or, if the Insurance Trustee has received a Change of Authorization Notice, the City, which resolve such ambiguity or uncertainty, provided that the Insurance Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Insurance Trustee has received a Change of Authorization Notice, the City, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Insurance Trustee, any direction, instruction, notice or other communication delivered to the Insurance Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Insurance Trustee shall comply with such direction, instruction, notice or other communication. After the Insurance Trustee has received a Change of Authorization Notice, any direction, instruction, notice or other communication delivered to the Insurance Trustee by the City shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Insurance Trustee shall comply with such direction, instruction, notice or other communication from the City.
- (o) Each of the Lenders' Agent and the City shall provide to the Insurance Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Insurance Trustee hereunder. The Insurance Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Insurance Trustee by the Lenders' Agent or the City, as applicable. The Insurance Trustee shall refuse to act upon any instruction given by the Lenders' Agent or the City which is signed by any person other than an individual

named in the incumbency certificate provided to the Insurance Trustee by the Lenders' Agent or the City, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.

- (p) The Insurance Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Insurance Trustee by the Lenders' Agent or the City, as applicable, pursuant to Section 6(o).
- (q) The parties hereto acknowledge that the Insurance Trustee shall have no responsibility for the adequacy or sufficiency of the Insurance Policies and shall have no obligation to review or analyze such Insurance Policies or keep them in good standing.
- (r) The Insurance Trustee shall retain the right not to act and shall not be liable for refusing to act if, in its reasonable opinion, such action would be contrary to or conflicting with the terms of this Insurance Trust Agreement or the applicable law or regulation of any jurisdiction or any order or directive of any court, governmental agency or other regulatory body.

## **7. INSURANCE TRUSTEE AND THE CITY'S RIGHTS TO DIRECT**

- (a) Until the occurrence of (i) termination of the Project Agreement in accordance with the Direct Lender Agreement and (ii) receipt by Project Co of any amounts to which it is entitled pursuant to Section 16 [*Termination Payments*] of the Project Agreement (a "Change of Authorization Event"), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Insurance Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds. Nothing in this Section 7(a) shall modify the Project Agreement, including Section 16 [*Termination Payments*].
- (b) Upon the occurrence of a Change of Authorization Event:
  - (i) the Lenders' Agent shall cease to be entitled, and the City shall thenceforth be entitled, to direct the Insurance Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
  - (ii) the Lenders' Agent and the City shall jointly provide notice to the Insurance Trustee (a "Change of Authorization Notice") that the City shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Insurance Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Insurance Trustee where a City Event of Default has occurred. Where a City Event of Default has occurred, upon receipt by the Lenders' Agent and Senior Lenders of all amounts owing by the City to the Lenders' Agent and Senior Lenders under the Direct Lender Agreement, the Insurance Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.
- (d) The Lenders' Agent hereby agrees with and confirms to the other parties hereto that if a conflict or inconsistency exists in or between a provision of this Insurance Trust Agreement and a provision of the Security Documents, the provisions of this Insurance Trust Agreement shall prevail.

**8. TERMINATION**

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
  - (i) the obligations of Project Co to the Lenders' Agent and the Senior Lenders under the Senior Financing Agreements have been paid and performed in full and the Senior Lenders have no further obligation to make any further advances or other credit accommodations under the Senior Financing Agreements;
  - (ii) the obligations of Project Co to the City have been paid and performed in full; and
  - (iii) the Insurance Trustee has fully discharged its obligations hereunder with respect to any Insurance Proceeds paid to it.
- (b) The Insurance Trustee may terminate this Insurance Trust Agreement at any time upon 60 days prior written notice to the other Parties hereto or such shorter time as the Parties hereto may agree, provided that no termination of this Insurance Trust Agreement by the Insurance Trustee shall be effective until such time as the Lenders' Agent, the City, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement insurance trustee satisfactory to the Lenders' Agent, the Senior Lenders and the City.

**9. ASSIGNMENT**

- (a) The Insurance Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, the City and Project Co.

**10. NOTICES**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Insurance Trust Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Insurance Trust Agreement) and served by sending the same by registered mail, facsimile, electronic mail or by hand, as follows:

If to the City:

[Redacted address information]

With a copy to:

[Redacted address information]

And with a copy to:

[Redacted]

If to the Lenders' Agent:

[Redacted]

If to Project Co:

[Redacted]

With a copy to:

[Redacted]

If to the Insurance Trustee:

[Redacted]

or to such other address or electronic mail address or facsimile number 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:

- (i) 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 representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (ii) if delivered by electronic mail or facsimile 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:



- (A) the receiving party has, by electronic mail or facsimile or by hand delivery, acknowledged to the notifying party that it has received such notice; or
  - (B) 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.
- (b) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic or facsimile transmission in accordance with this Section 10.

## **11. AMENDMENTS**

This Insurance Trust Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Insurance Trust Agreement.

## **12. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

## **13. FORCE MAJEURE**

No party shall be liable to any other party, or held in breach of this Insurance Trust Agreement, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of acts of God, riots, terrorism, acts of war, epidemics, earthquakes, or any other similar causes beyond the affected party's reasonable control and where such failure in performance is not caused directly or indirectly by the affected party (including but not limited to, mechanical, electronic or communication interruptions, disruptions or failures, unless caused by the negligent or willful misconduct of the affected party). Performance times under this Insurance Trust Agreement shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section, provided that the affected party shall take commercially reasonable steps to mitigate or remedy the event giving rise to the delay.

## **14. ANTI-MONEY LAUNDERING**

The Insurance Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Insurance Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Insurance Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days written notice to the other parties to this Insurance Trust Agreement, provided that (i) the Insurance Trustee's written notice shall describe the

circumstances of such non-compliance; (ii) if such circumstances are rectified to the Insurance Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

## **15. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and agent.

## **16. ENTIRE AGREEMENT**

Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Insurance Trust Agreement.

## **17. SEVERABILITY**

Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust Agreement is declared invalid, unenforceable or illegal by a court of competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Insurance Trust Agreement. If any such provision of this Insurance Trust Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and restore this Insurance Trust Agreement as near as possible to its original intent and effect.

## **18. ENUREMENT**

This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

## **19. GOVERNING LAW AND JURISDICTION**

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Alberta and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

## **20. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Insurance Trust Agreement.

## **21. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

## **22. PRIVACY LAWS**

The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, the "Privacy Laws") applies to obligations and activities under this Insurance Trust Agreement. Despite any other provision of this Insurance Trust Agreement, none of Project Co, the Lenders' Agent, the City or the Insurance Trustee shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. The parties to this Insurance Trust Agreement shall, prior to transferring or causing to be transferred personal information to the Insurance Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the Parties can rely or are not required under the Privacy Laws. The Insurance Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Insurance Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Insurance Trust Agreement and not to use it for any other purpose except with the consent of or direction from the parties to this Insurance Trust Agreement or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

## **23. COUNTERPARTS**

This Insurance Trust 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.

*[signature pages follow]*

IN WITNESS WHEREOF the Parties have executed this Insurance Trust Agreement as of the date 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

\_\_\_\_\_, as  
Lenders' Agent

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.

**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.



Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation

## APPENDIX 17C: FORM OF PERFORMANCE BOND

This bond is subject to the terms and conditions of the multiple obligee rider attached hereto no. \_\_\_\_\_

Bond Amount [Insert Amount]

[Insert Construction Contractor], as Principal, hereinafter called the "Principal", and [Insert Surety], as Surety, duly authorized to transact the business of suretyship in Canada (the "Surety"), are held and firmly bound unto [Insert Project Co] as Obligee, hereinafter called the Obligee (the "Obligee"), in the amount of [Insert Amount] of lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally. For greater certainty, each of the parties comprising the Surety shall be liable for the Surety's obligations hereunder on a joint and several basis in all respects.

**WHEREAS**, the Principal has entered into a written contract entitled Construction Contract with the Obligee dated as of [•], 20[•] for the design and construction of the City of Edmonton Valley Line LRT - Stage 2 (Valley Line West) Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Construction Contract.

The condition of this obligation is such that, if the Principal shall promptly and faithfully perform its obligations to the Obligee under the Construction Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Obligee to be, in default in respect of its obligations to the Obligee under the Construction Contract, the Obligee having performed the Obligee's obligations under the Construction Contract, the Surety shall promptly select and carry out one of the four following options:

1. remedy any default, or;
2. complete the Construction Contract in accordance with its terms and conditions, or;
3. obtain a bid or bids for submission to the Obligee for completing the Construction Contract in accordance with its terms and conditions and upon determination by the Obligee and the Surety of the lowest responsible bidder, acceptable to the City of Edmonton acting reasonably, arrange for a contract between such bidder and the Obligee or between such bidder and such other party as an additional named Obligee shall be entitled to direct, and the Surety shall make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Construction Contract, less the Balance of the Construction Contract amount and to pay all expenses incurred by the Obligee as a result of the Principal's default relating directly to the performance of the Design and Construction obligations under the Construction Contract, but not exceeding the Bond Amount. The "Balance of the Construction Contract amount" is the Contract Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract; or
4. pay the Obligee the lesser of (1) the Bond Amount or (2) the Obligee's proposed cost to complete the Construction Contract in accordance with its terms and conditions less the Balance of the Construction Contract amount.

The Surety shall not be discharged or released from liability hereunder and such liability shall not be in any way affected by any changes, alterations, additions or variations, taking or receiving of security between the Principal and the Oblige, or extension of time, or other modification of the Construction Contract, by the exercise by the Oblige of any of the rights or powers reserved to it under the Construction Contract or by its forbearance to exercise any such rights or powers, including (but without restricting the generality of the foregoing) any changes in the extent or nature of the CC Project Work under the Construction Contract or by any dealing, transaction, forbearance or forgiveness which may take place between the Principal and the Oblige.

The Surety agrees that, for the purposes of determining its liability under this Bond, findings or decisions against the Principal under the terms of the Construction Contract that are binding on the Principal and the Oblige shall also bind the Surety.

It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the Construction Completion Date, or (2) the date on which the Principal is declared in default by the Oblige and such notice of default is provided to the City of Edmonton and [Insert Lender].

The Surety shall, in no event, be liable for a greater sum than the Bond Amount. Further, and notwithstanding anything else in this Bond, the Surety's liability hereunder for any default under Section 14.6(k) of the project agreement between the Oblige and the City of Edmonton dated [insert date] shall be limited to any default by the Principal resulting in the non-performance or non-observance by the Principal of any of its other obligations under the Construction Contract.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Oblige named herein, or the heirs, executors, administrators, successors or assigns of the Oblige.

This Performance Bond may be executed in any number of counterparts, and by the different parties hereto on separate counterparts, each of which counterpart shall be an original but all of which shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Principal and the Surety have signed and sealed this Bond dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Signed, sealed and delivered**

in the presence of:

**[CONSTRUCTION CONTRACTOR]**

By:

Signature

Name of person signing

**[SURETY]**

By:

Signature

Name of person signing

## Exhibit 1 to Appendix 17C

### Form of Multiple Obligee Rider to Performance Bond

TO BE ATTACHED TO AND FORM PART OF THE PERFORMANCE BOND NO. [Insert Bond No.] dated as of [•], 20[•] (the "Bond") concurrently with the execution of this Multiple Obligee Rider, issued by [Insert Surety], as Surety (hereinafter called the "Surety"), on behalf of [Insert Construction Contractor], as Principal (hereinafter called the "Principal"), and in favour of [Insert Project Co], as Obligee (hereinafter called the "Obligee").

NOW THEREFORE, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The Bond shall be and is hereby amended to add the City of Edmonton and [Insert Lender] ("[•]"), in their respective capacities as assignees of the Construction Contract, as additional named obligees, which additional named obligees (hereinafter from time to time referred to as "Obligee(s)") shall, subject to the terms of the Bond and this Multiple Obligee Rider, be entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligee Rider.
2. Capitalized terms used in this Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the Bond and the Project Agreement entered into between the City of Edmonton and the Obligee dated [insert date of Project Agreement].
3. If there is an event of default by the Principal under the Construction Contract (a "Construction Event of Default") and [Insert Lender] or the City of Edmonton makes a claim under the Bond, [Insert Lender] or the City of Edmonton, as the case may be, shall make available to the Surety in accordance with the terms of the Construction Contract the Balance of the Construction Contract amount.
4. All of the terms, conditions and provisions of the Bond are hereby incorporated herein by reference as if fully set forth herein.
5. No alteration or material change in the Construction Contract or any conduct of the Principal, Obligee or [Insert Lender], prior to the Principal being declared in default, shall prejudice the rights or interest of the City of Edmonton under the Bond or this Multiple Obligee Rider provided that the City of Edmonton has not caused such alteration or material change without the prior written consent of the Surety.
6. The Obligee, Principal, Surety and [Insert Lender] acknowledge and agree that they will not remedy any default, settle, waive, reduce or otherwise compromise any claims under the Bond without the prior written approval of the City of Edmonton, acting reasonably, and the Surety shall provide reasonable notice to the City of Edmonton prior to remedying any default, settling, waiving, reducing or otherwise compromising any claim or making any payment under the Bond, provided that the Surety shall not be precluded from tendering upon the Obligee(s) performance pursuant to one of the four numbered options in the Bond.
7. The Surety acknowledges the Lender's Step-In Period rights; provided that such acknowledgement shall in no way limit or otherwise abrogate from the Surety's rights under the Bond or this Multiple Obligee Rider.
8. In the event of any ambiguity, conflict or inconsistency, the Bond and this Multiple Obligee Rider shall prevail over the Project Agreement and the other Project Documents.
9. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the Bond.



10. This Multiple Obligee Rider may be executed in any number of counterparts, and by the different parties hereto on separate counterparts, each of which counterpart shall be an original but all of which shall together constitute one and the same instrument.

**Signed, sealed and delivered**

in the presence of:

**[CONSTRUCTION CONTRACTOR]**

By:

Signature

Name of person signing

**[SURETY]**

By:

Signature

Name of person signing

**[PROJECT CO]**

By:

Signature

Name of person signing

**[LENDER]**

By:

Signature

Name of person signing

**CITY OF EDMONTON**

By:

Signature

Name of person signing

## APPENDIX 17D: FORM OF LABOUR AND MATERIAL PAYMENT BOND

NOTE: This bond is issued simultaneously with a Performance Bond and Multiple Obligeo Rider and is subject to the terms and conditions of the Labour and Material Payment Bond Multiple Obligeo Rider attached hereto

Bond No.

Bond Amount: [Insert Amount]

[Insert Construction Contractor], as Principal (hereinafter called the "Principal"), and [Insert Surety], a corporation created and existing under the [laws of Canada] and duly authorized to transact the business of Suretyship in Canada as Surety (hereinafter called the "Surety") are subject to the conditions hereinafter contained, held and firmly bound unto [Insert Project Co] as Obligeo (hereinafter called the "Obligeo"), for the use and benefit of the Claimants, and each of their heirs, executors, administrators, successors and assigns, in the amount of [Insert amount] of lawful money of Canada for the payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. For greater certainty, each of the parties comprising the Surety shall be liable for the Surety's obligations hereunder on a joint and several basis in all respects.

WHEREAS, the Principal has entered into a written contract entitled Construction Contract with the Obligeo dated [•], 20[•] for the design and construction of the City of Edmonton Valley Line LRT – Stage 2 (Valley Line West) (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Construction Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Construction Contract, then this obligation shall be null and void; and otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Construction Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Construction Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Construction Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Construction Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, in accordance with and in the manner provided for in the latest revised edition of the publication of the Canadian Construction Association titled "Rental Rates on Construction Equipment" published prior to the period during which the equipment was used in the performance of the Construction Contract.
2. The Principal and the Surety hereby jointly and severally agree with the Obligeo, as Trustee, that every Claimant who has not been paid as provided for under the terms of his or her or its contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of

his or her or its contract with the Principal and have execution thereon. Provided that the Obligeé is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Obligeé or by joining the Obligeé as a party to such proceeding, then such act, action or proceeding shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless the Obligeé against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligeé by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them, may use the name of the Obligeé to sue on and enforce the provisions of this Bond.

3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Obligeé, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3(b) and 3(c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
  - (a) unless such Claimant shall have given written notice within the time limits hereinafter set forth to each of the Principal, the Surety and the Obligeé, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Obligeé at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the Construction Contract is located. Such notice shall be given:
    - (i) in respect of any claim for the amount, or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under the construction or builders' lien legislation applicable to the Claimant's contract with the Principal, whichever is greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal; and
    - (ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
  - (b) after the expiration of one (1) year following the date on which the Principal ceased work on the Construction Contract, including work performed under the guarantees provided in the Construction Contract; and
  - (c) other than in a Court of competent jurisdiction in the Province of Alberta in which the subject matter of the Construction Contract, or any part thereof, is situated, and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety agrees not to take advantage of Article 1959 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothecs and privileges of said Claimant.
5. Any material change in the Construction Contract between the Principal and the Obligeé shall not prejudice the rights or interest of any Claimant under this Bond who is not instrumental in bringing about and has not caused such change.

6. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith and in accordance with the provisions hereof, inclusive of the payment by the Surety of construction or builders' liens which may be filed of record against the subject matter of the Construction Contract, whether or not claim for the amount of such lien(s) be presented under and against this Bond.
7. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
8. This Labour and Material Payment Bond may be executed in any number of counterparts, and by the different parties hereto on separate counterparts, each of which counterpart shall be an original but all of which shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Principal and the Surety have signed and sealed this Bond this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**SIGNED, SEALED AND DELIVERED** in the presence of:

**[CONSTRUCTION CONTRACTOR]**

By:

Signature

Name of person signing

**[SURETY]**

By:

Signature

Name of person signing

**Exhibit 1 to Appendix 17D**

**Form of Multiple Obligees Rider to Labour and Material Payment Bond**

**To be attached to and form part of the Labour and Material Payment Bond no.** [Insert Bond No.] dated [•], 20[•] (the “L&M Bond”) concurrently with the execution of this Labour and Material Payment Bond Multiple Obligees Rider (“L&M Multiple Obligees Rider”) issued by [Insert Surety] (hereinafter called the “Surety”), on behalf of [Insert Construction Contractor], as Principal (hereinafter called the “Principal”), and in favour of [Insert Project Co], as Obligees (hereinafter called the “Obligees”).

**Now therefore**, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The L&M Bond shall be and is hereby amended to add the City of Edmonton (hereinafter called the “Owner”) and [Insert Lender] (hereinafter called the “Lender”) as additional named obligees (hereinafter from time to time referred to as “Obligees”), in their respective capacities as assignees of the Construction Contract.
2. Capitalized terms used in this L&M Multiple Obligees Rider without definition shall have the respective meanings attributed to them in the L&M Bond and the Project Agreement entered into between the City of Edmonton and the Obligees dated [insert date of Project Agreement].
3. All of the terms, conditions and provisions of the L&M Bond are hereby incorporated herein by reference as if fully set forth herein.
4. No alteration or material change in the Construction Contract or any conduct of the Principal, Obligees or Lender, shall prejudice the rights or interest of the Owners or any Claimant under the L&M Bond or this L&M Multiple Obligees Rider provided that the Owners or any such Claimant have not caused such alteration or material change without the prior written consent of the Surety.
5. In the event of any ambiguity, conflict or inconsistency, the L&M Bond and the L&M Multiple Obligees Rider shall prevail over the Project Agreement and the other Project Documents.
6. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the L&M Bond.
7. This Multiple Obligees Rider may be executed in any number of counterparts, and by the different parties hereto on separate counterparts, each of which counterpart shall be an original but all of which shall together constitute one and the same instrument.

**Signed, sealed and delivered**

in the presence of:

**[CONSTRUCTION CONTRACTOR]**

By:

Signature

Name of person signing

**[SURETY]**

By:

Signature

Name of person signing

**[PROJECT CO]**

By:

Signature

Name of person signing

**[LENDER]**

By:

Signature

Name of person signing

**CITY OF EDMONTON**

By:

Signature

Name of person signing

42808266.1