

THE CITY OF EDMONTON

**PROJECT AGREEMENT
VALLEY LINE WEST LRT**

***Schedule 31
Form of Performance Guarantee of Construction Guarantor***

SCHEDULE 31

FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

THIS GUARANTEE is made as of the 22nd day of December, 2020

AMONG:

THE CITY OF EDMONTON
(the “**City**”)

AND:

[REDACTED], a corporation incorporated under the laws of the State of Delaware
 (“**Parsons**”)

AND:

[REDACTED], a corporation incorporated under the laws of France
 (“**Colas**”)

[REDACTED], collectively, the “**Construction Guarantor**”)

WHEREAS:

- A. The City and Marigold Infrastructure Partners Limited Partnership (“**Project Co**”) have entered into a project agreement dated as of the 22nd day of December, 2020 (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Project Agreement**”).
- B. As an inducement to the City to enter into the Project Agreement with Project Co, Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to the City, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (as such term is defined in Section 1.1(c) of this Guarantee), and in furtherance thereof has agreed to enter into this Guarantee.

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 AND INTERPRETATION

1.1 Definitions

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Project Agreement.
- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement.

- (c) For the purpose of this Guarantee, the term “Design and Construction Work” means:
- (i) subject to Section 1.1(c)(ii) below, all of Project Co’s covenants, obligations and activities with respect to the Project Work pursuant to the Project Agreement, and including, for certainty:
 - (1) all of Project Co’s covenants, obligations and activities pursuant to Schedule 4 [*Design and Construction Protocols*] and Section 7 [*Warranty*] of the Project Agreement; and
 - (2) Project Co’s representations and warranties contained in Section 12.1 [*Project Co’s Representations*] of the Project Agreement;
 - (ii) for the purpose of this Section 1.1(c), the term “Design and Construction Work” shall be deemed not to include any of the following covenants, obligations or activities of Project Co under the Project Agreement (including the delivery of any executed originals of the documents referred to below):
 - (1) any covenant, agreement, undertaking or obligation related to the Senior Debt financing or the Cost of the Financing;
 - (2) the recitals to the Project Agreement;
 - (3) Section 16 [*Termination Payments*];
 - (4) Sections 3.2 [*Compliance with Senior Financing Agreement*] and 3.3 [*Changes to Senior Financing Agreements*];
 - (5) Section 17.1 [*Notices*];
 - (6) Schedule 25 [*Completion Documents*];
 - (7) Schedule 21 [*Direct Lender Agreement*];
 - (8) any of Project Co’s obligations under Schedule 22 [*Project Contracts and Collateral Agreements*];
 - (9) Schedule 16 [*Payment Mechanism*];
 - (10) Schedule 27 [*Compensation on Termination*];
 - (11) Schedule 30 [*Warranty Letter of Credit*];
 - (12) Schedule 24 [*Project Co’s Ownership Information*]; or
 - (13) Schedule 31 [*Form of Performance Guarantee of Construction Guarantor*].
- (d) For the purpose of this Guarantee, the Term “**DB Guarantees**” means, collectively, the performance guarantee delivered by Parsons Corporation and the performance guarantee delivered by ██████████ each in their capacity as guarantor under their respective DB Guarantee (the “**DB Guarantors**”) in favour of ██████████ and assigned to the Senior Lenders pursuant to the Lending Agreements.

1.2 Survival

This Guarantee shall survive the termination or other expiry of the Project Agreement.

2. GUARANTEE

2.1 Guarantee

- (a) Construction Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to the City, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (collectively, the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings and obligations of Project Co under the Project Agreement which are not expressly defined in this Section 2.1(a).
- (b) Notwithstanding any other provision of this Guarantee:
 - (i) Construction Guarantor’s undertakings and obligations are derivative of and not in excess of Project Co’s obligations under the Project Agreement and Construction Guarantor retains all rights, claims, defences and limitations of liability possessed by Project Co under the terms of the Project Agreement or arising from the Parties’ performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Project Co, including, for greater certainty, that the alleged non-performance or non-observance by Project Co of the Guaranteed Obligations arises out of or is a result of an event referred to in Section 15.3 [*Termination by Project Co*] of the Project Agreement; and
 - (ii) in no event shall the aggregate liability of Construction Guarantor under this Guarantee and the DB Guarantors under the DB Guarantees exceed the greater of:
 - (1) the maximum liability of the DB Guarantors under the DB Guarantees; and
 - (2) 40% of the Total Capital Cost Amount less financing costs,but this limit of liability shall not extend to interest and enforcement costs payable under this Guarantee.

2.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by Project Co shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.
- (b) The Guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Project Agreement and Construction Guarantor shall have fully and satisfactorily discharged all of its obligations under this Guarantee.

- (c) The liability of Construction Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no notice to Construction Guarantor shall be required in respect of):
- (i) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;
 - (ii) any amalgamation, merger or consolidation of Project Co or Construction Guarantor or any sale, lease or transfer of any of the assets of Project Co or Construction Guarantor;
 - (iii) any Change in Control of Project Co or Construction Guarantor;
 - (iv) the termination or other expiry of the Project Agreement;
 - (v) any Relief Event or Force Majeure Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended by the period of any extension permitted pursuant to Section 10.1(b) or Section 11.2(b));
 - (vi) any change in the financial condition of Project Co or Construction Guarantor;
 - (vii) any of the Termination Events described in Sections 14.6(a), (b), (c), or (d) of the Project Agreement, or any resulting release, stay or discharge of any Guaranteed Obligation;
 - (viii) any lack or limitation of power, incapacity or disability on the part of Project Co or any other irregularity, defect or informality on the part of Project Co with respect to the Guaranteed Obligations;
 - (ix) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, Construction Guarantor in respect of the Guaranteed Obligations or this Guarantee;
 - (x) the assignment by the City in accordance with the provisions of Section 22.6 [*Assignment by City*] of the Project Agreement;
 - (xi) the exercise of any rights under the Lending Agreements, including the right of the Senior Lenders to cure any default by Project Co by or on behalf of Project Co and/or to assume the obligations of Project Co and complete the Project Work in the manner provided in the Direct Lender Agreement; or
 - (xii) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against Construction Guarantor.
- (d) The obligations and liabilities of Construction Guarantor hereunder shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Project Co or Construction Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.

- (e) The City shall not be bound to exhaust its recourse against Project Co or others or pursuant to any Performance Security or other securities or guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the Construction Guarantor and Construction Guarantor renounces all benefits of discussion and division.
- (f) It is the intent and purpose hereof that Construction Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law, generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, Construction Guarantor hereby waives notice of acceptance of this Guarantee and of the non-performance by Project Co, diligence, presentment, protest, dishonour, demand for performance from the City and notice of non-performance or failure to perform on the part of Project Co and all other notices whatsoever. The Guarantee hereunder is a guarantee of performance and compliance. In order to hold Construction Guarantor liable hereunder, there shall be no obligation on the part of the City at any time to demand or resort for performance to Project Co, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that Project Co be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and the City shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against Project Co are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when, from time to time, Project Co shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such default, the Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.
- (g) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of Construction Guarantor under this Guarantee and without in any way requiring the consent of or giving notice to Construction Guarantor, the City may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Project Co and/or Construction Guarantor or others, including any other guarantor, as the City may see fit and the City may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as the City may see fit.
- (h) Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Guarantee. Construction Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of Construction Guarantor to the City do not merge with or end Construction Guarantor's obligations hereunder.
- (i) The liability of Construction Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on Construction Guarantor, provided, however, that the Construction Guarantor shall be required to respond to such demand within five (5) Business Days of delivery thereof.
- (j) Construction Guarantor agrees to pay to the City any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis), incurred by it in connection with enforcing any of its rights hereunder.

3. REPRESENTATIONS AND WARRANTIES

3.1 Construction Guarantor Representations and Warranties

- (a) Subject to Section 3.1(b), each entity comprising the Construction Guarantor represents and warrants to the City that as of the date of this Guarantee:
- (i) [REDACTED] is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing under the laws of Delaware with respect to the filing of annual returns, and has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is currently being conducted;[*]
 - (ii) [REDACTED] is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing under the laws of France with respect to the filing of annual returns, and has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is currently being conducted;[**]
 - (iii) each entity comprising the Construction Guarantor has the requisite power, authority and capacity to enter into, execute, deliver and perform its obligations under this Guarantee and the Project Documents to which it is a party, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee and the Project Documents to which it is a party to be done, executed, delivered or performed;[***]
 - (iv) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholder agreement in a manner that would materially impair or limit its ability to perform its obligations under this Guarantee or any of the Project Documents to which it is party and such documents and agreements are in full force and effect as of the date hereof;[***]
 - (v) this Guarantee and the Project Documents (when executed and delivered) to which Construction Guarantor is a party, have been duly authorized, executed, and delivered by Construction Guarantor and constitute legal, valid, and binding obligations of Construction Guarantor, enforceable against Construction Guarantor in accordance with their respective terms, subject only to:[***]
 - (1) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (2) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
 - (vi) the authorization, execution, delivery and performance by Construction Guarantor of this Guarantee and the Project Documents to which it is a party do not violate or conflict with or constitute a default under:[***]
 - (1) its constating or organizational documents or any unanimous shareholder agreement or similar rights agreement binding on Construction Guarantor;

- (2) any Applicable Law; or
 - (3) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
 - (vii) Project Co is an indirect wholly owned subsidiary of the Construction Guarantor;[****]
 - (viii) there are no actions, suits, proceedings, or investigations pending or threatened against Construction Guarantor, at law or in equity, before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Construction Guarantor or in any impairment of its ability to perform its obligations under this Guarantee or any Project Documents to which it is a party, and Construction Guarantor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment;[***] and
 - (ix) each entity comprising the Construction Guarantor is able to meet its obligations as they generally become due[***].
- (b) Each representation and warranty that is accompanied by:
- (i) “[*]” is made by [REDACTED]
 - (ii) “[**]” is made by [REDACTED]
 - (iii) “[***]” is made severally by [REDACTED] and [REDACTED]; and
 - (iv) “[****]” is made jointly and severally by the entities comprising the Construction Guarantor.

4. NOTICES

4.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Guarantee shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Guarantee) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to the City:

[REDACTED]

With a copy to:

[REDACTED]

If to Construction Guarantor:

[REDACTED]

and

[REDACTED]

4.2 Facsimile

Where any Notice is provided or submitted to a party via facsimile or electronic transmission, an original of the Notice sent via facsimile or electronic transmission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via facsimile or electronic transmission shall not be invalid by reason only of a party's failure to comply with this Section 4.2.

4.3 Change of Address

Either party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 by prior Notice to the other party, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such Notice unless a later effective date is given in such Notice.

4.4 Deemed Receipt of Notices

- (a) Subject to Sections 4.4(b), (c) and (d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile or electronic transmission shall be deemed to have been received on the day it is transmitted by facsimile or electronic transmission (as the case may be).
- (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 facsimile transmission or electronic transmission in accordance with this Section 4.

- (c) If any Notice delivered by hand or transmitted by facsimile or electronic transmission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

4.5 Service on the City

Where any Notice is required to be served on the City, the obligation to serve such Notice shall be fulfilled by serving it on the City in accordance with the provisions of this Section 4.

5. GENERAL

5.1 Amendments

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

5.2 Waiver

- (a) No waiver made or given by a party under or in connection with this Guarantee 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 party. 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 either party hereto 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.

5.3 Entire Agreement

Except where provided otherwise in this Guarantee, this Guarantee, together with the Project Agreement and the Project Documents, constitute the entire agreement between the parties hereto 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 Guarantee.

5.4 Severability

Each provision of this Guarantee shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Guarantee is declared invalid, unenforceable or illegal by the courts of a 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 Guarantee. If any such provision of this Guarantee is invalid, unenforceable or illegal, the parties hereto shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Guarantee as near as possible to its original intent and effect.

5.5 Enurement

This Guarantee shall enure to the benefit of, and be binding on, the City and Construction Guarantor and their respective permitted successors and assigns. This Guarantee may not be assigned by the Construction Guarantor.

5.6 Governing Law and Jurisdiction

- (a) This Guarantee shall be governed by and construed in accordance with the laws of the Province 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) Each party hereto hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta and all courts competent to hear appeals therefrom.

5.7 Cumulative Remedies

Except as otherwise set forth in this Guarantee, the rights, powers and remedies of each party hereto set forth in this Guarantee are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Guarantee or the Project Agreement or Project Documents.

5.8 Further Assurance

Each party hereto shall do all reasonable things, from time to time, and execute all reasonable further documents, necessary to give full effect to this Guarantee.

5.9 Costs

Each party hereto shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Guarantee.

5.10 Language of Agreement

- (a) Each of the parties hereto acknowledges having requested and being satisfied that this Guarantee 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 declare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Guarantee shall be in English.

5.11 Proof of Authority

The City and Construction Guarantor each reserves the right to require any Person executing this Guarantee on behalf of the other party to provide proof, in a form acceptable to the City or Construction Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind the City or Construction Guarantor, as applicable.

5.12 Counterparts

This Guarantee 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.

5.13 Joint and Several

If Construction Guarantor is comprised of more than one Person, then each such Person shall be jointly and severally liable for the obligations and liabilities of Construction Guarantor hereunder.

[signature pages follow]

IN WITNESS WHEREOF the parties have executed this Guarantee 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

Per: _____
Name: [REDACTED]
Title: Senior Vice President, Chief Legal Officer
and Secretary

I have authority to bind the Corporation.

Per: _____
Name: [REDACTED]
Title: CEO

I have authority to bind the Corporation.

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