

**IN THE MATTER OF** the *Expropriation Act*, RSA 2000 c E-13, as amended (the ***“Expropriation Act”***);

**AND IN THE MATTER OF** an intended expropriation by the City of Calgary (***“The City”***), pursuant to Notices of Intention to Expropriate registered against property interests (the ***“NOITEs”***), by which NOITEs The City communicated its intended taking of land legally described as:

CONDOMINIUM PLAN 9510906, UNIT 12  
CONDOMINIUM PLAN 9510906, UNIT 50  
CONDOMINIUM PLAN 9510906, UNIT 11  
CONDOMINIUM PLAN 9510906, UNIT 53  
CONDOMINIUM PLAN 9510906, UNIT 10  
CONDOMINIUM PLAN 9510906, UNIT 35  
CONDOMINIUM PLAN 9510906, UNIT 36  
CONDOMINIUM PLAN 9510906, UNIT 9  
CONDOMINIUM PLAN 9510906, UNIT 44  
CONDOMINIUM PLAN 9510906, UNIT 55  
CONDOMINIUM PLAN 9510906, UNIT 8  
CONDOMINIUM PLAN 9510906, UNIT 49  
CONDOMINIUM PLAN 9510906, UNIT 7  
CONDOMINIUM PLAN 9510906, UNIT 54  
CONDOMINIUM PLAN 9510906, UNIT 6  
CONDOMINIUM PLAN 9510906, UNIT 46  
CONDOMINIUM PLAN 9510906, UNIT 5  
CONDOMINIUM PLAN 9510906, UNIT 52  
CONDOMINIUM PLAN 9510906, UNIT 4  
CONDOMINIUM PLAN 9510906, UNIT 39  
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CONDOMINIUM PLAN 9510906, UNIT 2  
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CONDOMINIUM PLAN 9510906, UNIT 25

CONDOMINIUM PLAN 9510906, UNIT 17  
CONDOMINIUM PLAN 9510906, UNIT 51  
CONDOMINIUM PLAN 9510906, UNIT 16  
CONDOMINIUM PLAN 9510906, UNIT 42  
CONDOMINIUM PLAN 9510906, UNIT 15  
CONDOMINIUM PLAN 9510906, UNIT 43  
CONDOMINIUM PLAN 9510906, UNIT 14  
CONDOMINIUM PLAN 9510906, UNIT 45  
CONDOMINIUM PLAN 9510906, UNIT 13  
CONDOMINIUM PLAN 9510906, UNIT 48

(collectively, the “**Lands**”)

**AND IN THE MATTER OF** Notices of Objection to the above referenced intended expropriation (collectively, the “**Objections**”) filed on behalf of each of the following named individuals:

- 1) ANNE YUK CHUN WONG
- 2) BRENT DARRYL RAUSCH
- 3) ZHAOJUN WU and AIPING JIANG
- 4) SISI WU
- 5) DAYNE KELLS and PREYA KELLS
- 6) MARTIN HEIM and DENISE MAN
- 7) XIONG (ANDY) YAN
- 8) HWAN CHA and YOUNGCHO CHA
- 9) PATRICK L. LINDSAY and JANE LINDSAY
- 10) KULDIP SANDHU and RUPINDER SANDHU
- 11) SHICHANG SHEN
- 12) XIA SUN
- 13) THOMAS McWILLIAMS and PAMELA McWILLIAMS
- 14) TIMOTHY THOMPSON and ALISON TAYLOR (THOMPSON)
- 15) MASATAKA HORIGUCHI
- 16) DEBORAH BUXTON
- 17) JOEL SEAN GAUCHER
- 18) GORDON D. HOLDEN and NIKKI B. HOLDEN
- 19) ROBERT A. HALSE and LOUISE HALSE

(collectively, the “**Owners**”)

**AND IN THE MATTER OF** an Inquiry in respect of the foregoing, held pursuant to provisions of the *Expropriation Act*, before Sharon Roberts, appointed as Inquiry Officer pursuant to a Notice of Appointment dated June 1, 2023 and signed by Todd Nahirnik, Executive Director, Legal Services Division, Alberta Justice, in his capacity as a designate of the Deputy Minister of Justice and Solicitor General.

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INQUIRY OFFICER REPORT

ISSUED BY SHARON ROBERTS ON MONDAY, JULY 31, 2023\*

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## I. PURPOSE AND INITIATING PROCEDURE

1. This Inquiry involves the intended taking of the Lands, which comprise fee simple interests in condominium properties at a complex known as River Run located in the Eau Claire neighbourhood in downtown Calgary. The expropriating authority, The City, was represented by Christopher Ghesquire and Jeff Watson and the objecting Owners were represented by Stacy McFarlane, Karen Salmon, Grace Shory and Evelyn Pesantez (summer student), of Borden Ladner Gervais LLP.
2. The author was appointed as Inquiry Officer in this matter by Todd Nahirnik, Executive Director, Legal Services Division, Alberta Justice, in his capacity as a designate of the Deputy Minister of Justice and Solicitor General. An extension of time for delivery of this Report was requested, with agreement of The City and the Owners, and granted by Mr. Nahirnik, pursuant to section 23 of the *Expropriation Act*.
3. The Inquiry hearing was held in person at the offices of Borden Ladner Gervais LLP by consent of all parties, through their counsel. In addition, some of the Owners attended some or all of the Inquiry remotely via audio-video connection provided by the hosting law firm.
4. All witnesses' testimony and counsel's oral submissions during the Inquiry were presented in person. Counsel for the objecting Owners and The City tendered written Briefs, copies of records, and authorities in support of the parties' respective positions.
5. Among the records before me were individual NOITEs dated February 7, 2023. Among other things, the NOITEs state:
  - a. Legal description of the lands that The City intends to expropriate and the nature of the interest in the Lands to be expropriated (in the case of each of the NOITEs, that interest being the fee simple estate, together with all encumbrances, liens, estates, tenancies, occupations or interests relating to the Lands, whether registered or unregistered, save and except for particularized Utility Rights of Way and an Easement, noting their applicable instrument numbers, as registered at the Land Titles Office.
  - b. A summary of the work or purpose for which the interest in the Lands is required, being:
    - i. one or more of the construction, operation and maintenance of a light rail transit system and associated facilities, which may include but is not limited to:
      1. tracks;
      2. road and sidewalk improvements;
      3. transit station;

4. bus terminals;
  5. substations;
  6. elevated guideways;
  7. piers;
  8. columns;
  9. tunnels;
  10. bridges;
  11. park and ride facilities;
  12. maintenance and storage facilities;
  13. staging;
  14. hoarding;
  15. landscaping;
  16. sloping;
  17. utility locations, relocations, improvements or upgrades;
  18. construction activities;
  19. demolition activities; and
  20. ancillary purposes
- (collectively, the “**Objectives**”).

c. Recitations of sections 6(1) and 6(2) and 10 of the *Expropriation Act*, as follows:

i. Section 6 of the Act provides that:

6(1) No person may in any proceedings under this Act dispute the right of an expropriating authority to have recourse to expropriation.

(2) In any proceedings under this Act the owner may question whether the taking of the land, or the estate or interest in it, is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

ii. Section 10 of the Act provides that:

10(1) An owner who desires an inquiry shall serve the approving authority with a notice of objection,

- (a) in the case of an owner served in accordance with section 8(2), within 21 days after service on the owner of the notice of intention, and
- (b) In any other case, within 21 days after the first publication of the notice of intention.

(2) The notice of objection shall state:

- (a) the name and address of the person objecting,
- (b) the nature of the objection,
- (c) the grounds on which the objection is based, and
- (d) the nature of the interest of the person objecting.

d. Notice that the approving authority for the intended takings is The City and its address for service.

6. The NOITEs filed on behalf of each of the objecting River Run Owners identify the following particulars of their respective and collective objection to the intended takings:

- a. Some or all of the Lands are not reasonably required for the construction, operation, or maintenance of a light rail transit system and associated facilities as described in the NOITEs;
- b. There are reasonable alternatives by which The City can achieve its Objectives, including the partial expropriation of the Lands to the minimum extent necessary to achieve the Objectives;
- c. The proposed expropriation fails to strike a reasonable balance between public interests and Owner interests;
- d. The proposed expropriation is a result, in whole or in part, of the improper, invalid, or unfair use by The City of its powers to enable some or all of the Lands when some or all of the Lands are not required for achievement of the Objectives; and
- e. Such other grounds as may be raised at the Inquiry hearing.

7. Neither party raised any fatal procedural defects with respect to the issuance and service of the NOITE or the Notice of Objection. I am similarly unaware of any material irregularities in procedures followed in this intended expropriation.

8. As Inquiry Officer, I must inquire into and opine on whether the intended expropriation is fair, sound and reasonably necessary in the achievement of the Objectives as identified by the expropriating authority – in this case, The City.<sup>1</sup>
9. In exercising the jurisdiction granted to Inquiry Officers by the Legislature under the *Expropriation Act*, it was not disputed by any party that I have general control over the Inquiry procedure; may swear witnesses; and am not bound by the rules of evidence, though I may prescribe to and administer the rules and common law principles regarding evidence, in service of my role and within my jurisdiction over the Inquiry proceeding.<sup>2</sup>
10. Also in service of my role and within my jurisdiction as Inquiry officer, I required both The City, as expropriating authority, and the Owners or the Owners' chosen representatives, as objectors, to attend in person or virtually a publicly accessible Inquiry hearing, held over three days, being July 17, 18 and 19, 2023. In advance of the Inquiry hearing, I received written materials including representations (argument), authorities, and documents produced to me by the parties through their counsel. At the Inquiry hearing itself, I provided each party reasonable opportunity to present evidence in direct and to conduct cross examination.<sup>3</sup> Where necessary, I ruled on objections.
11. In addition to the written and oral arguments advanced by The City and the Owners for and at the Inquiry hearing, I received oral and brief written submissions and issued an interim direction about the scope of information and record disclosure to be provided by The City ("**Interim Direction**"), with respect to which I reserved the right to provide supplemental reasons for my decision. A copy of that Interim Direction is incorporated at Appendix "A" to this Report and supplemental reasons for granting it are included in the section of this Report entitled "Opinion on the Merits".

## II. SUMMARY OF EVIDENCE

12. Both The City and the Owner tendered lay witness evidence only. No party called or proposed to have qualified any written expert opinions or live (*viva voce*) evidence from a witness tendered and qualified as an expert opinion witness.
13. The City identified its sole witness as a transportation engineer, Mr. Evan Kortje.
14. The Owners called the following five witnesses, each being an objecting Owner:
  - a. Patrick Lindsay;
  - b. Gordon Holden;
  - c. Timothy Thomspen;

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<sup>1</sup> [Expropriation Act](#), RSA 2000 c E-13 [*"Expropriation Act"*], s 15(8).

<sup>2</sup> [Expropriation Act](#), s 15(9)(e), (g), (i).

<sup>3</sup> [Expropriation Act](#), s 15(9)(a), (c.)

- d. Joel Gauchier; and
- e. Kuldip Sandhu.

## A. Evidence of the Expropriating Authority, the City of Calgary

- 15. The City's record disclosure included, without limitation, planning records and reports, including The City's RouteAhead 30-year strategic plan with respect to transit, maps, presentations, correspondence including with the Owners or any one or more of them, the NOITEs and Objections, and documents respecting the qualifications and intended scope of evidence of The City's one witness, Mr. Evan Kortje. Mr. Kortje is a professional engineer (P.Eng) and Project Manager (PMP) who is employed by the City as a Senior Transportation Engineer.

### i. Evan Miles Kortje – Examination in Chief

- 16. Mr. Kortje testified that his highest formal educational achievement was a bachelor of science in civil engineering from the University of Calgary, which he obtained in 2010. He is a registered and practicing member of APEGA and received his Professional Engineering designation in 2014.
- 17. Mr. Kortje has been employed by the City of Calgary for just over 13 years. His current role is Senior Transportation Engineer, which he has held since 2018. He currently works as a Program Manager on Calgary Transit's new bus electrification project within the Transit System Group of the Major Mobility Division of the Public Space Delivery department at The City. Prior to that role, and over the past nine years, Mr. Kortje worked on the Green Line project.
- 18. His duties and responsibilities on the Green Line project were numerous. He began as Technical Lead for investigations on the southeast alignment. In 2016, he became planning lead for southeast Green Line and from 2018 through 2019-2020 he was a lead for developing the technical specifications and reference concept design for the Green Line southeast, including LRT right-of-way station area structures. Mr. Kortje took on lead or similar management of the technical requirements for the LRT right-of-way stationary areas and corridor infrastructures for all of Phase 1, including the downtown southeast alignment once the procurement became Phase 1 and 2.
- 19. Mr. Kortje testified in direct that the Green Line long term version is from 168<sup>th</sup> Avenue in the north down Harvest Hills, Centre Street through the downtown core and then through southeast Calgary to Seton. Stage 1 is from 16<sup>th</sup> Avenue north down Centre Street, crossing the Bow River through the downtown core, then through southeast Calgary to Shepard, about 126 Avenue. Stage 1 is broken into two phases, with Phase 1 being from the Bow River / Eau Claire Market area through the downtown core, then through southeast Calgary to Shepard, and Phase 2 running north across the Bow River along Centre Street to 16<sup>th</sup> Avenue North station.

20. Mr. Kortje reported that Calgary City Council has approved Stage 1 of the Green Line at an approximate cost of \$4.9 billion. It is to be funded by all three levels of government (municipal, provincial, federal).
21. The current version of Green Line alignment was approved by Council in June 2020; the drawings associated with it indicate segments as opposed to a phase-based progression. Mr. Kortje testified in direct that before the current staged approach within Phase 1, the Green Line had been planned on a segment-based progression. Phase 1 as presently planned is to end in the south at Shepard and in the north at 2<sup>nd</sup> Avenue Station. Phase 2 is to run between 89<sup>th</sup> and 16<sup>th</sup> Avenue Station.
22. Mr. Kortje stated that the alignment changed over time for the Beltline downtown portion of Green Line. From 2016 through 2020, multiple evaluations took place with consideration of both 10<sup>th</sup> and 11<sup>th</sup> Avenues versus 12<sup>th</sup> Avenue alignments. In addition, 2<sup>nd</sup> Street considerations included the depth of the planned tunnel and station locations and the crossing of the Bow River, i.e., by tunnel or by bridge.
23. Originally, the reference concept design had the Green Line crossing under the Bow River, by tunnel, with 2<sup>nd</sup> Avenue Station in the 2<sup>nd</sup> Street right-of-way. Reevaluation occurred due to affordability concerns as well as the ease of use for future transit users. The 2020 alignment has the Green Line crossing the Bow River by bridge and shifting 2<sup>nd</sup> Avenue station to shallower than planned in the 2017 alignment.
24. In addition, that station is no longer in the right-of-way. Mr. Kortje explained that when the plan was for a station at greater depth, there was stacking of infrastructure and the ability to minimize the footprint of the station. Adopting a shallower station plan meant expanding the footprint, allowing for all ancillary rooms and support for the tunnel and station infrastructure, as well as addressing conflicts between a shallower station and utilities running along the 2<sup>nd</sup> Street corridor.
25. Mr. Kortje testified in direct that there is also a need to find room for the station heads at the 2<sup>nd</sup> Avenue station, which in the 2020 alignment were planned to be integrated with the property on the west side of 2<sup>nd</sup> Street. He identified a need to maintain appropriate grades for the future crossing of the Bow River to achieve appropriate heights, in terms of the slope or grade, both in regard to flood mitigation measures and maintaining appropriate operational elevations for light rail vehicles, as well as for the structure to meet up with Centre Street for future development.
26. Mr. Kortje acknowledged awareness of some public consultation with respect to the 2017 and later alignments of the Green Line, but had no personal involvement with any public engagement on behalf of The City. He believed that The City hosted open houses and that there was online ability to provide comments (particularly during the COVID-19 pandemic). Mr. Kortje was asked and agreed there had been opportunity for the public to provide input at Council meetings as well.
27. The final station on the Phase 1 portion of the Green Line development in the downtown core is 2<sup>nd</sup> Avenue Southwest station, which Mr. Kortje stated was designed to be

integrated on the Eau Claire Market lands. The witness identified on an aerial map that the River Run complex is north of the Eau Claire Market. Asked why the Lands at River Run are required in Phase 1 if the last station to be developed in that phase is 2<sup>nd</sup> Avenue Southwest station, Mr. Kortje said that the 2<sup>nd</sup> Avenue station extends north of the current market footprint and that the full station box for the station and planned tail tracks will take up a majority of the River Run property. He again mentioned “various rooms and ancillary rooms and supporting structure for the station and tunnel, including mechanical, electrical rooms, tunnel ventilation” and noted that the latter necessitates ventilation shafts coming to the surface, and testified that this infrastructure will “take up a majority of the River Run property” by the end of Phase 1.

28. Asked about the Lands from a longer term perspective, Mr. Kortje described their anticipated use in Phase 2 as including the tail track at the northern end of the station to support staging of trains for operations in Phase 1 and the need to modify that area for the train to return to surface. Mr. Kortje clarified that on the Lands, currently River Run, the Green Line will exit the tunnel by way of a portal that will then go onto a bridge and cross the Bow River.
29. Mr. Kortje acknowledged that the current reference concept design could yet be modified, but stated that there is a need, right after the 2<sup>nd</sup> Avenue station, for the track and grade to begin climbing so that the portal can be at a level to mitigate 100-year and 200-year flood events, as well as for the bridge structure. The River Run Lands, according to Mr. Kortje’s evidence and documents produced by The City, will be required for trenching the portal to transition the Green Line from tunnel to bridge and river crossing. However, there is no present confirmation of when any Phase 2 construction might begin.
30. For Phase 1, Mr. Kortje testified that the majority of the River Run Lands are planned to be used for the station box for 2<sup>nd</sup> Avenue station (which station box Mr. Kortje noted is to be at or slightly above current grades), as well as for servicing ancillary rooms for the station and tunnel to allow for operations at the end of Phase 1. In addition to the intended use of the Lands for the station box and portal, Mr. Kortje testified to The City’s assumption that the Lands would be the site of an open excavation to construct the station and tail track.
31. Mr. Kortje testified that at all end stations along the LRT alignment, The City usually (but not always?) provides an additional length of track to allow for storage and queuing of trains, which helps support operations including launching services and meeting run times for service. Mr. Kortje indicated tail tracks are necessary as part of Phase 1 because 2<sup>nd</sup> Avenue may end up being the end of Phase 1, i.e., an end (terminus) station. Mr. Kortje also reviewed site plans depicting two station heads at grade, where passengers can enter and exit (access, egress) the 2<sup>nd</sup> Avenue station, one at each end of the station box.
32. Further in direct, Mr. Kortje testified that the reference concept design includes a planned expansion of the station. He noted that the plan currently is for the station to be built to accommodate the future platform extension, when ridership increased and necessitated an expansion of the platform for another light rail vehicle to be added.

33. Asked whether it would be possible to shift all the infrastructure and tail track construction back far enough that use of the Lands at River Run would not be required, Mr. Kortje said he didn't believe so. In other words, part of Phase 1, per the reference concept design, involves utilization of the Lands as a future potential expansion area. In addition, Mr. Kortje noted that it would not be possible to avoid the River Run Lands and have the train come to surface and elevated before crossing the Bow River. The Lands, according to Mr. Kortje, are needed for grading, stairs, pathways in terms of the temporary plaza area that would be built at the end of Phase 1 to get individuals into the station.
34. Mr. Kortje described the 2<sup>nd</sup> Avenue station construction as an "open cut station", and explained this to mean excavating from surface level down to the depth of the station then covering the station back up after the fact (i.e., open excavation). Mr. Kortje testified that even where a tunnel boring machine is planned to be used for tunneling, all station boxes on the Green Line are planned to be open cut design. Even where the tunnel boring machine passes through a station, the walls will have to be open cut to construct the station box.
35. Asked when construction is anticipated (not scheduled) to begin, Mr. Kortje testified that a Request for Proposals (RFP) process was conducted to bring on a design builder for the Green Line project in 2022. The delivery strategy for the project is design-build finance model and a delivery partner has now been selected from the RFP process. The delivery approach, however, has changed to more of a modified design build process with a beta development phase; this is the current stage of the project.
36. Mr. Kortje testified that there is a process of approximately 16 months in which The City will be reviewing its reference concept design and progressing it to approximately a 50% level so as to develop a fuller cost estimate, review risks, determine how those risks will be managed throughout the project, and develop a schedule. This 16-month process will take the Green Line project to mid-2024. At the end of that development phase, assuming the project comes to agreement on cost and schedule, the project team would enter execution phase, and into construction.
37. According to Mr. Kortje, if or when the Green Line project transitions from Phase 1 to Phase 2, the tail tracks at 2<sup>nd</sup> Avenue station will no longer be needed; the Lands will be torn up again at that time, for future expansion.
38. For the past few years, enabling works projects have been underway for the Green Line; all of these projects have been along Phase 1, involving efforts to manage and mitigate some risk for the main contract. The enabling work includes utility relocations, work with heavy rail partners, removing waste from abandoned or closed landfills. These works are ongoing. In the downtown area, the primary enablings works are utility relocations, including along 2<sup>nd</sup> Street.
39. Mr. Kortje testified in direct that The City considered various alignments that potentially replaced the 2017 Council approval. Variations included full LRT, building out for Stage 1, whether alignment would run along 1<sup>st</sup> Street or 2<sup>nd</sup> Street, and whether the tunnel below the Bow River or bridge over it would be pursued. Considerations included cost,

transportation network impacts, risks, and land availability. Ultimately, the risks and unknowns associated with 1<sup>st</sup> Street over 2<sup>nd</sup> Street were unacceptable. In each analysis, 2<sup>nd</sup> Street came out as the preferred option.

40. Asked whether a shift of 2<sup>nd</sup> Avenue station to the East (i.e., the opposite side of the street) was not considered due to impact to existing high-rise condominium buildings. Mr. Kortje estimated two or three towers that may have been affected if the shift was considered.

## ii. Evan Kortje – Cross Examination

41. The Owners' counsel had Mr. Kortje confirm the current staging of the Green Line project and further clarify the funding that has been committed. Mr. Kortje, on cross examination, confirmed that the \$4.9 billion of funding is for Phase 1 and Phase 2, and that the selected design and execution with the RFP partner is only for Phase 1. Mr. Kortje clarified that for The City to go out to Phase 2 would require another approval and depends on alignment on both costs and schedule for Phase 1.
42. Mr. Kortje further clarified, upon request, that he had been a senior project engineer with the Green Line project from 2018 to 2023, having only recently switched to his new position. He further clarified that in his role as senior project engineer with the Green Line, Mr. Kortje was involved with the technical design of both the stations and the Green Line itself; he was the lead for the civil works and corridor infrastructure, including looking at station area as in the public realm around station areas.
43. Mr. Kortje was not involved in strategic meetings for planning the Green Line where decisions were made about the route, other than Segment 1 (Ramsay Inglewood to Shepard) in 2019-2021. He first got involved looking at the full Phase 1 until after those decisions had been made. That said, he has been involved in the required property acquisition and in providing technical support to The City's real estate team for the downtown portion of Phase 1 since Fall 2021.
44. In reviewing a September 23, 2022 report prepared by Hatch for The City,<sup>4</sup> Mr. Kortje confirmed that the the proposed stations at 7<sup>th</sup> Avenue SW, Centre Street and 4<sup>th</sup> Street SE are all centre-loading platforms, at which the tracks are on the outside of the 8.4 metre wide, 130 metre long platform, accommodating a three-car Light Rail Vehicle ("LRV") train with a 5-metre buffer at each end. He confirmed that these dimensions represent the planning for the future expansion and build out of stations when a three-car train, based on the current LRVs being procured for Green Line project. On cross examination, Mr. Kortje clarified that all stations are being planned for a future expansion, when ridership requires the expansion of the platform to 130 metres in length so as to accommodate another train car at said stations.
45. Mr. Kortje went on to confirm that the 2<sup>nd</sup> Avenue SW station design currently is for that station to have side loading platforms, which are 4.5 metres wide, for a total of 9 metres versus 8 metres for centre loading. He indicated this is based on a need for side loading

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<sup>4</sup> City Document Tab 13.

versus centre loading because of the track width needed for circulation of transit customers and future integration with the station – meaning something developed on top of the station at a future date and the structural requirements for such development. On further examination, Mr. Kortje admitted he was not particularly familiar with all of the rationale behind the side loading, but his review suggested the need for future structural loading would in turn necessitate appropriate piers and columns.

46. Mr. Kortje conceded that because the 7<sup>th</sup> Avenue, Centre Street and 4<sup>th</sup> Street SE stations are all within the road right-of-way, they wouldn't necessarily have the same future structural loading and other requirements as the proposed 2<sup>nd</sup> Street station that is planned to be integrated in future developments.
47. Mr. Kortje was referred to plans dated September 7, 2022, Version C, and incorporated into a Hatch report labelled Green Line LRT Stage 1, Downtown Segment,<sup>5</sup> which Mr. Kortje acknowledged was first issued in April 2022. He confirmed that Hatch was "The City's owners' engineer", meaning the engineer hired by The City's to develop the reference concept design and technical specifications for the Green Line. Mr. Kortje further confirmed that The City would have provided Hatch with information about building footprints or foundations and property line boundaries for various properties along 2<sup>nd</sup> Street, including information on two proposed "Eau Claire towers 4 and 5". Mr. Kortje indicated that Hatch would have been involved with The City and owners of the Eau Claire Market in discussions about these proposed towers, as well as a proposed parking lot and proposed Eau Claire Towers 1, 2 and 3, and the potential for such proposed "integration".
48. Mr. Kortje testified that the proposed platform expansion is not part of the scope for Phase 1 of the Green Line. However, he conceded that all but the 2<sup>nd</sup> Street station have been designed with the full 130 metre length based on the Hatch reference concept design. Although there would be no requirement for trains to have the full platform extension or length at this stage, Mr. Kortje could not confirm or deny whether the full length of 130 metres for the stations other than 2<sup>nd</sup> Avenue station would be built now or later; nothing on the Hatch drawings indicates they are not to be built at the full 130 metre length in first instance.
49. Mr. Kortje maintained that a minimum of 90 metres in length was required for the 2<sup>nd</sup> Avenue station platform, and that each train car is roughly 40 metres in length. He added that there needs to be a "buffer zone" of approximately 10 metres between live operations and tail track area, plus another 10 metres at the end of the tail tracks, for a total of 200 metres or so. Mr. Kortje did not know the frontage of the Eau Claire Market property adjacent to 2<sup>nd</sup> Street SW. Upon being presented with an aerial image from Google Earth, however, he agreed that the frontage appears to be about 200 metres, i.e., the same length as is being proposed for the 2<sup>nd</sup> Street station platform and tail track.
50. The Owners questioned Mr. Kortje about a document dated April 24, 2015 and entitled "North Central LRT Corridor Study"<sup>6</sup> and Mr. Kortje acknowledged that, in that document,

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<sup>5</sup> Owners' Document Tab 38.

<sup>6</sup> Owners' Document Tab 5.

the LRT alignment did not intersect or run through the River Run Lands, but rather proceeded to the east of the Lands. Mr. Kortje was shown a 2015 diagram of the preliminary Green Line alignment in the south coming north up 2<sup>nd</sup> Street SW downtown, to the 2<sup>nd</sup> Avenue SW station and confirmed that the diagram considered a few routes for crossing the Bow River, including Centre Street and Edmonton Trail. He also agreed the diagram had some geology considerations noted in the downtown, including an area labelled “channel of unique geology” that does not extend to the proposed 2<sup>nd</sup> Avenue SW station or to the River Run site.

51. Mr. Kortje was unable to confirm whether The City had sold the Eau Claire Market site to Harvard Developments in 2014, and did not accept or refute a representation by counsel for the River Run Owners that this information can be found on the Harvard Developments website.<sup>7</sup> Mr. Kortje had no knowledge when River Run was constructed, nor when the waterfront towers he referenced in his evidence in direct were constructed.
52. When presented with a September 30, 2017 technical report from the City prepared by Hatch and Stantec, Mr. Kortje acknowledged the report was commissioned by the City to assess alignment options and identify the most cost-effective alignment through the Beltline. He acknowledged The City’s concerns at that time about risks including high costs to acquire lands for the Green Line. Further, the witness confirmed that the report identified the proposed 2<sup>nd</sup> Avenue SW station as being 130 metres long, with 4.5 metre side loading platforms, same as today. Mr. Kortje further confirmed that The City’s real estate group, working with The City’s consultants, had identified by September 2019 that if the Green Line was built on the 2<sup>nd</sup> Street SW alignment with a bridge option, a full acquisition of the River Run complex would be required. Mr. Kortje further conceded that this report also identified for The City a key risk of significant property acquisition in Eau Claire if this alignment was pursued.
53. Mr. Kortje further confirmed on cross examination that The City had a Green Line Committee, which was a Committee of Calgary City Council, which was aware by January 2020 that the entire River Run complex would need to be acquired for the Green Line project. The witness further admitted he had no direct knowledge of strategy or decision making within the real estate team or otherwise at The City with respect to what was, or was to be, communicated to owners at River Run about the need for the City to acquire their lands in 2020, even when no other alignment than one which required River Run was under consideration.
54. Similarly, Mr. Kortje was not able to speak first hand or with direct knowledge about what was meant by real estate group employees of The City communicating the desire not “to repeat the same mistakes”. Mr. Kortje also had no knowledge of the internal communications within The City’s real estate group in February 2020 where they discussed the need to acquire the River Run complex if Council approved the updated Green Line

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<sup>7</sup> The information I obtained from the [Harvard Developments website](#) suggests a purchase of the Eau Claire Market site in 2004. The reference to 2014 was documented in a draft (real time, not certified) transcript of the Inquiry hearing and is likely a typographical or other human error).

alignment. It was also acknowledged that no City witnesses from with knowledge of the real estate group were produced in this Inquiry.

55. Asked why The City saw itself as unable or unwilling to move the alignment more into the 2<sup>nd</sup> Street SW, Mr. Kortje initially testified that there were a number of issues within the 2<sup>nd</sup> Street alignment, including potential utility costs, impact to overall road network, and that the 2<sup>nd</sup> Street right-of-way or corridor would not be able to fit the infrastructure required for the station area and tunnel, as well as the ancillary service rooms. He then confirmed that the current configuration is platform, tail track, rooms, but not that there are rooms anticipate both at the north and south ends of the station.
56. Asked if it is a requirement that the rooms be located at the north end of the station, or whether they could also be located at the east, west or south ends, Mr. Kortje testified that there is "likely ability for some to be shifted or moved" but opined that "some in relation to the tunnel ventilation likely need to be located at the north end." To make those changes, Mr. Kortje testified the shift would have to be able to work within the available planned envelope. Asked what that meant, he testified that the "available land envelope" means "lands that have been secured for the project." Asked if the only lands currently owned by The City are those in the 2<sup>nd</sup> Street road right-of-way, Mr. Kortje clarified that he meant both City-owned land, and "any of land negotiations or land acquisition that has already taken place". Further asked to clarify, he claimed a lack of familiarity with a zoning application, and conceded his understanding that "the land agreement has been reached on the Harvard site."
57. Asked if that land agreement was for the Green Line as well as the integration of the Green Line into the Harvard redevelopment, Mr. Kortje confirmed it was. Asked if that agreement is what is now limiting where additional parts of the station can go, Mr. Kortje conceded "I guess it was taken into... consideration as the design was developed." However, when asked for further details such as whether, while Harvard and the City were negotiating for a portion of the Harvard site, what happened was a great deal of the technical components for the station got planned for the River Run site, Mr. Kortje claimed he could not say for certain about the rationale of the negotiations of service and ancillary rooms, but one certainty is that the land constraints are one matter dictating where The City has planned to place mechanical rooms at the 2<sup>nd</sup> Avenue station.
58. Mr. Kortje was asked about May 2020 presentation materials from The City that showed the Green Line station located fully in the Eau Claire site, across the riverfront Mews street, and integrated with the Harvard redevelopment, with the LRT exiting via a portal. The witness confirmed that these architectural renderings had the riverfront complex completely demolished, showing the River Run site integrated into the remainder of Eau Claire Promenade lands owned by the City; Mr. Kortje agreed the drawing showed no property lines at all.
59. Mr. Kortje further testified that as of May 2020, The City was prepared to proceed with station heads on the Eau Claire Market site, regardless of whether Harvard Developments had approval for its future development or integration on the site, noting that he was not aware whether the Harvard infrastructure was to be in-line with the City's Phase 1

development or in the future. To his knowledge, the timing of Harvard's development of the site relative to timing of the Green Line did not matter.

60. Mr. Kortje was asked to review Calgary City Council minutes and in doing so confirmed that in June 2020, Council directed City administration to advance enabling works, including demolition of existing buildings, and also to proceed with the real property transactions based on the updated Stage 1 alignment, which included transactions for real property with respect to the 2<sup>nd</sup> Avenue station. Mr. Kortje was asked about the procedures that were approved, and noted that they were marked confidential. The City objected to production; Owners' counsel acknowledged same and move on. I was not provided with the procedures and Mr. Kortje gave no evidence with respect to them in the result.
61. Mr. Kortje confirmed City records indicating REDS (real estate group) intended to approach the Green Line Board for approval to seek Council approval to expropriate River Run in January 2022. Mr. Kortje confirmed his understanding that it would be staff who made a recommendation to the Green Line Board for approval, and then make a recommendation to Council to expropriate. Asked if, alternatively, a councillor could initiate the process on their own, Mr. Kortje said he believes it is just raised through administration to Council in terms of recommendations, but he could not say for certain.
62. When asked about a practice or policy within City administration or the real estate group whereby The City does not compensate owners at the front end of negotiations with landowners because The City thinks that the owners will use that money to take positions adverse to The City, as set out in internal emails among employees of The City that were produced in this Inquiry, Mr. Kortje said he was unfamiliar with the policy. In another email, Mr. Kortje acknowledged a City employee telling another that owners' requests for recovery of their reasonable and other legal costs during negotiations is a tactic.
63. Although he was not involved, Mr. Kortje also acknowledged emails suggesting the CEO of the Green Line, Darshpreet Bhatti, had directed by October 22, 2021 that unless there was some movement from River Run owners, The City would start formal expropriation of the River Run complex. Similarly, Mr. Kortje could not speak to but acknowledged an email in which a member of The City's real estate group wrote that the Board was "very supportive and agreed with having a later initiation of the expropriation date for River Run so that it aligns with Harvard", where Mr. Kortje conceded that Harvard was Harvard Developments and the Board referenced was the Green Line Board.
64. Reviewing alignment records, Mr. Kortje was asked if The City had any concerns with the 2<sup>nd</sup> Avenue SW station encroaching into the 2<sup>nd</sup> Street right-of-way. He confirmed that the tunnel is completely running in the 2<sup>nd</sup> Street right-of-way south of 2<sup>nd</sup> Avenue (i.e., no concerns).
65. Mr. Kortje further confirmed that the north station head entrance for the planned 2<sup>nd</sup> Avenue station is not, in fact, on the River Run site; rather, it is on the Eau Claire redevelopment site. Asked what high rise towers The City is or would be attempting to avoid if it shifted the station further south to avoid some high-rise towers, Mr. Kortje indicated it was the south-west corner of 2<sup>nd</sup> street and 2<sup>nd</sup> avenue.

66. Finally, Mr. Kortje testified that if a landowner was open to discussing the location of a station head, and the need for access to the underground platform, and the ability to locate a station within lands outside the road right-of-way, a “perfect solution” could be had.
67. The City did not engage in any redirect of Mr. Kortje.

## B. Evidence of the objecting Owners

68. The Owners produced records that included, without limitation, items from The City’s disclosure in this expropriation proceeding that The City did not include in the records relied upon by The City directly, correspondence from and with the Owners.
69. In addition to their documentary evidence, the Owners called five individual owners on behalf of the objecting Owners of the Lands: Patrick Lindsay, Timothy Thompson, Gordon Holden, Joel Gauchier and Kuldip Sandhu.

### i. Oral testimony of Patrick Lindsay

70. In his direct evidence, Mr. Lindsay testified that he and his wife, Jane Lindsay, and their youngest child, as well as their two senior pets live have lived at River Run since June 2017. Mr. Lindsay works as a tax lawyer with a LLM in tax law as his highest level of formal education. Mr. Lindsay has been keeping up to date on the Green Line on behalf of the River Run Board of Directors for several years. I have included *verbatim* below the timeline set out by Mr. Lindsay, with gratitude to the witness for preparing and sharing same with counsel and the Inquiry Officer.

#### Timeline

5. On August 6, 2019, the City sent River Run families an invitation for a 'Green Line update' scheduled for August 14, 2019.
6. The City also taped invitations to our mailboxes and all River Run families received an email from our condominium manager with a copy of the City's invite.
7. On the afternoon of August 14, 2019, many River Run families went to the meeting set up by the City. It was in a boardroom a block from City Hall. Graham Gherlo from the City Green Line team presented for about 20-30 minutes. A few of us eventually spoke up to say that he was not providing any new information regarding the Green Line. He was only repeating information that was already publicly available.
  - a. There was an awkward pause and then Graham introduced Jessica Cullen, a land agent from the City.
  - b. Emily, owner of unit 28 and who grew up at River Run, immediately burst into tears and started saying that there was bare land across the street from River Run for years. It took

me a moment to understand what Emily was saying. Her point was that, in her view, it seemed that the City had a choice whether to build a train on the bare land that had been beside her childhood home for many, many years or, instead, run a train through her home.

- c. The City surprised us all by introducing the concept that our homes may be destroyed without, in my view, providing us with any meaningful detail. The surprise introduction of a land agent left me with fear and uncertainty regarding the City's plans for my property.
- 8. The City introducing the idea that our homes may be destroyed has made it difficult, since August 2019, to plan maintenance and upgrades to individual units and the complex as a whole. Basic questions regarding repairs or upgrades are difficult to make when there is uncertainty regarding whether our homes will continue to exist.
  - 9. All River Run families received a letter, dated February 18, 2020, in which the City identified that our homes "*may be impacted*" by the Green Line.
  - 10. On February 19, 2020, the River Run board of directors met to discuss the City letters. In the absence of any meaningful information from the City regarding what "*may be impacted*" meant, the Board decided to hold a town hall with all owners to discuss the issue. I was one of the board members and I thought a town hall may reduce some of the stress and anxiety caused by the seriousness, but lack of information, in the City letters.
  - 11. On February 27, 2020, the River Run Board hosted a town hall for owners to discuss the situation and potential next steps in light of the uncertainty caused by the City. There was at least 20 of us in Gordon and Nikki's house discussing the situation and getting input from people with some expropriation experience.. I left that meeting understanding that I should expect a few things from this process:
    - a. the City will provide us as little information as it can;
    - b. the City will use its position of power to try to pay as little for our homes as it can; and
    - c. the City will avoid using the word "expropriation" as long as it possibly can to avoid triggering any of the rights that exist for citizens, under the provincial *Expropriation Act*.
  - 12. On March 4, 2020, the City held an open house and had on display pictures of the Green Line train running over about one third of the

River Run land on the east side. We endured the 'gut punch' feeling of learning that the City is planning to run a train through our homes, at a public open house.

13. Whether the City plans to run a train through our homes is obviously important information for River Run families to be able to plan our lives.
14. The City would have been aware of its plan to run a train over our property well before this open house, perhaps at the time of the August 2019 meeting or earlier..
15. Despite this information being so important to River Run families, the City \_kept this information from us as long as it possibly could.
16. Prior to March 4, 2020, we were concerned that the City might destroy our homes, now it appeared certain that the City will destroy our homes, if Council approved the new alignment for the Green Line.
17. On March 19, 2020, Jane and I sent several questions to the Jessica Cullen at the City and she responded in writing, on April 3, 2020. [DOCUMENT.]

a. First question:

- *Is the decision whether to proceed to expropriate us subject to some kind of funding or other conditions, or just the Council vote?*

*It is The City's intention to acquire all properties required for Green Line construction through negotiated agreements. The decision to move forward with land negotiations is subject to Council approval of the updated Stage 1 alignment.*

*There is currently no approval in place to initiate expropriation proceedings to acquire any of the required properties located in Segment 2 of the Green Line (16 AV - Inglewood/Ramsay), including the River Run development.*

*The funding to purchase properties for the Green Line is currently in place.*

I understood this answer to mean that, if Council approved the new Green Line alignment, our homes would be destroyed.

b. Second question:

- *Does the City intend to expropriate all of our River Run property or just part?*

*As mentioned above, The City does not have Council approval to initiate expropriation proceedings to acquire the River Run properties. If the updated alignment is approved by Council, it is The City's intention to begin negotiations to acquire all 23 units within the River Run development.*

*The design of the bridge landing and adjacent LRT station is underway, and the full extent of the land impacts are not fully understood. There has not been a solution identified to maintain access to the River Run development, and it is likely that the impacts to the River Run development will become more substantial as the station and bridge design advances. In addition, the land encompassed by the River Run development is anticipated to be needed for staging throughout the duration of construction.*

c. From my perspective, this was very vague description that left me wondering whether the City really needed to destroy my home for the Green Line or if, instead, the City just wanted our land in connection with Harvard's redevelopment immediately south of us.

d. Moving to the bottom of page 2:

*Will the City cover our appraisal and legal costs even if we do not reach a negotiated agreement?*

*The City's process for acquiring property through negotiated transactions, allows for reimbursement of appraisal and legal costs, only upon closing of a transaction. As mentioned above, as part of the negotiations, The City will pay for an appraisal to be completed by a third-party appraiser and will provide the owner with a copy of the appraisal.*

e. I understood the City's response to be a clear "no". The City will not cover our costs for independent advice if an agreement is not reached. From my perspective, the City's refusal to commit to reimbursing our cost of independent advice was a huge red flag. Independent advice is such a hallmark of a fair process, especially when there is such an extreme power imbalance.

18. [DOCUMENT.] On May 19, 2020, Ward 7 Councillor, Druh Farell, published a Green Line update on the City website that expressly identified that the City intended to either purchase or expropriate River Run. On page 3, midway into the first paragraph under the heading "The Eau Claire/Chinatown area was redesigned" it reads:

The station and the portal are now both located fully in the Eau Claire community on the site of the Eau Claire Market. The Market is scheduled for redevelopment anyway. The project team worked hard with the Market owners to design a station that works for the Green Line and supports future redevelopment of the site. This change encases the station within the redeveloped Eau Claire Market, leaves all cross avenues open, and opens up more opportunities for a better 2 St SW for both adjacent communities. This station, in general, is also key to finally pushing the redevelopment of the Market forward and helping Eau Claire reach the residential density it needs to become a complete community.

One unfortunate element of this alignment is that it still requires the purchase or expropriation of the River Run condominiums that sit along the Bow River Pathway. I really struggled with how these residents would be forced to move for the project...

I am also reminded of when the Red Line was originally built through Sunnyside. It meant homes needed to be demolished and that too was a shame.

**How does the Green Line interact with the Bow River Pathway?**

The Bow River Pathway is one of Calgary's busiest places for recreation and transportation. A pre-requisite for me on any Green Line alignment is that it maintains or improves this key amenity. The revised alignment will still affect the existing pathway. However, the pathway is being rebuilt anyway as part of a flood mitigation and pathway improvement project. This gives us the opportunity to align that project with Green Line and improve the area. The project team provided additional details on how Green Line and a rebuilt Bow River Pathway can co-exist. I am satisfied with their commitments and that this intersection of pathway and LRT can be done well. With the loss of River Run, we also have the opportunity to provide more public

and park space at this narrow pinch point in the pathway system.

19. I understood this publication by our Councillor to mean that our homes would be destroyed, if Council approves the new alignment, especially with our Councillor using words like "demolished".
20. Our Councillor's narrative for why our homes would be destroyed was because our property was central to many City projects: Riverwalk, Promenade, Flood Barrier, Green. Line. It also appeared that part of our property would be turned into a public park, right in between the waterfront and Harvard's planned multi-tower development.
21. On June 16, 2020, City Council approved segment 1 of the Green Line. With this approval, it appeared certain that our homes would eventually be destroyed.
22. On June 22, 2020, the Board had a video call with the City (Graham Gherlo and Jessica Cullen) where:
  - a. the City identified that the River Run land would be needed for construction in mid to late 2022; and
  - b. the Board requested that the City commit to reimburse owners for the cost to be reasonably informed of their rights and value, prior to acquisition discussions.
23. On June 23, 2020i the Board held a townhall in the River Run courtyard for all owners to have the opportunity to be provided an update regarding discussions with the City. The main questions owners raised related to the process, timing, and whether we would be able to get compensation that would permit us to acquire replacement homes where our quality of life would not be reduced.
24. On July 6, 2020, the Board provided owners with an opportunity to jointly engage one law firm in order to have common representation in this difficult situation. At the same time, the Board shared a draft Owners Agreement which would allow all participating owners an opportunity to work together, share information, and communicate with counsel efficiently through the Owners Committee, which would consist of three owners: Tom McWilliams, Joel Gaucher and I.
25. On July 21, 2020, Jessica Cullen sent an email to the Board that identified:
  - a. the City will require vacant possession of all River Run homes;

- b. the City would soon be reaching out to individual owners to start obtaining individual appraisals as part of the acquisition discussions; and
  - c. the City would have an appraisal of River Run prepared based on the highest and best use of the River Run land.
- 26. Also on July 21, 2020, the Board had another discussion with the City, specifically Graham Gherlo and Jessica Cullen. The City confirmed that it will require our property and the City expressly declined to commit to reimbursing our cost to have professional advice. I pointed out my view that such decision was unfair for reasons including:
  - a. the City was using taxpayer funds to ensure that the City has all the advice it needs; and
  - b. because of the enormous power imbalance between the City and the families of River Run.

Jessica said she understood our position but confirmed that it was the City's position that the City would not commit to reimburse our cost to have independent advice. If we wanted independent advice, we would have to incur that cost ourselves and bare the risk that such cost would never be reimbursed.

- 27. On September 2, 2020, the Board, had a video call with Jessica Cullen where she identified that:
  - a. the City identified that it will require vacant possession of the River Run homes as early as June 2022, but that date may be pushed back into later 2022;
  - b. about a year prior to the City requiring vacant possession of our land, the City will need to initiate the more formal expropriation process and, as such, owners have from now until mid to late 2021 to try to negotiate an agreement with the City if they choose to do so prior to a formal expropriation;
  - c. the City maintained its position that it would not commit to covering any costs associated with the acquisition discussions; and
  - d. the City advised that they had engaged an appraiser to prepare a report regarding the highest and best use of the River Run property.
- 28. [DOCUMENT.] By September 2020 owners of 22 of the 23 units engaged one counsel. On September 30, 2020, counsel to the

River Run families wrote to the City to identify items including:

- a. River Run families understand that the City intends to acquire all of the River Run homes by virtue of an involuntary transaction under the threat of expropriation or, if necessary, by expropriation;
- b. as such, owners are entitled to certain expropriation rights;
- c. owners are prepared to have acquisition discussions with the City if the City recognizes the owners' rights under expropriation principles; and
- d. owners have organized to have one point of contact which should reduce costs and provide some efficiencies as we work through this situation caused by the City.

29. [DOCUMENT.] A couple weeks later, on October 19, 2020, Jessica Cullen wrote to the Board by email to request individual email addresses for all owners. I was surprised and confused as to why the City's land agent is now looking for individual emails after the letter from our counsel directing communications to be through counsel. The email states:

*{In Archive} RE: [EXI'] Any update on timing of appraisal and next steps?Cullen,*

*Jessica*

*to: Tom M, Patrick Lindsay, Joe!Gaucher 10/19/2020 03:52  
PMI'his message may be*

*forwarded to Google recipient(s)*

*From: "Cullen, Jessica" <Jessica.Cullen@calgary.ca>*

*To: "Tom M" <ml55t@protonmail.com>, Patrick  
Lindsay/PwC Law/CAITLS/PwC@Americas-CA, "Joel  
Gaucher" <gaucherjoel@hotmail.com> Archive: This  
message is being viewed in an archive.*

*The City has recently been in contact with Cushman & Wakefield regarding the highest and best use analysis, and it is expected that the final report will be ready for distribution by the end of the month. In order to ensure that all unit owners receive a copy of the report at the same time, we would kindly ask that you (1) obtain the consent of each unit owner to provide, and (2) forward a corresponding list of current email addresses for each owner to facilitate this distribution.*

30. The stated reason for requesting everyone's personal emails was for the City to send out the Cushman & Wakefield appraisal, which seemed odd. The City already had the mailing address for all owners. It seemed like the City may be trying to circumvent our counsel to continue to pressure individual owners to negotiate directly with the City even though owners of 22 of 23 units had organized as a group to try to minimize the impact of the power imbalance between the

River Run families and the City.

31. [DOCUMENT.] On October 20, 2020, the City, specifically Steve Wheeler from the City's legal department, responded to counsel to River Run identifying that:
  - a. the City intends to acquire all of the River Run homes;
  - b. the City was obtaining a valuation from Cushman & Wakefield based on the highest and best use of River Run; and
  - c. the City is willing to have itself engage, instruct and pay a third party to prepare individual appraisals, but the City will not commit to reimbursing the cost of independent advice. I understood this to mean the City was maintaining the position that if River Run families wanted independent advice in this difficult situation, we would bare 100% of the risk of that expense never being reimbursed.
32. [DOCUMENT.] On October 22, 2020, counsel to River Run wrote to the City to identify items including:
  - a. what the City proposes with River Run owners is not a "voluntary transaction" and the compensation principles of the *Expropriation Act* are now engaged;
  - b. the law in Alberta expressly directs that: "[1]he role of government in an expropriation is not to obtain the land at the lowest possible price but to provide full compensation to a landowner";
  - c. the City's position that the City is not obligated to reimburse owners' costs is unreasonable and is not a position taken in good faith;
  - d. the City's approach is clearly designed to create inequality of bargaining power which offends the City's duty to deal with its citizens in good faith; and
  - e. the City is attempting to improperly circumvent its statutory obligations by pretending that this is a voluntary process.
33. [DOCUMENT.] On November 20, 2020, the City's legal counsel issued a letter stating that:
  - a. At the end of the first paragraph, the City writes: "we have no approvals to initiate expropriation proceedings relating to any of the River Run units. We also have no definitive timeline as to when, or even if, such approvals would ever be sought by Administration". I had understood that, after the June 2020 Council decision, it was certain that our homes would be destroyed. Now the City's legal department is telling us that

was uncertain whether our homes would be destroyed because the City does not know "when, or even if" the City would expropriate.

- b. The next paragraph states: *"As there is no actual or intended expropriation, the City is not required to, and will not, compensate the River Run unit owners as if their units were expropriated. If you continue to mischaracterize the transactions we are currently proposing as involuntary, or if either you or any of the River Run unit owners continue to insist on the inclusion of Expropriation Act damages or compensation in the absence of an actual or intended expropriation, then there is no point in continuing discussions or negotiations relating to the purchase and sale of the River Run units."*
- 34. At this point, the City was representing conflicting information to River Run families, in particular:
  - a. the City was messaging very clearly to us that the City absolutely needed our property as an integral part of a large redevelopment that involved the waterfront, the Riverwalk, the Promenade, the Green Line as well as the Harvard Developments collection of towers; and
  - b. at the same time, the City was representing to us that it was uncertain whether our homes were needed because the City was uncertain "when, or even if" the City expropriate our homes.
- 35. Although the City was reintroducing uncertainty regarding whether our homes would be destroyed, from my perspective it still seemed inevitable that our homes would be destroyed based on everything we had heard from the City prior to this letter.
- 36. At the end of the City's November 20, 2020 letter, at the bottom of page 2, it states: *"Further to earlier discussions between the City and the River Run Condominium Board, the City has retained an independent third party appraiser to complete an analysis on the highest and best use of the entire River Run property"* which was attached.
- 37. At this point, the City had really built up the importance of the Cushman & Wakefield "independent" appraisal regarding the highest and best use of our property. The City had been referring to this document repeatedly since July. It was so important the City land agent requested everyone's email address so she could ensure they had a copy of this document.
- 38. [DOCUMENT.] [Go to the City's draft appraisal.]
- 39. Although the City was holding this out as an independent appraisal,

from my perspective, this draft appraisal is not "independent". The expert who prepared this analysis was selected, hired, instructed, communicated with and paid by the City with no input from us. I agree that this is the analysis prepared by a third party, but it is not accurate to refer to this analysis is independent.

40. Another initial point is that there is a DRAFT watermark on the report, which made us question whether this document the City was holding out as very important, was reliable.
41. On page 1, the draft appraisal is indicated to be "as of" August 17, 2020. In my view, through this document, the City presented some incorrect information to us which made me question whether I can rely on the City as a reliable source of information.
42. I will take you to specific paragraphs where this document indicates that a tower cannot be constructed on our property for a couple reasons: (i) the shadowing restrictions or "right to light" limits the height of buildings close to the riverbank; and (ii) the proximity of our homes to the river. I'll read through some excerpts where this is set out.
  - a. [p23 para 2] *"Based on discussions with the Planning Department, a change in the land use is not a feasible scenario for the subject parcel due to various restrictions for the site including the proximity of the parcel to the Bow River and location within the Floodplain zone having a required setback of a minimum of 6m from the edge of the floodway and 60m from the Bow River. As groundwater can severely fluctuate at this property and the potential for flooding due to groundwater seepage in basements is likely, no new developments are allowed within the floodway."*
  - b. [p23 3<sup>rd</sup> para] The shadow bylaw is expressly referenced and the letter states: *"This bylaw is to maximize the amount of sunlight on public spaces therefore the building maximum building height allowable for the site will remain limited as it currently exists, and further limiting any increase in density from the 1.5 FAR allowable for the site."*
  - c. [p23 last sentence] *"As the floodplain, shadow protection and development height restrictions all serve to protect the safety and enjoyment of the public spaces to the north, a relaxing of these regulations is not feasible."*
  - d. [p27 4<sup>th</sup> para] *"The zoning in place supports the existing regulations including floodplain development boundaries and shadow protection from the Eau Claire Promenade including limiting building height for this site to allow for maximum unlight. Due to these restrictions supporting the*

*greater good for the public a zoning change which would increase densification is not feasible."*

- e. [p27 next paragraph, last sentence] "*...Redevelopment with an increased height allowance and density does not appear to be feasible due to the Floodway and shadow protection for the areas to the north and would not be physically possible to increase the density due to the size and shape of the site considering these bylaws.*"
- f. [pg 36- last sentence at the bottom] "*These restrictions on utility of the site include being within the floodplain and the maximum allowable height restrictions due to shadow protection for the Promenade bordering the site on the north side*".

- 43. This document represented to River Run families that the City's shadow restrictions rules preclude the construction of a tower on our property. This representation does not appear to be accurate for many reasons.
- 44. First, as we'll see when we get up to November 2023, when the City and Harvard are presenting their conceptual plans for the redevelopment of both the Eau Claire Market site and our property, the City has pictures prepared that indicate the right to light could accommodate what appears to be a 16 story tower on our property. [DOCUMENT.] [Go to picture.]
- 45. Second, every other parcel of downtown land in Calgary that is immediately across water south of Prince's Island has a tower on it and, generally, a terraced design is used to accommodate the shadow restrictions. [List - we can see them out the window, east to west: Anthem, Prince's Island Estates, 500 Eau Claire, Princeton, Concord,]
- 46. [DOCUMENT.] Third, if you look at the picture on page 23 (page 33 of PDF) of this draft appraisal, you will see the brand new tower immediately across the street east of us is 10 stories and that tower uses a terraced design to accommodate the right to light or shadow restriction.
- 47. I'll point out that this third party document specifically caveats on the top of page 23 [DOCUMENT - page 33 of the PDF], in the third sentence: "*We are not experts in the interpretation of zoning regulation*". And the next sentence leads into the third party appraiser having discussions with the City's planning department. I understand this to mean that the City's planning department was likely the party informing this appraiser that the shadow restriction would preclude a tower on our property.
- 48. Since the City will not commit to reimburse our cost of

independent advice, we have not had our own expert review this appraisal document that was prepared for the City. But from my own laymen's perspective, this document concluding that the City's shadow bylaw would preclude a tower on our property does not appear to be accurate, which raises the concern for me regarding how much I can trust information provided by the City.

49. Now I'll move to the representation in this draft appraisal that the proximity of our homes to the Bow River precludes the construction of a tower. This representation does not appear to be accurate for a many reasons.
50. First, again the picture on page 23 shows the new tower immediately across the street, which is closer to the Bow River.

51. Second, the Prince's Island lagoon immediately north of River Run is a man made channel. This channel was dug out in order to get logs off the Bow River and closer to a saw mill in the 1800s. Our River Run homes are actually several hundred metres from the Bow River. There are many towers in Calgary that are closer to the Bow River than our property (many if which can be seen out the window).
52. Third, the comment in this document that leaking basement are likely due to River Run's proximity to the River I know is not accurate because of the experience of the River Run families over the last 28 years. There have been no leaks that I am aware of. River Run did not flood in 2013 in part due to how far from the natural river we are. I live in a waterfront unit in River Run and I have not had a leak in any basement.
53. Fourth, it's my understanding that a high rise building was contemplated on the River Run lands but the City, in 1993, instead decided to limit the development to 23 townhomes. In 1993, the City was just completing the Eau Claire Market and the River Run acre of land was in between the Market and the waterfront. As noted in an October 28, 1993 decision of the City of Calgary Development Appeal Board, at page 3, referring to the River Run acre: *"Options available for development in this area could have been a high rise type of building, or a hotel, as was previously planned for this site."* This quote is from City development permit 930624, application DP93/0624, dated March 19, 1993.
54. I was really disappointed to get this draft appraisal document from the City. For months the City had been telling us about this independent analysis regarding highest and best use that we would soon be receiving. The City hyped up the importance of this document for months. And then, I read it, and it appeared that critical factual representations regarding our property did not appear to be accurate.
55. As a further concern, in my view, the City prevented this third party appraiser from actually considering highest and best use because it appears that the City caused this third party to assume that the proximity to the Bow River and the shadow restrictions precluded the construction of a tower, which does not appear to be accurate.
56. Another concern, in my view, was that the hypothetical situations considered in the draft appraisal did not make sense to me. This appraisal considers one hypothetical situation where we pay to demolish our homes and sell our property as bare land (on pages including 38, 54) and, alternatively, the hypothetical where we sell our homes to a developer for less than the cost to obtain replacement properties (on pages including 28 "hypothetical", 32- series of sales to developers).

- a. The first hypothetical I consider the "parking lot" example. If a tower cannot be constructed and we've just paid to demolish our homes, apparently our land would be used as a parking lot in this hypothetical. This hypothetical does not make a lot of sense to me, perhaps because we would never demolish our homes and sell our property as bare land.
  - b. The second hypothetical also would never occur. We would never sell to a developer for less than the cost of replacement properties.
- 57. Many owners were disappointed when we received this document. After months of the City building up this document and then, when we receive it, it does not appear reliable. Further, considering that this document appears to represent information regarding our property that was not accurate, for me, I did not view the City as a reliable source of information regarding our property.
- 58. On December 2, 2020, River Run owners had a virtual townhall to discuss frustrations with the City. In my view, the primary frustrations were:
  - c. [1] the City continuing to represent both that River Run will be destroyed and, at the same time, that it remains uncertain whether the City would destroy River Run;
  - d. [2] that our properties are frozen; we cannot sell to anyone other than the City which made many owners feel pressure to sell to the City because selling to the City was the only way we could exit this terrible situation;
  - e. [3] the City building up its "independent, highest and best use" appraisal for months and, after we receive it, it does not come across as accurate or reliable; and
  - f. [4] the City refusal to commit to reimburse our reasonable cost of independent advice.
- 59. [DOCUMENT.] On December 3, 2020, counsel to River Run wrote to the City on the owners' behalf to identify concerns with the City's behaviour including:
  - a. the City pretending that River Run owners are simply involved in a "voluntary" process with the City, for their own benefit, is not a position taken in good faith;
  - b. the City is using its position of power to try to create an unfair bargaining situation, which is not appropriate;

- c. the City has effectively frozen the River Run properties preventing any sale to parties other than the City; and
  - d. requesting the City to direct any further communications, regarding the city's intended acquisition of River Run, to counsel.
60. Such letter also identified that, if the City is prepared to acknowledge expropriation compensation principles, including owners' right to have reasonable legal and appraisal advice paid for by the City, then owners are willing to have discussions with the City.
61. On February 12, 2021, as part of the redevelopment of the Eau Claire area surrounding our homes, which we understand will eventually include the redevelopment of our homes, the City destroyed more than a dozen mature trees immediately west of our property without notice. Over 100 mature trees had been marked for destruction, but not the grove of trees to the west of River Run. Since the Board already had a call with the City set for the following week, on February 18, 2021, I took the opportunity on that call to ask why the City destroyed those trees without notice.
62. The City immediately responded by saying that those trees were marked and that the City had pictures to prove it. (*Stephanie Lake was on the call, I believe it was a man on her team who made this assertion*). I said that I didn't think the City was telling the truth, but if the City was telling the truth they could just show us the pictures to prove me wrong. The City has never provided those pictures. I raised the issue with the trees today because, at this point, we are now years into this terrible situation and I really do not know if I can trust the City as a reliable source of information, which made the situation even worse.
63. [DOCUMENT.] On May 25, 2021, the Board wrote to the Green Line Committee, the Green Line Board and our City Councillor.

*May 25, 2021*

*To: Councillor Shane Keating, Chair,  
Green Line Committee Don Fairbairn, Chair,  
Calgary Green Line Board  
Ward 7 Councillor, Druh Farrell*

*cc: Jessica Cullen, Leader, Acquisitions - Green Line  
Dear Councillor Keating, Mr. Fairbairn and Councillor Farrell*

***[RE: River Run Condominium Corp.]***

*For over a year the City has depicted the Green Line driving through our families' homes on the City website, in the news, on billboards and in public forums. At the same time the City has been asking owners to participate in acquisition discussions.*

*We requested that the City pay our reasonable costs to be informed prior to such discussions. The City refused. The purpose of this letter is to ask the City to reconsider our request.*

*For discussions to be fair, we requested that the City pay our costs to be reasonably informed regarding our rights and value. Our property is unique and this situation*

*- is highly unusual. Rarely does a government intend to destroy an entire family complex. Any person put in this difficult position by a government would want to be reasonably informed. The City has expropriation experts, a legal team and valuation experts to navigate this difficult situation. We do not.*

*By refusing to cover our costs, the City is putting pressure on us to choose between:*

*(i) incurring costs that may never be reimbursed; or (ii) potentially making the biggest financial decision of our lives without being reasonably informed.*

*The citizens of River Run love our property and we have no desire to leave. However, as it seems inevitable that the City will engage in formal expropriation processes, while we reserve all of our rights to object to the expropriation of our homes, we are nonetheless willing to participate in fair discussions and we have done our part to try to make that happen. The City is aware that 96% of River Run owners have agreed to share information with each other and have lined up one law firm and one appraiser in order to have an organized process and to keep costs down. Owners simply want to have a relatively small amount of information and resources, as compared to the City, prior to engaging in the acquisition discussions that have been requested by the City.*

*For several years the City has effectively frozen our property. In March 2020, we learned for the first time, at a public forum, that the City intends to destroy our entire family complex. At the Green Line Committee meeting on May 19, 2021, we again had to view pictures of our homes destroyed by the City. At this time, there is no principled reason to continue to refuse to cover our costs to be reasonably informed prior to acquisition discussions.*

64. On June 4, 2021, a one-sentence response by email was received from an advisor from the Councillor's office recommending that owners continue to work with the City's land acquisition team. No other response was received.
65. On September 28, 2021, in response to a request by the owner of Unit 44, a City acquisitions agent from the City's Real Estate and Development Services team issued a letter to Unit 44 together with an appraisal. At this point, the City had been making reference to its willingness to pay for a third party appraisal for any owner for years and now one owner was interested in the City's process.
66. The appraisal the City had prepared made reference to 6 comparable properties including 4 prior River Run sales, two from 2014 with no adjustment for time, a fifth was a condo in Eau Claire that had been

on the market for almost 2 years prior to selling and one that was in Sunnyside, not at all comparable.

67. My understanding is that the owner who received this appraisal document no longer had an interest in trying to negotiate with the City, after reviewing this document. So, at this point, the City finally has one River Run family interested and willing to negotiate through the City's process and that interest quickly dropped off after receiving an appraisal document that the owner did not feel was reasonable or reliable.
68. [DOCUMENT.] On November 17, 2021, the Board wrote to their newly elected City Councillor:

*[November 17, 2021  
Councillor Ward 7 Terry Wong City of Calgary]*

*We request your assistance to obtain a reimbursement for legal fees incurred by River Run. We have reasonably incurred such fees due to: (i) a lack of transparency; (ii) conflicting information regarding whether our homes will be destroyed, and (iii) continued pressure to participate in an unfair process.*

*Lack of transparency*

*The City has created uncertainty on all sides of River Run for many years. The negative impact of such uncertainty is made worse by a lack of transparency. For example, we first learned that the City intends to run a train through our homes by attending an open house in March 2020. Everything we are aware of regarding the potential impact on, or destruction of, our homes we first learned ourselves by doing our own research, watching the news, reading the paper or from our counsel. For us to learn no material information directly from the City is the opposite of transparent.*

*Conflicting information*

*In May 2020, the City website identified that River Run would be expropriated: "One unfortunate element of this alignment is that it still requires the purchase or expropriation of the River Run condominiums". However, we later received a letter from the City's lawyer stating that the City will not recognize any of our expropriation rights because "there is no actual or intended expropriation". When a government publicly identifies an intention to expropriate, but privately says it, will not recognize any of the rights that exist when an expropriation is intended, any reasonable person would want to understand their rights.*

*Unfair process*

*For the last 20 months, the City has put pressure on us to participate in acquisition discussions. For discussions to be fair, we requested that the City pay our costs to be reasonably informed regarding our rights and value. Our property is unique*

*and this situation is highly unusual. Rarely does a government intend to destroy an entire family complex. Any person put in this difficult position by a government would want to be informed. The City has expropriation experts, a legal team and valuation experts to navigate this difficult situation. We do not. To date, the City has refused to commit to reimbursing any of our costs while continuing to depict our homes destroyed.*

*Reimbursement request*

*In light of this difficult situation, we engaged counsel to: (i) assist the Board to be aware of its rights and obligations; (ii) to assist owners to be aware of their rights and obligations; and (iii) to assist us in communicating with the City. Please advise if you will assist us to be reimbursed for our reasonable fees, which to date are around \$1,500 per owner. We look forward to hearing from you.*

*Regards,*

*- River Run Board of Directors*

69. A few days later, the City removed from its web page the statement, from our former Councillor, that River Run would be purchased or expropriated. No one from the City ever responded to the above request from the Board.
70. The Board's request for some clarity regarding the disconnect between our former Councillor's statement that our homes would be purchased or expropriated, and the City's subsequent representation that it was uncertain whether we would be expropriated, was a very reasonable request. Instead of responding to our request for clarity, the City just deleted Councillor Farrell's published statements.
71. On January 17, 2022, the Board sent a follow up communication to our Councillor regarding the prior letter. Our Councillor did not respond.
72. In January 2022, the City installed metal pilings in between River Run and the Prince's Island Park lagoon. Owners with waterfront views became alarmed that their waterfront views were being replaced with a wall much higher than the City had previously represented.
73. [DOCUMENT.] On January 26, 2022, the Board wrote to the City to identify concerns including:

*RE: [EXT] Re: Flood Barrier question-River Run Condominiums Tom M to: Baird, Jeff,*

*Emily Struck, Wong, Terry K., Gordon D. Holden, Mark Heim, Ka! Sandhu, Jane Lindsay:*

*Patrick Lindsay, Deb Buxton 01/26/2022 12:56 PM*

Cc: "Hoffart, Dennis", "England, Daniel", "Tang, Joyce", "Lake, Stephanie C.",  
"Coombes, Natalie E."

This message may be forwarded to  
Google recipient(s) From: "Tom M"  
<ml55t@protonmail.com>

To: "Baird, Jeff" <Jeff.Baird@calgary.ca>, "Emily  
Struck"  
<emily.struck@outlook.com>,  
"Wong, Terry K." <Terry.Wong@calgary.ca>, "Gordon D..  
Holden"  
<gh@ESPAssociates.com>, "Mark Heim"  
<Oilbull@hotmail.com>,  
"Kal Sandhu"  
<Kal.sandhu@hotmail.com>, "Jane Lindsay" <janelindsay07l  
5@gmail.com>, Patrick  
Lindsay/PwC Law/CAITLS/PwC@Americas-CA, "Deb  
Buxton"  
<deb@buxton.com>  
Cc: "Hoffart, Dennis" <Dennis.Hoffart@calgary.ca>, "England, Daniel"  
<Daniel.England@calgary.ca>, "Tang, Joyce" <Joyce.  
Tang@calgary.ca>, "Lake, Stephanie  
C." <Stephanie.Lake@calgary.ca>, "Coombes, Natalie  
E."  
<Natalie.Coombes@calgary.ca>

Hi Jeff,  
We look forward to meeting next week. Several of us are available  
at 4pm on Wednesday, Thursday or Friday. If none of those times  
are available please suggest alternates.

We understand that our meeting will focus on the flood barrier;  
however, we will provide some broader context to help you  
understand our frustration with the City as well as some questions.

City Conduct

The City has been pressuring us to enter into acquisition  
discussions for years. In doing so, the City has represented to us  
that the proximity of our property to the river precludes the  
construction of a tower. We know this is not true because of the  
dozens of towers in Calgary closer to the River, including the one  
across the street, closer to the river.

Our former Councillor published the City's intention to expropriate  
our property and the City website continues to publicly represent  
our homes destroyed. In contrast, privately, the City's lawyer has  
informed us that we have none of the rights that exist when a  
government intends to expropriate.

The City sent us a "hypothetical appraisal" for our land that  
considers low value hypotheticals that would never occur, such  
as destroying our homes and selling our waterfront property as

a parking lot. The City's hypothetical appraisal does not consider any high value hypotheticals, not even the possibility that we get expropriated and need replacement properties.

In short, we have put up with years of the City misrepresenting the facts, our rights and the value of our property in an effort to acquire our property for less than fair value. The City's lack of transparency regarding all sides of our property, and regarding whether our homes will be destroyed, negatively impacts our quality of life every day.

On February 12, 2021, the City destroyed more than a dozen mature trees immediately west of our property without notice. Many trees were marked, but not these trees which we used to see outside our kitchen windows on the west side every day. When we raised our concern with the City on a February 18, 2021 call, the City said they had marked the trees and had pictures they would provide to us. The City never provided any pictures because the trees were destroyed without notice.

Hopefully this context lets you understand why we are frustrated with the City's behaviour, independent of the current flood wall problem.

#### City Commitment

When we met with the City in July 2019 regarding the flood barrier, our only material concern was whether our view of the water and park would be obstructed. The City team were unequivocal regarding the height and assured us it would not prevent us from seeing the water from our patios.

In that meeting, we expressed our concern that the City has not been a reliable source of information and requested that the City show us exactly the impact on views. To confirm the height of the flood wall and its impact on views, some owners and City workers were inside unit 30 looking towards the park and others were on the pathway with precise measurements showing where the City committed that the top of the wall would be. The City committed to us that we would still be able to see the water from our patios.

The height of the current wall is a full 4 feet higher than what the City committed to and we now have owners that live in waterfront properties where they cannot see the water from their patios, living rooms or kitchen.

74. On February 3, 2022, several owners had a video call with the City. Owners asked to present their concerns to the City and the City team indicated that they would all leave the call if owners presented their concerns.
- a. Instead of permitting owners to present their concerns, the City presented a slide deck with old information and told.

owners that it was "impossible" to use a temporary flood wall beside any part of River Run.

- b. The City's statement that it was "impossible" to use temporary barrier beside all or part of River Run does not appear to be accurate because temporary barriers are used in over a dozen location including immediately east and immediately west of River Run.
  - c. This was just another example of us receiving information from the City that we cannot trust to be accurate, both with respect to the representation that our water view would not be taken away and the later representation that the use of a temporary barrier beside us was "impossible".
75. In my view, it seems very likely, that the City planned the design of the flood barrier years earlier based on the expectation that our homes would be destroyed.
76. Instead of addressing our concerns, on February 8, 2022 at 5:35pm, the City land acquisition leader sent an email to the Board regarding drilling that was to occur the following morning at 7:00am. In such email, the City attached yet another picture of a train running through River Run homes. This email was unusual in that normally we have no notice from the City regarding construction beside our homes. I understood this email, from the City leader of land acquisitions, with a depiction of the train on our property, to be a not too subtle reminder that the City really wants to have acquisition discussions..
77. At the April 1, 2022 Green Line Board meeting, the City indicated that one focus area will now be to ensure that the City acquires all of the land needed downtown.
78. [DOCUMENT.] On May 18, 2022, the Board sent a letter to their Councillor which again expressed concerns with the City's behaviour.

May 18, 2022  
Dear Councillor Wong,

*For years, the City has tried to acquire our River Run homes through an unfair process. The families of River Run again request that the City agree to participate in a fair process.*

*River Run*  
*We love our unique acre of downtown, waterfront property. The phrase "location, location, location" is apt for the central, riverfront, park-adjacent location of River Run. City administration and elected officials have both publicly referred to River Run and its adjacent lands as the 'crown jewel of downtown Calgary on the banks of the river', in news articles and in City publications.*

We have no interest in selling our homes. However, with the City telling us since March 2020 that our homes will be destroyed, and with the City publishing its intention to acquire or expropriate our homes in May 2020, we continue to be willing to have discussions.

#### Conflict of Interest

As a land developer that wants to acquire our homes, the City has put itself in an obvious, direct and ongoing conflict of interest. The City is directly adverse in interest regarding the value of River Run. To appropriately manage this conflict created by the City, most reasonable organizations would adopt safeguards, such as ensuring that we have independent advice. The City has gone in a different direction and has refused to reimburse owners for independent advice.

#### Imbalance of Power

The City has pressured the families of River Run to participate in acquisition discussions where:

- ☐ the City, a land developer that wants to acquire River Run, can unilaterally decide whether it will expropriate, can unilaterally decide what will be developed on River Run, has confidential knowledge regarding the City's intended use for River Run and the City uses taxpayer funds to ensure it has the benefit of extensive independent advice including an expropriation team, land agents, a land development team, valuers and a legal team; and
- ☐ owners do not want to sell, owners do not have any of the City's power, information, or resources and the City will not use any taxpayer funds to ensure that the families of River Run have the benefit independent advice.

No reasonable, informed person would describe the process demanded by the City as fair.

#### Misrepresented Facts

As further unfairness, the City has repeatedly provided the families of River Run with false information regarding their homes. For example, the City represented, in writing, that the geology of our property will not support a residential tower. The City knows this is untrue. The City has approved 14 towers on the immediately adjacent 12 acres.

#### Misrepresented Value

*To continue the pattern of unfairness, the City has provided valuation information to owners that is not credible. For example, the City used taxpayer funds to prepare a draft "hypothetical" appraisal of River Run that only considers two low-value hypotheticals, neither of which would ever occur: (i) we destroy our homes and sell our water front property as a parking lot; or (ii) we sell our homes to a developer for less than the cost of replacement property.*

*The City's hypothetical appraisal deliberately avoids considering the cost of replacement properties. Even if the City provided owners with credible valuation information, for the process to be fair, owners would need to be reimbursed for independent advice in the circumstances.*

#### *Expropriation Rights*

*Since March 2020, the City has represented that it will acquire our property and destroy our homes.*

*Where a government intends to expropriate, impacted citizens are entitled to certain rights, including: (i) a right to have the government reimburse owners to receive independent advice; and (ii) a right to a "home for a home" to ensure owners receive an amount that permits them to acquire a comparable home.*

*The City has confirmed in writing that it will not recognize any of our expropriation rights. Not recognizing expropriation rights appears to be designed to cause harm in the sense that the City is trying to get away with paying an amount to owners that would force any accepting owner to either: (i) leave their chosen community to acquire an equivalent home; or (ii) pay a substantially higher amount to acquire an equivalent home in their chosen community.*

#### *River Run Request*

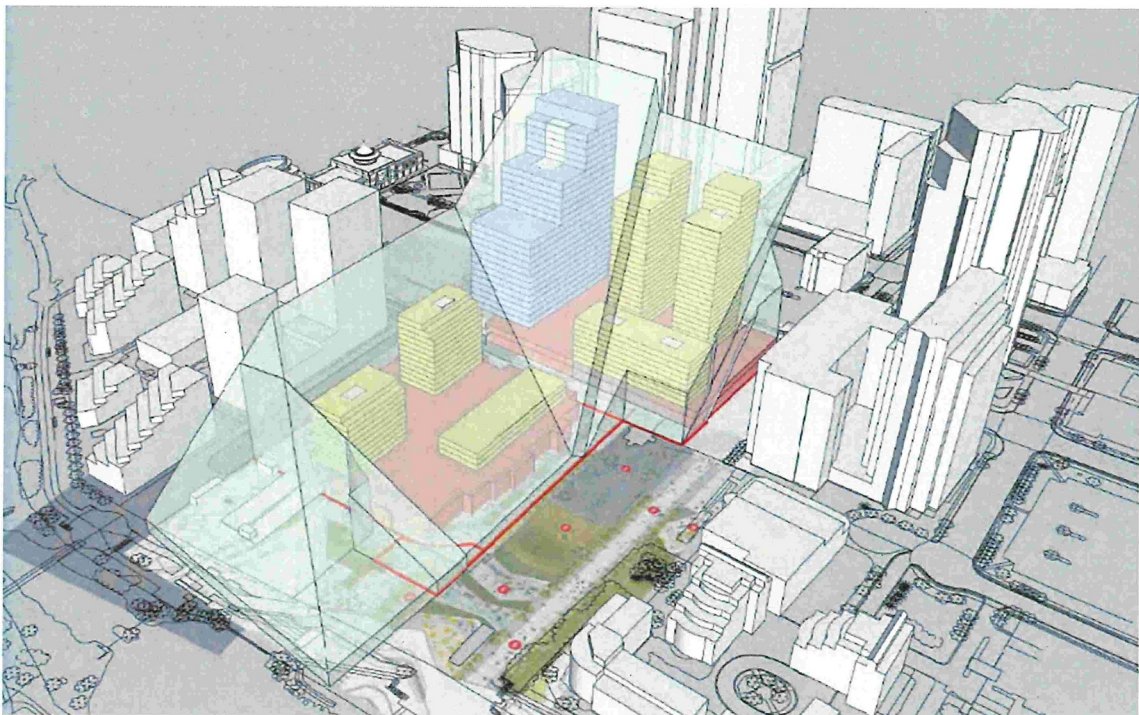
*The City continues to pressure owners to participate in an unfair process. We have repeatedly set out our reasonable concerns and the City has deliberately avoided any meaningful discussion. Instead, every response from the City is a direction for us to participate in an unfair process.*

*The families of River Run are organized and, for years, have been willing to participate in acquisition discussions. However, we are not going to enter into the most significant financial discussions of our lives without first being reasonably informed and it is unfair for the City to continue to pressure us to do so.*

*We again request that the City agree to reimburse our reasonable costs to have fair, informed discussions where our rights are respected.*

*- River Run Board of Directors*

79. On June 17, 2022, Terry Wong's assistant replied by email to say she had reviewed our letter with Terry and she provided a link to the City Whistle-Blower policy. Although this was at least a reply to our letter, it was not a meaningful or useful reply. In my view, the City was continuing to avoid any meaningful engagement regarding our concerns.
80. [DOCUMENT.] On November 1, 2022, the City held an open house in connection with the City and Harvard's planned land use redesignation application in which the City again depicts River Run no longer in existence. At the presentation the City had a picture prepared regarding what the right to light meant on our property and that document indicated that about a 16 story tower could be built on our property in compliance with the right to light.



81. [DOCUMENT.] On November 2, 2022, the Board wrote to all City Councillors and copied the City land acquisition team and the City Eau Claire improvements team. The tone and content of this letter was strong because: (i) we are now into the fourth year since the City introduced uncertainty as to whether our homes would continue to exist; (ii) we are now into the third year after the June 2020 Council meeting where the Green Line alignment, with a train running through our homes, was approved; and (iii) at the same time, the City continued to represent to us that it was uncertain whether our homes would be destroyed. The letter makes many of the same points we've made earlier but also adds:

*The City has the power to take our homes and select its price. If we disagree with the City's selected price, we can ask an independent tribunal to determine fair value. In these circumstances, there is no possibility the City will ever pay more than fair value for our homes. **Aside from trying to avoid paying fair value, why does the City continue to refuse to reimburse our reasonable cost/or independent advice?***

- 82. As with prior letters, no one from the City responded.
- 83. In November 2022, the City provided a undated letter to all owners to notify owners of the City and Harvard's planned land use redesignation application.
- 84. In response, on December 14, 2022, the board filed a letter with the City indicating that the Board did not support the land use redesignation application, based on the lack of information available.
- 85. As with prior letters, no one from the City responded.
- 86. On January 3, 2023, Jeff Baird from the City's Eau Claire team reached out by email to the River Run Board to provide some updates and to remind the Board that Jessica Cullen remained available for acquisition discussions and Jessica was copied. The context of the letter related to construction activity, but the email ended with a reminder that Jessica Cullen from land acquisitions was available.
- 87. This was yet another reminder that the City wanted us to engage in the form of acquisition discussions it wanted.
- 88. On February 14, 2023, the City filed Notices of Intention to Expropriate ("**NOITEs**") against River Run properties and sent a letter in which the City stated that it intends to initiate the process to expropriate River Run. This was the first time the City directly informed us that it intends to expropriate our homes. As with most other important information, the City kept this information from us as long as it could and only informed us when this information became public.
- 89. [DOCUMENT.] Starting on February 15, 2023, the River Run board had an email exchange with the City that confirmed:

*From: Swanson, Gary*

*<Gary.Swanson@calgary.ca>*

*Date: Fri, Feb 17, 2023 at 1:09*

*PM*

Subject: RE: [External] River Run Expropriation

To: Patrick Lindsay <lindsaypatrick367@gmail.com>

Cc: Hazel Bennett <hazel.bennett@gmail.com>, mark h  
<oilbull@hotmail.com>, Kal Sandhu  
<kal.sandhu@hotmail.com>, Pam McWilliams  
<kvingfeller@gmail.com>, Jane Lindsay <janelindsay071  
5@gmail.com>, Emily Struck <emily.struck@outlook.com>

Hi Patrick,

On February 13th, 2023, The City mailed out letters to all owners and occupants in the River Run development to inform them that The City will be proceeding with registration of the Notices of Intention to Expropriate at the Alberta Land Titles office. This process is being initiated now to ensure that all known land requirements are secured prior to the start of main construction in 2024. Notwithstanding that The City is proceeding with registration of the NOITES, The City's preferred outcome to acquire the homes in the River Run development is through negotiated agreements with individual property owners. The City remains committed to fair and reasonable compensation for all property owners.

1. Will the City agree to reimburse River Run owners our reasonable cost to have independent advice prior to participating in such negotiations?

As part of negotiations, The City is willing to hire and pay for an independent appraisal of each River Run unit. Individual property owners will have the option to select an appraiser of their choosing, provided that the appraiser is accredited with the Appraisal Institute of Canada. The City is willing to retain the appraiser and pay for the reasonable costs of the appraisal regardless of whether a negotiated agreement is reached or not. Property owners will receive a copy of the appraisal. If there is additional independent advice that an owner is seeking. The City is open to reimbursement of reasonable expenses upon closing of a negotiated agreement. If a negotiated agreement is not reached, a property owner may wish to consult with its lawyer as to whether or not any of these claimed expenses may be recoverable.

2. Will the City participate in such negotiations based on the fact that this situation does not involve a voluntary sale of our homes?

*Market Value will form the basis of all negotiations; however, The City is willing to work with all property owners with an understanding that this situation is being triggered by The City's requirement to acquire these properties to support construction of the Green Line, and as a result there may be elements of the negotiation that extend beyond what is typical of a true market transaction. We encourage all property owners to reach out to The City directly to learn more about the process and options that are available.*

*I hope this information is helpful, and I trust that you will forward this email to all owners in the River Run development. Going forward, please ensure that all members of the River Run Board copy all individual unit owners on future requests for information to The City, as out of fairness, The City has chosen not to deal with or through the Board to the exclusion of other River Run unit owners. Alternatively, if any individual unit owner has questions in respect to the acquisition of that owner's unit, they are welcome to reach out to The City directly one-on-one. Please note that all negotiations between The City and individual property owners are treated as confidential.*

90. I understood this email to be a long way of answering "no" to both questions. The City still will not commit to reimburse our cost for independent advice, even though they are now are finally using the word expropriation. The City was willing to hire, instruct and pay an accredited appraiser to prepare a valuation at the City's expense - which was always the case, but that would not result in any actually independent advice to River Run families. Unit 44 tried this approach and the appraisal that the City paid for did not appear reliable.
91. On the second question, the City is quite vague, but the City does not say yes. As such, it is my understanding that, as of today, the City is still not prepared to have acquisition discussions based on River Run families having expropriation rights.
92. Owners of 20 of the 23 townhomes objected to the City's expropriation.
93. I take no issue with the concept of expropriation: The concept makes complete sense. However, I take great issue with the manner in which the City has wielded its power to expropriate.
94. The City has the unilateral power to take our homes which puts the River Run families in an extremely vulnerable position. The City is in a position of great power.
95. To quote the great literary classic, that is the Marvel Comic book

series Spiderman, "with great power comes great responsibility".

96. The City's power to take our homes against our will is a great power. In my view, the City has wielded this power in an irresponsible manner with little regard for the well-being of River Run families.
- a. first, the City has kept critical information from us as long as it possible can, such as the City's intention to run a train through our property and the City's intention to expropriate;
  - b. second, even though it appears that the fate of our homes was sealed as a result of the June 2020 Council decision, the City represented to us up until early February 2023 that whether our homes would be destroyed was uncertain;
  - c. third, the City has repeatedly provided us information that does not appear to be accurate, including:
    - i. that the right to light precludes a tower from being constructed on our property;
    - ii. that the proximity of our land to the Bow River precludes the construction of a tower on our property;
    - iii. that the City provided proper notice before the City had a grove of beautiful, mature trees destroyed immediately west of River Run;
    - iv. that the flood barrier would not be constructed in a manner that would take water views away from waterfront property; and
    - v. that it was uncertain whether the City would expropriate our homes right up until February 13, 2023.
  - d. throughout this process, the City has not been a reliable source of information.
97. Despite being in an enormous position of power, the City has treated this as an adversarial process which, in my view, is inappropriate.
98. A few personal comments before I conclude my remarks.

99. I'm personally objecting to expropriation because I don't want my home taken away and destroyed. Jane and I live in the northwest corner of River Run. We have a corner waterfront unit looking at the Prince's Island Park and the lagoon. We love our home. Four bedrooms, four floors, beautifully renovated, over 2300 sqft of space, dog friendly, a 1300 sqft yard with 7 mature trees on our lawn, very low condo fees, a wonderful patio, views of Prince's Island Park out every window. We will never replace what we have.
100. River Run families were a close group before this situation, but having the City as a common enemy for the last several years has brought us even closer together. Jane and I, as well as my friends and neighbours at River Run, will never replace what we have.
71. To the extent that Mr. Lindsay spoke on behalf of and in a representative capacity for many River Run Owners. I am hopeful it will assist City Council to review the notes he made in preparation for giving his testimony and appreciate this and the other perspectives of families and individuals adversely impacted by the intended takings at River Run.
72. On cross examination, Mr. Lindsay was asked about a town hall that occurred February 27, 2020 and whether it was an internal town hall or if City representatives were present. Mr. Lindsay said there was no one from the City in attendance. When asked about his having left that meeting with expectations about how the City would behave, Mr. Lindsay testified that he formed those expectations from discussions with others at that meeting, including someone who had previously had land expropriated before. Mr. Lindsay also confirmed he was not a certified appraiser, and that the wall building work he mentioned was part of The City's flood barrier project, not the Green Line project. Mr. Lindsay testified on cross examination that he was uncertain of this, and of whether the removal of trees at River Run was related to the flood barrier project.

## ii. Oral testimony of Timothy Thompson

73. Mr. Thompson is a business, engineering and management consulting professional with a vast array of experience in the energy sector. Mr. Thompson and his wife own a home at River Run. Mr. Thompson's evidence in direct was frank, thoughtful and thought-provoking. The witness communicated his belief that by looking at the expropriation process itself, it is apparent that the Owners have been subject to an unfair process. In his view, a process begins when you experience it, and it has to have a noticeable impact on you. From his perspective, the process begins the moment the City publicly declares it has an alternate purpose for your property, as occurred here in June 2020.
74. In Mr. Thompson's perspective, once it made that declaration, the City had – *de facto* – taken ownership of the River Run Owners' properties. Even if such a statement is contingent, the public market for such property and the number of buyers other than The City dropped to zero: This is a very real outcome of the announcement, Mr. Thompson noted. Mr. Thompson investigated this directly with RE/Max realtors, finding they were disinterested in listing a unit in River Run as they did not anticipate any potential buyers – in short, no one wants to buy a home when it is unclear whether it will exist in the future.

75. In the case of River Run, Mr. Thompson testified that The City's announcements contain uncertainty, including about project timelines, scope, and location. The only buyer interested in one's property in that factual matrix is the expropriating authority itself. When The City makes an announcement publicly, but does not correspondingly commence the legal process of expropriation, both choices are intentional, said Mr. Thompson. The effect for the private landowner is a sterilization of a substantial portion of one's life savings, while The City has created for itself an open ended option to purchase – with no consideration or cost to itself corresponding to the owners' loss (and loss of options). In short, said Mr. Thompson, we are talking about the City holding hostage an owner's entire life savings – putting owners in limbo, in effect.
76. Mr. Thompson testified that the materiality of this fact must be considered in a fairness analysis. The bigger the impact on a party adversely effected, the more fair the process ought to be, he said. The harm that has come to the River Run owners was not unavoidable – it was within the City's control when to disclose, and when to expropriate, as well as how to engage with landowners in between those extremes.
77. Mr. Thompson analogized this experience to a loss of autonomy – when the City makes a public announcement about its alternate purpose for your lands, only the City can rescind that, or proceed to expropriation or – the worst – do nothing at all. The City has all the power and impacted owners have no right of appeal, or even a procedure to end the limbo period (apart from an early exit by selling one's land to The City). Mr. Thompson also testified about inequitable resourcing between owner and City, and about improper conduct on the part of The City where, as here, the process has dragged on for years, and owners were put in limbo by a party that they cannot trust.
78. Finally, Mr. Thompson called as procedurally unfair the City's decisions to engage in continuous construction over the three years of limbo they have imposed to date on River Run Owners. In addition, said Mr. Thompson, to their pressuring owners to settle and sell their homes, The City coerced Owners at River Run to live through untenable conditions for the past three years.
79. Mr. Thompson proposed ways the City could make this process less unfair and exploitive on owners, including:
- a. Expropriation ought to commence and advance in a timely fashion.
  - b. It ought to include a process for the City to take an option on your land, and pay for same.
  - c. There should be a defined timeline from the moment of announcement.
  - d. There should be penalties for attempting to take unfair advantage of the process for the expropriating authority's own gain or ends.
80. On cross examination, Mr. Thompson was asked about the pilons to the ground around his property and resulting damage. He was asked whether those related to the flood barrier

project, and Mr. Thompson confirmed his understanding that they did. He also agreed that the barrier project is separate from the Green Line.

### iii. Oral testimony of Gordon Holden

81. Mr. Holden has been a longtime owner and resident at River Run. He did not wish to be here, in this process. It sucks life out of a busy person, he noted, but became a necessity given the unfairness of the process, and its impact.
82. The Holden family, according to Mr. Holden, consciously designed their lives to be able to walk to work, get exercise in their community, and appreciate all the irreplaceable attributes this location has to offer, including its location north of the central part of downtown, its placement on the best part of the Bow River, river pathways and placement across from the core of Prince's Island with its lagoon, fountain, bridges and weir; the nearby market, the adjacent Plus 15 system, and proximity to Chinatown.
83. Further, River Run's unique form is singular to the area. Also, the entire complex is townhouses, complete individual homes each with four floors and a variety of different spaces, access from each unit's basement to the allocated parking spaces. The units have separate heating and air systems – this became invaluable during the recent COVID-19 pandemic. Each unit also has its own patio, many of which owners have developed beautifully and sometimes share with neighbours.
84. Mr. Holden closed his direct evidence noting that there were reasonable alternatives to achieve the Green Line objectives that did not necessitate taking River Run. Even if they may not have been the least costly option, there are alternatives, he testified. In closing, Mr. Holden wondered aloud what other reasons The City may have for taking River Run, beyond necessity.
85. The City did not cross examine Mr. Holden.

### iv. Oral testimony of Joel Gauchier

86. Joel Gauchier has been an owner occupier of River Run for many years. Indeed, he moved to Calgary specifically because of River Run. Hailing from Saskatoon, Mr. Gauchier was charmed by River Run when he stayed with a friend there while completing a summer law firm placement while still in law school. Mr. Gauchier cannot imagine being happy living elsewhere in Calgary and, if his land is expropriated, he is considering moving elsewhere.
87. Mr. Gauchier, like Mr. Holden, spoke about the amazing community at River Run, his neighbours, the safety and efficiency of community, the beauty of the surroundings, and the investment in his home he has made since purchasing in 2005.
88. Mr. Gauchier testified to his belief that The City, as expropriating authority, has a duty to be transparent, honest, fair and reasonable with families whose homes are being destroyed – this includes plainly and clearly telling the Owners what was happening, as well as why, when and how it is happening. Mr. Gauchier objected to the lack of meaningful consultation

as a stakeholder in the Green Line project, as well as the hardship and mental health effects of living in limbo for years now. Mr. Gauchier reports having been unable to plan his life as a result – the City’s announcements and then prolonged inertia have created deep uncertainty for where Mr. Gauchier and others will live, work, their financial position, travel plans, social life, and hobbies/activities. In short, Mr. Gauchier noted, his life as with his home, has been frozen, in effect, for almost four years now.

89. From his perspective, The City has behaved secretly, dishonestly, unfairly and unreasonably in its dealings with the River Run Owners. During the four years of limbo, for Mr. Gauchier, River Run has stopped truly feeling like his home; as a result, he has withdrawn from making home improvements, or even seasonal gardening that he used to love doing. Given Mr. Gauchier’s very strong emotional attachment to his home – River Run being the only home he has ever owned – he finds the prospect of it being taken in an unfair and unreasonable manner very distressing.
90. The City declined to conduct cross examination of Mr. Gauchier.

#### v. Oral testimony of Kuldip Sandhu

91. Mr. Kuldip Sandhu is a retired management executive and petroleum engineer with almost 45 years experience in the energy sector, much of it internationally. His involvement in complex and multi-stakeholder, diverse interest based transactional and operating matters has led to his recognition that stakeholder interest is of paramount importance. Preserving those interests, he testified, is an onerous task but an entirely doable and very rewarding one.
92. Mr. Sandhu and his family purchased in River Run with a determination it would be their last home. Their decision was well researched and consistent with their active lifestyle and deeply considered post retirement plans. Mr. Sandhu mentioned several of the unique attributes detailed by Mr. Holden and Mr. Gauchier, and added that a conscious choice to make minimal use of vehicles for transportation given his age (72) is a singular factor not noted by other Owners.
93. Mr. Sandhu noted the stress of changing City announcements and potential alignments, as well as the lack of transparency and delays. He has attended many presentations about the Green Line alignment through downtown and adjacent to or, more recently, through River Run. Mr. Sandhu testified that The City has never made a clear and proper disclosure on its utilization of the Lands. Mr. Sandhu acknowledges that the law vests power of expropriation for the public good, but maintained that the law also mandates responsibilities toward the citizens adversely affected.
94. Expressing shock, Mr. Sandhu testified that he “never expected the City’s behaviour in total disregard toward River Run homeowners, one of the key stakeholders in the project” and that the “[t]otally nontransparent process of the City to acquire our home has been very stressful and disturbing for my family. I’m tired of dealing with nontransparent means and inefficiency, and that brings me here today.” That being said, in closing, Mr. Sandhu

testified that it is still not too late to build trust with the key stakeholders and do the right thing by treating these key stakeholders equally and correctly.

95. The City did not conduct any cross examination of Mr. Sandhu.

### III. SUMMARY OF ARGUMENT

96. The City submitted an original Brief and a Rebuttal Brief of written argument; the objecting River Run Owners only provided their Brief of written argument as respondents to The City's submissions. Counsel for both The City and the Owners also advanced oral argument. The parties' key arguments are summarized below.

#### A. Argument of the Expropriating Authority, the City of Calgary

97. The City advanced a number of key arguments, summarized as follows, with a view to seeking a finding that the intended taking of the 20 sets of Lands from the Owners set out in the NOITEs is fair, sound and reasonably necessary in The City's achievement of the Objectives and, in particular, in the construction, operation and maintenance of the Green Line and its associated facilities.
98. The City argues that not every acquisition is an expropriation, nor subject to provisions of the *Expropriation Act*. The City noted its authority to require property under the *Municipal Government Act*, without resort to expropriation, and not subject to the *Expropriation Act*. The City attempted to characterize the Owners' arguments in this case as suggesting that expropriation began at the moment when The City released its first drawing with the Green Line going through the River Run property, and urged me to reject same.
99. The City further argued that, in considering if a taking is fair, sound and reasonably necessary, I must consider whether alternative proposals achieve the objectives of the expropriating authority,<sup>8</sup> but the scope of my consideration of alternative proposals does not include consideration of a completely different proposal. Rather, The City submitted, my focus ought to be on factual information about the proposed taking, the purpose for it and its suitability for such purpose.<sup>9</sup>
100. Here, The City argues that the preferred route alignment ought to be considered in the context of intersecting variables already considered and found to be necessary. With respect to fairness, The City acknowledges this involves a balancing of public interests advanced by the intended taking and owners' private interests, but maintains I am not at liberty to consider a completely different proposal from what The City has put forward. Further, any other viable options before me are not preferable.
101. The City further argues that the tail tracks identified as a purpose and work to which the intended takings will be put are necessary in Phase 1, and that the Lands at River Run are

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<sup>8</sup> *Karn v Ontario Hydro* (1977), OR (2d) 737 at 743, 1977 CarswellOnt 1090 (CA) para 7

<sup>9</sup> *Portair Holdings Ltd v Alberta (Minister of Transportation)* (1978), 14 LCR 133, 1978 CarswellAlta 535 (LCB) at para 9.

required for Phase 1. Finally, The City submits that it is not favouring a private entity's interests over the interests of the Owners, and that the purpose for the intended takings clearly falls within the Objectives.

## B. Argument of the objecting River Run Owners

102. The objecting Owners argued, most pointedly, that The City has failed to act in good faith in its dealings with the River Run Owners and the Lands. Indeed, the Owners allege *bad faith* in the broadest sense of that word, and not as a form of fraud or other willful misfeasance, and insist they have deployed that term "in its wide sense", without alleging any fraudulent conduct on the part of Council or any employee of The City.<sup>10</sup>
103. The Owners ask me to find that "intended expropriation" is an expansive process, that can include events beginning with evidence or a clear sense of certainty that expropriation will follow (i.e, if there isn't a voluntary negotiated transfer of land). The Owners also argue, as does The City, about a multitude of ways by which a municipal government may attempt to acquire land registered to a private interest holder. They do so as a means of challenging, in part, The City's argument that other forms of acquisition than expropriation are "voluntary", and not part of any process of expropriation.
104. The Owners argue that acquisition discussions form part of the intended expropriation, and note the fact that the Inquiry process is the only one by which to challenge an intended taking. These arguments are then used to advance the Owners' position that expropriation is a process, not a point in time.
105. The Owners argue that fairness, transparency, timeliness, reasonable notice, and minimization of uncertainty are tenets of an expropriation process that is "fair, sound and reasonably necessary". The Owners further argue those tenets were not met and, in fact, there was an absence of *bona fides* or good faith in how The City went about acquiring the Lands.
106. The Owners argue that The City has refused to agree to pay for or reimburse Owners for reasonable legal or other costs (e.g., appraisals) they incur to understand their rights in a compulsory acquisition, and to negotiate with The City on a level playing field. In addition, the Owners argue, The City has taken rigid positions about communicating and has not, in fact, communicated openly or transparently with Owners throughout.
107. The Owners further argue that there are alternate alignments and takings possible that could have eliminated the intended takings, making them neither sound nor reasonably necessary. In particular, the Owners suggest other viable options for 2<sup>nd</sup> Avenue SW station in terms of land usage for its construction, maintenance and operation.
108. In addition, the Owners allege that construction of the tail track at the 2<sup>nd</sup> Avenue SW station location is premature. Further, insofar as City Council has not approved all

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<sup>10</sup> In doing so, the Owners cite the Alberta Court of Appeal decision in *Campeau Corp. v Calgary (City)*, 1978 AltaSCAD 266, 1978 CarswellAlta 136 at para 39.

segments and/or phases of development, the Owners allege that the intended takings are premature and thereby neither sound nor reasonably necessary.

110. Further, the Owners argue that the City has, through its conduct, prioritized and preferred the interests of Harvard Developments over those of the River Run families, as represented by the Owners, further rendering the intended taking unsound and not reasonably necessary to achieve the Objectives.
111. Finally, the Owners argue that advancing the intended taking for purposes of creating or constructing a “public realm” is not in keeping with the Objectives, thereby again making the intended taking unsound and/or not reasonably necessary.

#### IV. FINDINGS OF FACT

112. Before turning to factual findings, I note my jurisdictional scope and limitations as Inquiry Officer, which include, without limitation:
  - a. I have no authority to make merit-based considerations or opinions about matters involving compensation payable to an owner whose interest in land is being subjected to an expropriation process.
  - b. I have no jurisdiction to opine on, or question the merits of any published policies of the expropriating authority.
  - c. It is beyond my jurisdiction to challenge the Objectives substantively, or look behind their identification to assess whether they are meritorious.
  - d. It is within my jurisdiction to evaluate whether the intended takings are fair, sound and reasonably necessary in fulfilment of the Objectives and, in this way, am empowered by the Legislature to assess that nexus, including through a balance of private interests and their infringements (here, that of the River Run objecting Owners) with the public’s interest in having the entire River Run complex utilized not merely for the key Objectives of building and maintaining the Green Line

##### A. City plans identify the LRT expansion as a transit growth area

113. The key work and purposes set out in the NOITEs, as part of the Objectives establish a *bona fide* need for lands for The City’s use in advancing the Green Line light rail transit system, including in accordance with the City’s transit policy and planning document.

##### B. The Lands were identified as required by at least June 2020

114. It is not seriously disputed that, by 2020 and prior, the Lands at issue in this Inquiry were identified as likely acquisitions by the City for construction of the Green Line north of the downtown core.

### C. Deficient stakeholder communications with River Run Owners

115. Despite this fact, I find that The City failed to communicate transparently and as a party with great power ought to communicate with a key stakeholder about the likely acquisition of the River Run Lands.
116. I further find that, on the whole, transparent and forthright communication from The City to the Owners was in short supply or clearly absent.

### D. Funding for Phase 1 of the Green Line

117. I find, from the evidence of Evan Kortje and the documentary evidence produced for my review by the parties, that there is funding in place and pending to undertake work so as to advance the Objectives, at least within the scope of Phase 1.
118. Insofar as funding that is committed but not used may be withdrawn, or not extended, I find there is a necessity to proceeding with the Objectives in a timely manner.

### E. With great power comes great responsibility

119. I find that the extraordinary powers granted municipalities to acquire fee simple and other interests in land ought to be accompanied by a corresponding assembly of accountability, candour and good faith on the part of the municipality when communicating with affected landowners.
120. While I do not find that there is a carte blanche obligation for The City to pre-approve expenses that owners anticipate they may incur, setting requirements for City employees to refuse to ever do so (or unless an owner expressly commits to transacting with the government) – which I find occurred on the evidence before me – is unduly inflexible and comes across as high-handed. Moreover, as was made out on the evidence, the rigid refusals and high-handed (i.e, government preserving a position of clearly unequal bargaining power in a less-than-independently-voluntary negotiating relationship) aimed at and/or having the foreseeable effect of materially disadvantaging the landowning stakeholders whose interests are expected to be adversely effected.
121. I further find a positive obligation on the part of the expropriating authority to engage in communications with key stakeholders such as the Owners in a manner that is objectively transparent and even-handed, and not aimed at gaining advantage or preventing an equal benefit to the landowner relative to the municipality. This obligation was not met by The City, and process improvements as well as a culture shift in how owners are viewed within The City's real estate groups and related teams are in order, in my respectful opinion.

### F. Tail tracks: conflicting evidence

122. I find that there is conflicting evidence on whether the planned development of the 2<sup>nd</sup> Avenue station could proceed without a taking for the tail tracks. However, the length of

the platform and need for rooms remains an open question. If the intended takings turned on this issue, it may prove determinative. That is not the case.

#### G. Rejecting some of the taking would not preserve all Owners' homes

123. On the evidence before me, I was unable to confirm that if only some of the River Run Lands are used for Phase 1 construction, the rest of the Owners' properties would be preserved.
124. Similarly, I am not convinced that staving off construction of the tail tracks or other ancillary uses of the Lands for certain rooms at the station heads will eliminate the need for any taking of the Owners' Lands.
125. As such, I accept that the intended takings, or some portion of them, are reasonably necessary in fulfilment of the Objectives, or some of them.

#### H. There is limited evidence of preference for third party interest

126. The Owners have raised a concern about whether The City is privileging the interests of Harvard Development in developing or integrating new development with the 2<sup>nd</sup> Avenue station. I can appreciate why this concern exists for some of the Owners, but find I have very limited evidence and more speculation and implicit bias. I am not in a position to find as a fact that Harvard or any other third party is being preferred as a condition precedent of the intended taking of the River Run Lands. I can certainly empathize with the Owners in their dismay over The City's *bona fides* (or lack thereof), given the other factors that concern me, as well as the Owners, in this intended taking.

### V. OPINION ON THE MERITS

127. I am not bound to reduce the statutory test for whether the intended takings are fair, sound and reasonably necessary to a lower or modified threshold of "reasonably defensible".<sup>11</sup> Doing so in the present circumstances, in my opinion, would impose a materially lower standard than "fair, sound and reasonably necessary in the achievement of" the Objectives.
128. The City, in each of the NOITEs, set out extremely broad and vastly inclusive purposes and work in the Objectives. The subject lands have been in a state of suspended animation or "limbo" for several years, with material impacts, including financial and practical ones, on the Owners. In this factual context, measuring the intended taking's fairness, soundness and reasonable necessity by a "reasonably defensible" standard would, in my opinion, affront the Legislature's intention and fly in the face of the legislated purpose and intended meaning to be given to an owner's right to object and require an inquiry in response to the NOITE or NOITEs served on them. Accordingly, in setting out my opinions on the intended taking below, I adopt and apply the test as set out expressly in section 15(8) of the

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<sup>11</sup> See e.g., *Parkin v Ontario*, [1978 CanLII 1254 \(ON CA\)](#), 19 O.R. (2d) 473 and *1501270 Ontario Limited v Markham (City)*, [2022 CanLII 51249 \(ON LT\)](#) at para 15.

*Expropriation Act* and reject The City's urging that I adopt a "reasonably defensible" standard.

129. An expropriating authority must balance competing public and private interests and its obligations to the public with its duty to treat the Owners – as directly impacted stakeholders in the Green Line project – fairly and in good faith. The City must not only do so, but be seen to be doing so. A majority of the Alberta Court of Appeal, among others, has held that "[t]he interests of the expropriated party ought to weigh fairly heavily in the balance."<sup>12</sup>
130. As noted, the question on which I must opine is whether it is fair, sound and reasonably necessary to expropriate the Lands in achievement of The City's objective. I consider this question in relation to the Objectives set out in the NOITEs. In doing so, I acknowledge that I have no jurisdiction to review the *bona fides* of The City's planning and policy decisions.<sup>13</sup>

#### A. Expropriation is a process

131. I accept the Owners' argument that expropriation is a process, particulars of which (such as when it began) are fact-dependent and may vary from case to case.<sup>14</sup>
132. In light of this fact, it is likely rare, if ever, the case where the entirety of an expropriation process begins and ends with registration of a NOITE and approval of an intended taking by an approving authority. This is an overly literal and unduly sterile interpretation of the "fair, sound and reasonably necessary" test.
133. In the context of this expansive intended taking of some 20 families' homes, investments, reasonable expectations, and entire lifestyles, it warrants noting that:
- a. Expropriation laws, including Alberta's *Expropriation Act*, are "remedial statute[s] enacted for the specific purpose of adequately compensating those whose lands are taken to serve the public interest";
  - b. Such laws "must be given a broad and liberal interpretation consistent with [their] purpose";
  - c. Correspondingly, "the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected"; and

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<sup>12</sup> 689799 *Alberta Ltd v Edmonton (City)*, [2018 ABCA 212](#) at para 23, leave to appeal to SCC denied: [2018 CanLII 105398](#). See also *The Canada Trust Co (McDiarmid Estate) v Alberta (Infrastructure)*, [2022 ABCA 247](#) at para 33

<sup>13</sup> "The inquiry officer has no right to look into the merits of [the expropriating municipality's] objectives": *Re Grey County Hydro Corridor Committee v Ontario (Minister of Energy)*, [1977] 18 O.R. (2d) 170, [1977 CanLII 1366 \(ON SC\)](#).

<sup>14</sup> In support of this finding, I rely upon, among other things, *Edmonton (City) v Can-West Corporate Air Charters Ltd*, 2018 ABLCB 8 at para 39; *Mount Lawn Industries Ltd v Edmonton (City)*, 1999 CarswellAlta 1534, 69 LCR 50 at para 26; and *Dell Holdings Ltd v Toronto Area Transit Operating Authority*, [1997] 1 SCR 32 at paras 19, 20, 21. Also see *Thoreson v Alberta (Minister of Infrastructure)*, 2006 ABCA 250 at para 12.

- d. “Substance, not form, is the governing factor” in the statute’s interpretation and application.<sup>15</sup>
- e. Expropriation is a process. That process does not necessarily begin with registration of a Notice of Intention to Expropriate and is not confined to a transfer of title or other registered interest in land.<sup>16</sup>

134. I accept the argument of the Owners that the expropriation process here began, as Mr. Thompson testified, when conduct of The City materially altered the Owners’ experience, opportunities and asset base, for which they received no corresponding benefit or other consideration.

### B. Unfairness: The process has been unduly prejudicial to the Owners

135. The time taken for The City to initiate formal expropriation and take material steps to bring to a close the “limbo” experienced by Owners at River Run has been excessive by any measure.
136. Moreover, I take very seriously – and urge City Council to take seriously – the material impacts on Owners of having public announcements about their land holdings, and facing that “limbo” for years on end, all while the power-imbalanced relationship continues.
137. In my opinion, The City’s unwillingness, decision and/or failure to communicate openly, which is to say in a forthright and transparent manner, with the Owners, coupled with delays in finalizing the alignment and intended acquisition processes, and created material prejudice to the Owners and the state of “limbo” in which several Owners found themselves. This is not in keeping with a good faith, transparent process that prioritizes mitigation of harm to affected owners as a means of giving intended effect to the expropriation legislation.
138. In the result, I find that the intended takings are **not** fair, considering a balancing of the interests of River Run Owners relative to members of the public apt to benefit from development of the Green Line through use of the subject lands.

### C. The intended takings are sound

139. Having been unable to find that the ancillary uses are not required, or are not required to advance the Green Line project through Phase 1, I must find that the intended taking of the Lands, with a view to fulfillment of the Objectives, is sound.
140. This is not to say other alignments or modifications would not work, merely that although I find the intended takings to be unfair in all of the circumstances, I cannot say the same of

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<sup>15</sup> *Dell Holdings Ltd v Toronto Area Transit Operating Authority*, [1997] 1 SCR 32 at paras 19, 20, 21. See also *Thoreson v Alberta (Minister of Infrastructure)*, 2006 ABCA 250 at para 12.

<sup>16</sup> See e.g., *Edmonton (City) v Can-West Corporate Air Charters Ltd*, 2018 ABLCB 8 at para 39; *Mount Lawn Industries Ltd v Edmonton (City)*, 1999 CarswellAlta 1534, 69 LCR 50 at para 26.

soundness. Rather, I lack sufficient evidence to find the proposed alignment and corresponding takings are not sound.

#### D. Reasonably Necessary: In whole or in part, takings are required

141. As noted, I am unable to find that no part of the River Run Lands are needed for the approved development. There are aspects of the design, including the 2<sup>nd</sup> Avenue Station, that will require integration and access to the Lands. In my opinion, I therefore find the intended takings, in whole or in part, to be reasonably necessary in fulfillment of the Objectives.

#### E. Costs

142. In accordance with section 15(10)(b) of the *Expropriation Act*, I find that the Expropriating Authority ought to pay the objecting landowners' reasonable costs in connection with this Inquiry, including the additional record disclosure I directed as part of determining that his expropriation was a process, and one that did not commence with the filing of the NOITEs, but required a review of events predating same to properly apply the fair, sound and reasonably necessary test.<sup>17</sup>
143. For clarity, I specifically note that, in my opinion, the Owners' request for additional disclosure from The City was not unfounded in the circumstances and the records so disclosed, or some of them, assisted me in reaching my decision with respect to the fairness, soundness, and reasonableness of the intended takings in achievements of the Objectives.
144. As noted during the Inquiry, I am grateful to all counsel for their capable representation and submissions on behalf of their respective clients, and to all witnesses who took part in the Inquiry process.

Signed this 31<sup>st</sup> day of July, 2023



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Sharon Roberts  
Inquiry Officer

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<sup>17</sup> Costs were not spoken to at the Inquiry hearing itself by either party. There was no request for reduction of costs payable to the Owners raised by counsel for The City during its written or oral submissions. This informs my finding that there are no special circumstances to justify a reduction or denial of costs to the objecting person. As noted above, I find that it was not unreasonable for the Owners to request the additional disclosure directed by the Interim Decision insofar as, in my opinion, it was and remains the intention of the Legislature for the expropriation process to be reviewed as such when considering whether an intended taking or takings is or are fair, sound, and reasonably necessary.

**APPENDIX "A"**

IN THE MATTER OF AN INTENDED TAKING UNDER THE *EXPROPRIATION ACT*, RSA  
2000, c E-13

*Between*

*THE CITY OF CALGARY, Expropriating Authority*

*and*

*INTEREST HOLDERS RE: CONDOMINIUM NO. 9510906 (RIVER RUN), Objectors*

**INTERIM DECISION OF INQUIRY OFFICER, SHARON ROBERTS**

JULY 6, 2023

I have received brief written submissions from each of the above referenced parties, through their respective counsel, in addition to oral representations on July 5, 2023 at an interlocutory hearing called for the purpose of addressing contested requests for additional City document and information disclosure by the Objectors. I am grateful to counsel for all of their submissions.

I hereby direct that the City of Calgary, as Expropriating Authority, produce the following supplemental information and document disclosure, being a portion of the items requested by the Objectors and listed in Schedule A to their written submissions:

A list of all dates Calgary City Council approved/provided direction to City Administration to engage in/pursue acquisition of RIVER RUN property interests for the Green Line (in proximity to 2 Ave SW Station), including with respect to acquisition through "negotiated agreements".

Copies of meeting minutes involving City Council and Administration on the issue noted in 1, above, if any.

All then-existing (as at July 2, 2020) City records setting out the information offered to be shared in City Doc No. 16: J Cullen email to P Lindsay dated July 2, 2020, i.e., information on the City's process and how negotiations are typically conducted, including any standing policies or procedures, if any.

Any documented instruction, orientation or communication from City Administration to the individuals who made calls to River Run owners in the week of July 23, 2020 referenced in City Doc No 17 about how those calls were to proceed, what they were include/exclude and/or address.

Copies of records re: acquisition of River Run units and the negotiation process, and potential expropriation referred to in City Doc Nos 17 and 18.

The balance of the items requested are not directed to be disclosed by the City of Calgary. This is not a determination of the relevance or materiality of any requested records, whether directed to be disclosed by the City or open to disclosure by the Objectors (including all correspondence between the City and River Run residents/the Board, which the Objectors are welcome to produce).

In making this direction, I acknowledge the City's argument that the requests are broad. I further accept the acknowledgment from the City that individual River Run objectors may produce records of communications, and nothing ought to deter the Objectors from adding records of their own. I accept the Objectors' argument that expropriation is a process and reject the suggestion that the applicable test in Alberta's legislative scheme is appropriately reduced to reasonable defensibility. That language appears nowhere in Alberta's Expropriation Act and is, respectfully, a reductive and inappropriate interpretation of the statutory criteria for an intended taking to be fair, sound and reasonably necessary.

To the extent City documents put matters in issue or referenced same, I struggle to see how the records pertaining to those issues or processes can be irrelevant or immaterial and am disinclined to exclude them when I am not, on the limited information presently before me, able to make such a determination at this time.

I reserve my right and jurisdiction to issue more fulsome reasons for this decision in the final Inquiry Report.

*Issued this 6<sup>th</sup> day of July, 2023:*

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*Sharon Roberts, Inquiry Officer*