

CITY OF PRINCE GEORGE
BYLAW NO. 8775

A Bylaw to authorize the City to enter into a standby letter of credit agreement with the Bank of Montreal under Section 175 of the *Community Charter* for terms no longer than 5 years, as security for the environmental responsibilities associated with the PW660 to PW605 Watermain Connector Construction Project.

WHEREAS the City may, pursuant to Section 175 of the *Community Charter*, incur a liability under an agreement provided that the liability is not a debenture debt and the period of the liability is not longer than the reasonable life expectancy of the activity, work or service under the agreement;

AND WHEREAS if the term of such agreement is greater than five (5) years, the City may only incur the liability with approval of the electors;

AND WHEREAS the estimated amount of the standby letter of credit, including expenses incidental thereto, is the sum of thirty five thousand dollars (\$35,000), which is the amount of the intended liability to be incurred under this Bylaw;

NOW THEREFORE the Council of the City of Prince George, in open meeting assembled, **ENACTS AS FOLLOWS:**

1. The Council is hereby empowered and authorized to enter into an agreement with the Bank of Montreal upon the credit of the municipality, a total sum not exceeding thirty five thousand dollars (\$35,000), for the purposes of a standby letter of credit associated with the environmental responsibilities related to the PW660 to PW605 Watermain Connector Project, generally in accordance with the files in the municipal office, and to do all things necessary in connection therewith.
2. The standby letter of credit agreement with the Bank of Montreal entered into pursuant to this Bylaw shall not exceed a term of five (5) years, and shall be in a form substantially in accordance with Appendix "A" attached to and forming part of this Bylaw.
3. This Bylaw may be cited for all purposes as "PW660 to PW605 Watermain Connector Monitoring Letter of Credit Bylaw No. 8775, 2016".



READ A FIRST TIME THIS 13th DAY OF JUNE , 2016.
READ A SECOND TIME THIS 13th DAY OF JUNE , 2016.
READ A THIRD TIME THIS 13th DAY OF JUNE , 2016.

All three readings passed by a **UNANIMOUS** decision of Members of City Council present and eligible to vote.

I hereby certify that this Bylaw has received three readings by City Council as outlined herein.


CORPORATE OFFICER
OF THE CITY OF PRINCE GEORGE

ADOPTED THIS 27th DAY OF JUNE , 2016,
BY A **UNANIMOUS** DECISION OF ALL MEMBERS OF CITY COUNCIL PRESENT AND
ELIGIBLE TO VOTE.


MAYOR

CORPORATE OFFICER

Application For Standby Letter of Credit / Demand Guarantee

Date: _____
(dd/MMM/yyyy)

The Manager
Bank of Montreal
Trade Finance Operations
234 Simcoe St. 3rd Floor
Toronto, ON, M5T 1T4

1. Reference Number: _____
Date of Expiry: 31/May/2021
Counter-guarantee expiry date, if applicable: _____
Automatic extension, if applicable: Annual Semi-Annual Quarterly
with 30 60 90 days notice of non-renewal.

2.	Please issue / Request your correspondent to issue Irrevocable <input checked="" type="checkbox"/> Standby Letter of Credit <input type="checkbox"/> Bid Guarantee <input type="checkbox"/> Performance Guarantee <input type="checkbox"/> Advance Payment Guarantee <input type="checkbox"/> Other	3. Method of issuance and Delivery to the Beneficiary <input type="checkbox"/> By SWIFT <input checked="" type="checkbox"/> By Courier <input type="checkbox"/> Other Special Delivery Instructions: _____
4.	For Account of (Applicant) - Full name and address: City of Prince George 1100 Patricia BLVD Prince George, B.C. V2L 3V9	5. In Favor of (Beneficiary) - Full name and address: Receiver General for Canada on behalf of Fisheries and Oceans Canada 11 Laurier Street Gatineau, QC K1A 0S5 Attention:
6.	Currency and Amount CDN \$35,000.00	7. Partial drawings <input checked="" type="checkbox"/> Allowed <input type="checkbox"/> Not Allowed

8. Transferable
 Yes No

9. Purpose of the Standby Letter of Credit / Demand Guarantee: Monitoring of the PW660 to PW605 Watermain Connector Project.

Instrument to be issued in accordance with:

- Terms and conditions as per attached
 BMO's standard text
 Proforma text of instrument attached (subject to BMO's approval)

10. Special/Additional Conditions

All banking charges other than issuing bank's charges and/or charges outside of Canada for the account of the :
 Beneficiary Applicant

11. The Standby Letter of Credit issued based on this Application will be subject to the terms and conditions of:
 The current Uniform Customs and Practice for Documentary Credits ("UCP") of the International Chamber of Commerce (the "ICC")
 The current International Standby Practices ("ISP") of the ICC

A Demand Guarantee issued based on this Application will be subject to the terms and conditions of the current Uniform Rules for Demand Guarantees ("URDG") of the ICC.

Documents presented and conforming to the appropriate ICC rule will be acceptable unless the terms of this Application specifically provide otherwise. The UCP ISP or the URDG of the ICC, as applicable, have been expressly brought to my/our attention and I/we have knowledge of them.

Important

The Agreement on the following pages must be signed. The Applicant has read the Agreement and agrees that it is accepted by and is binding on the Applicant. If there is more than one Applicant, each Applicant must sign both this Application and the Agreement.

Name of Applicant: <u>City of Prince George</u>	
Per: _____ Signature	Per: _____ Signature
_____ Name /Title	_____ Name/Title
<i>I/We have authority to bind the entity.</i>	

STANDBY LETTER OF CREDIT / DEMAND GUARANTEE INDEMNITY AGREEMENT

In consideration of the issuance by Bank of Montreal ("BMO") of a standby letter of credit / demand guarantee / counter guarantee or other instrument ("Instrument") substantially according to the application appearing on the reverse side hereof the Applicant (the "Applicant") agrees as follows:

Application of Agreement:

1. **Binding Effect.** The obligations of the Applicant under this Agreement shall be absolute, irrevocable and unconditional and shall not be reduced or affected by any event, occurrence or circumstances whatsoever, including, without limitation: (i) the existence of any claim, setoff, defense or other right which the Applicant may have at any time against a beneficiary named in the Instrument or any transferee of such Instrument (or any person for whom any the transferee may be acting), or against BMO or any other person, (ii) the surrender or impairment of any security for the performance or observance of any of the terms of this Agreement or the Instrument, (iii) any extension of the expiry date of the Instrument or any increase in the amount thereof, or alteration of any of the terms and conditions at the Applicant's request or with the Applicant's consent or (iv) any change in the composition of the Applicant, the parties to or the parties contemplated in this Agreement, including, without limitation, any change arising from the accession of one or more new partners, or from the death, disability, impairment, retirement, termination, withdrawal or secession of any partner or partners, or merger or amalgamation of one or more corporations. In the event of any of the foregoing circumstances, all the terms of this Agreement shall remain in full force and effect, without release of any party hereto, and this Agreement shall continue to apply to any and all amounts that BMO may ultimately be required to pay under the Instrument by reason of having issued same.

2. **Definitions.** As used in this Agreement, the following terms have the meanings specified below:

"Applicant" has the meaning set forth in the preamble hereto.

"BMO" has the meaning set forth in the preamble hereto.

"Bank Related Parties" means BMO and its affiliates and the respective partners, directors, officers, employees, Suppliers, agents, advisors and other representatives of BMO and its affiliates.

"Change in Law" has the meaning set forth in Section 6.

"Damages" has the meaning set forth in Section 3(c).

"Documents" means, in relation to an Instrument, any and all bills, documents of title, bills of lading, warehouse receipts, transportation documents, insurance policies, certificates, notices, and other documents relating to such Instrument or the Goods or services of relevance thereto.

"Goods" means all goods, products and other property to which Documents relate.

"ICC Rules" has the meaning set forth in Section 8.

"Instrument" has the meaning set forth in the preamble hereto.

"Other Currency" has the meaning set forth in Section 18.

"Set-off Obligations" has the meaning set forth in Section 22.

"Suppliers" means any suppliers, licensors, service providers, including BMO's affiliates, service organizations, correspondent banks, agents or vendors of BMO or its affiliates.

Indemnity and Processing Terms:

3. **Payments, Reimbursements and Indemnity.**

(a) **Reimbursements Generally.** The Applicant agrees to pay BMO in immediately available and freely transferable funds the amount of each draft or other request for payment received under the Instrument. Each such payment shall be made at the maturity of each respective draft or other request for payment received or, if so demanded by BMO, on demand in advance of any such drawing or request or its maturity.

(b) **Certain Payments and Reimbursements.** The Applicant agrees to pay to BMO in immediately available and freely transferable funds, immediately on demand by BMO, the full amount of BMO's contingent liability, as determined by BMO and notified to the Applicant: (i) in respect of an Instrument outstanding at the time any credit facility pursuant to which an Instrument was issued is terminated; (ii) in respect of an Instrument which has become the subject matter of any legal proceeding, order or judgment, injunction or other such determination, whether interim, temporary or permanent, which might have the effect of restricting payment by BMO under such Instrument or extending BMO's liability under the Instrument beyond the expiration date of such Instrument; (iii) in respect of an Instrument with an indefinite, unlimited or non-existent expiry date; and (iv) in respect of an Instrument which is or becomes affected by, or BMO's obligations pursuant to the Instrument are or become affected by, any foreign law, rule, sanction, regulation or policy, including, without limitation, the non-applicability of the ICC Rules.

(c) **Indemnity.** The Applicant hereby agrees to indemnify and hold the Bank Related Parties harmless from and against all claims, proceedings, actions, charges, complaints, costs (including legal fees on a substantial indemnity basis and disbursements), damages, demands, expenses, liabilities, losses and other consequences which any Bank Related Party may, directly or indirectly, incur, sustain or suffer (collectively, "Damages"), except to the extent caused solely by its own gross negligence or willful misconduct, as a direct or indirect result of issuing the Instrument or enforcing or protecting the provisions hereof, including, without limitation: (i) charges by other banks or financial institutions, legal expenses and other professional expenses reasonably incurred by any Bank Related Party and whether incurred in defending any action brought against any Bank Related Party to compel payment under the Instrument or to restrain any Bank Related Party from making payment thereunder, or in any proceedings brought by any Bank Related Party with respect to the Instrument, or against the Applicant, any guarantor of the Applicant's liabilities to any Bank Related Party hereunder, or with respect to the Applicant's or any guarantor's property charged or pledged to any Bank Related Party for the purpose of protecting, taking possession thereof, holding or realizing thereon, or otherwise in connection herewith, (ii) Damages related to the effect of an indefinite, unlimited or non-existent expiry date in the Instrument; (iii) Damages related to the effect of any foreign laws, rules, sanctions, regulations or policies on the Instrument or on any Bank Related Party's obligations pursuant to the Instrument, including, without limitation, the non-applicability of the ICC Rules and (iv) Damages related to (A) any unauthorized use of any services, (B) BMO acting, delaying in acting or declining to act on any instruction, (C) any systems failure, malfunction or delay or (D) any failure to provide any service or to act on any instruction for any reason outside BMO's control, including, without limitation, the acts or omissions of, or the insolvency or bankruptcy of, other financial institutions.

The Applicant hereby further agrees to indemnify and hold Bank Related Parties harmless from and against all Damages arising out of transmissions, including delay or loss in transit of any message(s), letter(s) or Document(s), or for delay, mutation or from insufficient or incorrect particulars being transmitted, or other error(s) arising in the transmission or delivery of any electronic communication or any telecommunication, including transmission by Internet, cable, electronic mail, wireless or otherwise.

The Applicant agrees to pay the amounts described in this Subsection (c) to the applicable Bank Related Party in immediately available and freely transferable funds immediately on demand by such Bank Related Party.

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(d) **No Set-Off or Counterclaim; Taxes.** All payments under this Agreement shall be made to BMO without withholding, deduction or set-off and free and clear of the effects of any required withholding or similar tax. The Applicant acknowledges that BMO's obligations to pay or fulfil any obligation under the Instrument are not subject to claims or defences by the Applicant resulting from its relationship with other parties or otherwise.

(e) **Applicable Currency.** All payments made under this Agreement shall be made in Canadian dollars (In respect of an Instrument denominated in Canadian dollars) or the Canadian dollar equivalent of any foreign currency (with respect to an Instrument denominated in such foreign currency) at BMO's prevailing selling rate for the applicable foreign currency, as determined by BMO and notified to the Applicant. In the event of any payment in any foreign currency, the Applicant shall remain liable to BMO for any deficiency which may result if the actual cost to BMO of settlement of the amount owing under the Instrument proves to be in excess of the amount so paid by the Applicant, and the Applicant shall be entitled to a refund, without interest, of any excess payment made by the Applicant.

(f) **Overdue Amounts.** Any amounts not paid when due hereunder shall bear interest at such lawful rates as BMO may in its discretion determine, payable on demand.

4. Limitations of Liability; Honor of Payments; Exclusions.

(a) **Documents Generally.** None of the Bank Related Parties or their respective correspondents or agents assumes any liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any Document(s), or for the general or particular conditions stipulated in the Document(s) or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the Goods or services represented by any Document(s), or for the good faith or acts or omissions, solvency, performance or standing of the beneficiary, or any other person whomsoever; nor shall any Bank Related Party assume any liability or responsibility for any error, neglect or default of any Bank Related Party's correspondents and the Applicant hereby assumes and undertakes all such risk, including acts of the users of the Instrument, and the Applicant further agrees that a Bank Related Party may hold the delivery of the Documents conforming to the Instrument as sufficient evidence of the good faith of the beneficiary and of the Goods or services described therein, without assuming any responsibility in regard to the shipment or services.

(b) **Honor of Payments.** BMO shall be entitled to honor any request for payment under the Instrument that substantially complies on its face with the terms and conditions of such instrument, even if such instrument by its terms requires strict compliance. In no event shall any Bank Related Party have any liability to the Applicant or to anyone else for recognizing or honoring any forged or fraudulent Document or otherwise for any action of any beneficiary or any shipper or other carrier of property related to the Instrument or for any failure of any documentation to accurately reflect any circumstance related to the Instrument or the property that is the subject of such Instrument, notwithstanding any notice from the Applicant or anyone else of such forgery, fraud, action, or other circumstance.

(c) **Transmissions and Terms.** Each Bank Related Party assumes no liability or responsibility for errors in translation and/or interpretation of technical terms, and reserves the right to transmit the Instrument terms without translating them. BMO may transmit all or any portion of any message encrypted as BMO may deem most expedient, the same being forwarded solely at the request and for the account and risk of the Applicant.

(d) **Limited Nature of Bank Obligations.** The Applicant fully understands and agrees that BMO's sole obligation to the Applicant shall be limited to honoring requests for payment made under and in compliance with the terms of the Instrument, and BMO's obligations remain so limited even if BMO or another Bank Related Party may have assisted in the preparation of the wording of the Instrument or any Documents required to be presented thereunder or may otherwise be aware of the underlying transaction giving rise to the Instrument and this Agreement.

5. **Account Charges; Fees.** BMO and its affiliates may charge to any account of the Applicant any and all amounts payable to BMO or its affiliates by the Applicant in connection with the Instrument. Charges shall be made by BMO at the rates set forth in the credit facility made available by BMO, as applicable, or at its prevailing tariff for commission under the Instrument, subject to a minimum commission. In addition, the Applicant shall pay BMO's and/or any of its affiliates', if appropriate, issuance, extension, drawing, negotiation, amendment and other administrative fees for the Instrument as may be established by BMO for the Applicant from time to time plus all correspondents' charges and out-of-pocket expenses incurred by BMO under or in connection with the Instrument.

6. **Yield Protection.** The Applicant shall reimburse BMO upon demand for all reduced rates of return and increased costs sustained or incurred by BMO and reasonably allocated by BMO if any change or proposed change in law or any governmental rule, sanction, regulation, policy, guideline or directive (whether or not having the force of law) or the interpretation thereof (any of the foregoing events, a "Change in Law") reduces the return to BMO or affects the amount of capital required to be maintained by BMO in respect of the Instrument, and all costs and expenses arising out of any reserve requirement for, or any assessment of deposit insurance premium on, the Instrument. Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act in the United States and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the Canadian or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law" regardless of the date enacted, adopted, issued or implemented. BMO will promptly notify the Applicant of any event of which it has knowledge and which will entitle BMO to compensation pursuant to this Section. A certificate of BMO claiming compensation under this Section and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error.

7. **Acceleration.** The Applicant agrees that if (i) the Applicant suspends payment, or if any amount owing by the Applicant is unpaid when due, or if any other obligation under the Instrument, or under any other credit issued on account of the Applicant, is not fulfilled, or if any other indebtedness or liability of the Applicant is overdue and unpaid (including, without limitation, any amounts demanded in advance of any drawing, request or maturity in accordance with this Agreement); or (ii) the Applicant becomes bankrupt or insolvent, or if proceedings are taken by or against it for the appointment of a receiver, liquidator or other similar official, or if an assignment or plan of arrangement or proposal for the benefit of creditors is made, or if proceedings seeking its liquidation or winding-up, or seeking re-organization, relief from creditors or other similar proceedings are commenced, then all obligations, acceptances, indebtedness and liabilities whatsoever of the Applicant, including, without limitation, those arising under the Instrument, shall mature (or be deemed to have matured) and become due and payable at the option of BMO without notice, provided that upon the occurrence of any of the events described in clause (ii) above, such obligations, acceptances, indebtedness and liabilities shall automatically become immediately due and payable without notice.

8. **ICC Rules.** The Instrument shall be subject to the current Uniform Customs & Practice for Documentary Credits, the current Uniform Rules for Demand Guarantees, or the current International Standby Practices, issued by the International Chamber of Commerce, as specified in the Instrument, as such rules may be amended from time to time (collectively, the "ICC Rules"). If the provisions of this Agreement conflict with the ICC Rules, the provisions of this Agreement shall prevail.

General Terms:

9. **Assignment.** The Applicant is not entitled to assign any of its rights or obligations under this Agreement.

10. **Waivers of Rights.** No term or provision of this Agreement is deemed waived and no breach excused, unless the waiver or consent is in writing and signed by the party claiming to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, does not constitute consent to, waiver of, or excuse for, any other different or subsequent breach.

11. Governing Law; Submission to Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

(b) The Applicant hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of Ontario in any action or proceeding arising out of or relating to this Agreement or for recognition or enforcement of any judgment, and each of the Applicant and BMO hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in Ontario. Each of the Applicant and BMO agrees that a final judgment in any

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such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that BMO may otherwise have to bring any action or proceeding relating to this Agreement against the Applicant or its properties in the courts of any jurisdiction.

(c) The Applicant hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any Ontario court. Each of the Applicant and BMO hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

12. **Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The Applicant and BMO shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provision with a valid provision the economic effect of which is as close as possible to that of the invalid, illegal or unenforceable provision.

13. **Non-Limitation of Rights.** This Agreement shall not be construed as limiting any rights of BMO which may be set out in any other agreement (whether oral or written) between BMO and the Applicant, including, without limitation, any other agreement made in respect of the Instrument or any credit facility. The rights and powers conferred hereby are in addition to and without prejudice to any other rights which BMO may now have or hereafter acquire from the Applicant or others.

14. **Additional Security.** The Applicant further agrees to furnish any security or any additional security which may from time to time be required by BMO.

15. **Amendments.** This Agreement will not be amended, modified or supplemented except in writing duly executed by the duly authorized representatives of the Applicant and BMO.

16. **Interpretation.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement. References in this Agreement to sections are to the sections of this Agreement. Unless otherwise specified, words importing the singular include the plural and vice versa.

17. **Binding on Successors and Assigns.** This Agreement shall be binding upon each of the Applicant and BMO and their respective successors and permitted assigns and enure to the benefit of BMO and its successors and assigns.

18. **Judgment Currency.** The obligation of the Applicant hereunder to make payments in a currency other than Canadian dollars ("Other Currency") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into Canadian dollars except to the extent that such tender or recovery shall result in the effective receipt by BMO of the full amount of the Other Currency so payable hereunder. Accordingly, the obligation of the Applicant shall be enforceable as an alternative or additional cause of action for the purposes of recovery in Canadian dollars of the amount (if any) by which such effective receipt shall fall short of the full amount of Other Currency so payable hereunder, and shall not be affected by any judgment being obtained for any other sums due hereunder.

19. **Further Assurances.** The Applicant agrees to execute such further documents and to perform, or cause to be performed, such further and other acts as may be necessary or desirable to give full effect to this Agreement.

20. **Additional Applicants.** If this Application and Agreement is executed by two or more parties under the heading "Applicant", the term "Applicant" shall be read to include all such parties and each Applicant agrees that it is jointly and severally and, under Quebec law, solidarity, which means both individually and together, liable and responsible for all obligations of the Applicant hereto.

21. **Counterparts; Electronic Transmissions.** This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. Any counterpart of this Agreement may be executed and circulated by facsimile or electronic mail and any counterpart executed and circulated in such a manner shall be deemed to be an original counterpart of this Agreement. All counterparts shall be construed together and shall constitute one and the same original agreement.

22. **Set-off.** In addition to, and not in limitation of, any rights now or hereafter granted to BMO under applicable law or any other agreement between the Applicant and BMO, upon any obligations of the Applicant to BMO under this Agreement becoming due and payable (whether by way of demand or otherwise, collectively, the "Set-off Obligations"), BMO may, at any time without notice to the Applicant or any other person, the right to receive any notice being expressly waived by the Applicant, set-off and compensate and apply any deposits, general or special, time or demand, provisional or final, matured or unmatured, and any other indebtedness at any time owing by BMO to or for the credit of or the account of the Applicant, against and on account of the Set-off Obligations, even if any such Set-off Obligations are contingent or unmatured.

23. **French Language Clause.** The parties have required that this Agreement and all documents relating thereto be drawn up and executed in English. Les parties ont demandé que cette convention ainsi que tous les documents qui s'y rattachent soient rédigés et signés en anglais.

Name of Applicant: City of Prince George

Per: _____

Name/Title: _____

Per: _____

Name/Title: _____

I/We have authority to bind the entity.