

THE CITY OF EDMONTON
DESIGN-BUILD AGREEMENT
CAPITAL LINE SOUTH LRT EXTENSION

Schedule 17
Insurance and Performance Security Requirements

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SCHEDULE 17

INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS

1. INSURANCE REQUIREMENTS

1.1 OCIP

Subject to Section 4 [*Uninsurability*], the City shall take out, maintain in force the insurance covers set out in Section 1.1 [*"All Risks" Course of Construction*], 1.2 [*Wrap-Up Commercial General Liability*], 1.3 [*Project Specific Professional Liability*] and 1.4 [*Project specific Pollution Liability*] of Appendix 17A [*Insurance Requirements*].

1.2 Other Insurance

Subject to Section 4 [*Uninsurability*], Design-Builder shall take out, maintain in force and renew, or shall cause to be taken out, maintained in force and renewed, the insurance covers set out in Section 1.5 [*Automobile Liability*], 1.6 [*Aircraft Liability and/or Watercraft Liability*], 1.7 [*"All Risks" Ocean Marine Cargo*], 1.8 [*"All Risks" Contractors' Equipment*], 1.9 [*Commercial General Liability and Non-Owned Automobile Liability*], 1.10 [*Employee Dishonesty (Crime)*], 1.11 [*Cyber Risk*], 1.12 [*Directors' and Officers' Liability*] and 1.13 [*Workers' Compensation*] of Appendix 17A [*Insurance Requirements*].

2. GENERAL INSURANCE PROVISIONS

2.1 Insurance Act

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

2.2 Liability Not Limited by Insurance

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

2.3 Insurers and Terms of Policies

- (a) The City and Design-Builder shall ensure that all policies for the insurance that it is respectively required to obtain, maintain and renew pursuant to this Schedule are obtained, maintained and renewed with Qualified Insurers authorized or licensed to insure the risks in question in Alberta and, subject to this Schedule, are in such forms and contain such terms and conditions which are equal to or better than those that would be obtained, maintained and renewed by prudent owners and operators of projects of similar scope and magnitude to the Project and, in addition to the required inclusions or permitted exclusions for each policy specifically described in this Schedule, include such other inclusions and exclusions as such prudent owners and operators would require or permit.
- (b) Design-Builder shall ensure that all insurance policies that it is required to obtain, maintain and renew pursuant to this Schedule must be in forms and with terms and conditions acceptable to the City, acting reasonably. The purpose of this Section 2.3(b) is to give the City the right to have modified or deleted from the actual insurance policies terms and conditions that the City becomes aware of, including those that the City becomes aware of only after receiving certified copies of the insurance policies, that are

contrary to the express intent or the spirit of the insurance requirements in this Agreement, including this Schedule.

- (c) Subject to this Section 2.3, the insurance covers required under this Agreement may be structured as single policies or as combinations of primary, excess, and umbrella policies.

2.4 Additional Insurance and Changes to Insurance

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

2.5 Other Requirements of Policies

- (a) Without limiting the generality of this Schedule and the provisions of Section 8 [*Insurance, Damage and Destruction*] of the Agreement, each policy of insurance required to be taken out, maintained and renewed by Design-Builder shall:
 - (1) be primary and not require the sharing of any loss or contribution by any insurer of the City or any other named insured;
 - (2) contain an endorsement to the effect that the insurer will not effect any material adverse change or amendment to the policy or any cancellation of the policy without first giving at least 90 days prior written notice by registered mail to the City and each of the other named insureds and loss payees;
 - (i) This clause (2) shall not apply to the automobile liability insurance described in Section 1.5 [*Automobile Liability*] of Appendix 17A [*Insurance Requirements*] where 60 days prior written notice of cancellation of the policy by registered mail to the City and loss payees shall be given;
 - (ii) This clause (2) shall not apply to Section 1.11 [*Cyber Risk*] and 1.12 [*Directors’ and Officers’ Liability*] of Appendix 17A [*Insurance*]

Requirements] where 90 days prior written notice of cancellation of the Policy by registered mail to the City shall be given by Design-Builder;

- (iii) This clause (2) shall not apply to Section 1.13 *[Workers' Compensation]* of Appendix 17A *[Insurance Requirements]*.
- (3) contain an endorsement to the effect that the policy will not be invalidated and coverage thereunder will not be denied to any insureds by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policy other than as a result of a negligent act, misrepresentation or omission of such insured, except that this clause (3) shall not apply to the following insurance policies:
 - (i) the automobile liability insurance described in Section 1.5 *[Automobile Liability]* of Appendix 17A *[Insurance Requirements]*; and
 - (ii) the workers compensation insurance described in Section 1.13 *[Workers' Compensation]* of Appendix 17A *[Insurance Requirements]*.
- (b) Without limiting the generality of this Schedule and the provisions of Section 8 *[Insurance, Damage and Destruction]* of the Agreement, each policy of insurance required to be taken out, maintained and renewed the City shall:
 - (1) be primary and not require the sharing of any loss or contribution by any insurer of the City or any other named insured;
 - (2) contain an endorsement to the effect that the insurer will not effect any material adverse change or amendment to the policy or any cancellation of the policy without first giving at least 90 days prior written notice by registered mail to the City and each of the other named insureds and loss payees;
 - (i) This clause (2) shall not apply to Section 1.3 *[Project Specific Professional Liability]* of Appendix 17A *[Insurance Requirements]* where 30 days prior written notice of cancellation of the policy by registered mail to the City, Design-builder and each of the named insureds shall be given.

2.6 Waiver of Subrogation

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

2.7 Subcontractor Insurance

- (a) Except with respect to the insurances required under Section 1.10 *[Employee Dishonesty (Crime)]*, 1.11 *[Cyber Risk]* and 1.12 *[Directors' and Officers' Liability]* of Appendix 17A *[Insurance Requirements]*, Design-Builder shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 17 *[Insurance and Performance Security Requirements]*. The Design-Builder shall determine the applicable limits to be obtained for Additional Insurance and Elective Insurance. Design-Builder shall

be solely responsible and liable for any damages which the City may suffer as a direct result of Design-Builder's failure to comply with the foregoing.

- (b) If Design-Builder receives notice that any Subcontractor employed by or through Design-Builder is not covered by any insurance required by this Schedule 17 [*Insurance and Performance Security Requirements*] to be obtained (or cause to be obtained) by Design-Builder, Design-Builder shall:
- (1) ensure that such insurance coverage is immediately put in place;
 - (2) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Project Work until after such insurance coverage is put in place; or
 - (3) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 17 [*Insurance and Performance Security Requirements*], replace the Subcontractor with a new Subcontractor who can be covered by insurance required by this Schedule 17 [*Insurance and Performance Security Requirements*] or who can obtain the required insurance coverage; it being acknowledged by Design-Builder that the requirements of and restrictions set forth in this Agreement regarding new and replaced Subcontractors shall be complied with.

2.8 Evidence of Insurance

At least 20 Business Days prior to Commercial Close, the City will provide Design-Builder with draft copies of policies, confirming that the insurance specified in Section 1.1 [*"All Risks" Course of Construction*], Section 1.2 [*Wrap-Up Commercial General Liability*], Section 1.3 [*Project Specific Professional Liability*] and Section 1.4 [*Project Specific Pollution Liability*] of Appendix 17A [*Insurance Requirements*] will be in full force and effect at Commercial Close. Final certified copies of policies will be provided by the City to Design-Builder at Commercial Close.

At least five Business Days prior to Commercial Close, Design-Builder will provide the City with certificates of insurance confirming that the insurances specified in Section 1.5 [*Automobile Liability*], Section 1.6 [*Aircraft Liability and/or Watercraft Liability*], Section 1.7 [*"All Risks" Ocean Marine Cargo*], Section 1.8 [*"All Risks" Contractors' Equipment*], Section 1.9 [*Commercial General Liability and Non-Owned Automobile Liability*], Section 1.10 [*Employee Dishonesty (Crime)*], Section 1.11 [*Cyber Risk*], Section 1.12 [*Directors' and Officers' Liability*] and Section 1.13 [*Workers' Compensation*] of Appendix 17A [*Insurance Requirements*] will be in full force and effect at Commercial Close.

Design-Builder shall provide or cause to be provided, not less than 5 days prior to expiration of any then current policy, documentation evidencing to the satisfaction of the City (acting reasonably) the renewal, extension or replacement of such insurance and as soon as reasonably practicable, and in any event within 90 days after expiration of any then current policy, certified copies of policies evidencing to the satisfaction of the City (acting reasonably) the renewal, extension or replacement of such insurance.

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

2.9 Design-Builder Deductibles and Self-Insured Retentions

The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance required to be maintained (or caused to be maintained) under this

Schedule 17 [*Insurance and Performance Security Requirements*]. In the event that responsibility for the matter giving rise to the claim is indeterminable, Design-Builder is responsible and liable for the payment of deductibles.

In the case of insurance specified in Section 1.3 [*Project Specific Professional Liability*] of Appendix 17A [*Insurance Requirements*], the first named insured shall be responsible for the payment of deductibles.

2.10 No Indemnification for Insured Claims

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

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

2.11 Compliance

- (a) Design-Builder shall comply with the warranties, terms, conditions and requirements of all policies for the insurance required by this Schedule 17 [*Insurance and Performance Security Requirements*] and shall not do, or omit to do, or permit to be done or omitted by any Design-Builder Person, anything with respect to the Project or the Lands that could reasonably be expected to result in the cancellation or voidance of any insurance required by this Schedule, or that would reasonably be expected to entitle any insurer to partially or fully refuse to pay any claim under any policy for any such insurance.
- (b) The City and Design-Builder shall, and Design-Builder shall cause Subcontractors to:
 - (1) comply with all insurance policy warranties, terms and conditions made known to them; and
 - (2) take any and all special precautions necessary to prevent loss or damage occurring in or about the Project as required by the terms of the course of construction property policy required pursuant to Section 1.1 [*"All Risks" Course of Construction*] of Appendix 17A [*Insurance Requirements*] of this Schedule.

2.12 Insurance Premium Payment

The City and Design-Builder respectively shall pay or cause to be paid all premiums payable in respect of the policies of insurance required to be taken out, maintained in force or renewed by the City and Design-Builder pursuant to this Schedule.

3. INCIDENT REPORTING AND INSURANCE CLAIM SETTLEMENT

3.1 Incident Reporting and Claims Adjuster

Design-Builder shall:

- (a) maintain a written register of all damages, events, losses, circumstances, situations, claims or occurrences, including but not limited to incidents which might result in a claim under any of the policies of insurance required under this Schedule and of all claims made by third parties involving bodily injury, illness, death, personal injury or property

damage in respect of the Project (each such incident, an “**Incident**”). Such register shall indicate the date of the Incident, the type of Incident, the circumstances giving rise to the Incident, and quarterly updates reflecting developments in such Incident until each such Incident is resolved, completed and designated as closed;

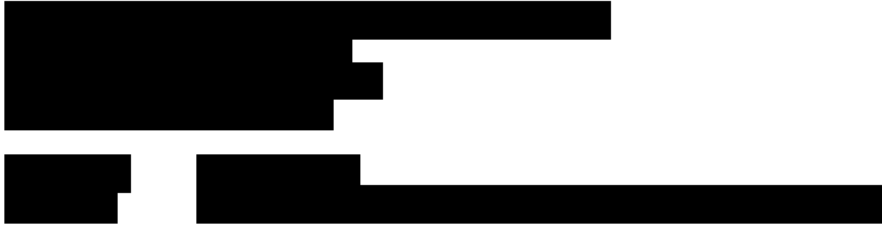
- (b) allow the City to inspect such register at any time and provide a copy of such register to the City quarterly and on the City’s reasonable request;
- (c) in consultation with the City, appoint a claims adjuster (the “**Claims Adjuster**”) to investigate and adjudicate Incidents falling or likely to fall within the insurance deductibles;
- (d) arrange and attend quarterly claims meetings with City representatives, the Claims Adjuster and insurers’ representatives to review the status of all such Incidents, including but not limited to any disputed or denied Incidents or claims arising therefrom;
- (e) meet with the City at the City’s reasonable request to discuss any such Incident;
- (f) promptly upon becoming aware of an Incident, but in any event no later than 5 Business Days after Design-Builder becomes aware of such Incident, notify the City’s Representative, the City’s Director of Insurance and Claims Management, the Claims Adjuster and the insurers’ claim representatives assigned to the Project of the full particulars of such Incident; Design-Builder shall be solely responsible and liable for any claims denied by Insurers, or any deductibles and self-insured retentions which the City may suffer or become responsible for as a direct result of Design-Builder’s failure to comply with the foregoing.
- (g) provide reasonable access, support, documents and information to City representatives, including City insurance and claims management personnel, and the Claims Adjuster in respect of any Incident;
- (h) as soon as practicable but no later than 15 Business Days after becoming aware of the Incident, provide reasonable access, support, documents and information to the Claims Adjuster and any adjuster assigned by the insurer(s) to investigate any Incident;
- (i) comply with the City’s reasonable requests regarding the investigation, negotiation and settlement of any such Incident or claim arising therefrom;
- (j) without prejudice to the provisions of this Agreement, including but not limited to Schedule 12 [*Communications and Engagement*], comply with the City’s reasonable requests regarding communication, including but not limited to communication with claimant(s) and members of the public, in respect of any such Incident and claim arising therefrom;
- (k) upon receiving recommendations on liability and quantum from the Claims Adjuster, settle any claims falling within the deductibles, self-insured retentions or waiting periods of the policies of insurance required under this Agreement, using a release on terms reasonably required by the City, and including Design-Builder, the City, and any parties reasonably required by the City, as releasees thereunder; and
- (l) ensure that the adjuster assigned by insurers or the Claims Adjuster, as applicable, shall provide recommendations on liability and quantum in respect of such Incidents to Design-Builder, the insurers (for losses in excess of the policy deductible) and to the City representatives assigned in accordance with this Section 3.1 [*Incident Reporting and*

Claims Adjuster]. For clarity, the City shall have no responsibility for the costs of any such adjuster, which shall be borne by Design-Builder or the insurer(s).

Wherever the requirements of this Section 3.1 [*Incident Reporting and Claims Adjuster*] are at variance with the terms and conditions of the actual insurance policy(ies), the terms and conditions of the actual insurance policy(ies) will prevail.

3.2 Notice of Incidents

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



3.3 Insurance Representative

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

3.4 Cooperation with Insurer's Consultant

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

- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
- (b) allow the insurer and its consultant to attend meetings between Design-Builder and the City (or, as applicable, and if reasonably required by the insurer, between Design-Builder and those engaged by or through Design-Builder).

3.5 Cooperation with the City's Insurance Broker or Consultant

For the purposes of fulfilling the City's obligations under this Schedule 17 [*Insurance and Performance Security Requirements*], the Design-Builder shall, and shall require the Design-Builder Persons, respectively to:

- (a) cooperate with the City's insurance broker or insurance consultant, including providing them with such information and documentation as they may reasonably require in an accurate and timely manner; and
- (b) participate in any meetings between the City, the City's insurance broker or insurance consultant.

3.6 Failure to Insure

Subject to Section 4 *[Uninsurability]* of this Schedule, if Design-Builder at any time fails or refuses to obtain, maintain in force or renew any insurance required to be effected by it under this Schedule, or to furnish the City with evidence of any required insurance or renewals in relation thereto as and when required and in accordance with this Schedule, the City shall, upon 5 days' written notice to Design-Builder, without prejudice to any of its other rights under this Agreement or otherwise, have the right itself to procure such insurance, in which event Design-Builder shall immediately reimburse the City for all amounts paid by the City for that purpose together with all reasonable costs incurred by the City in procuring such insurance.

Without prejudice to this Section 3.6 *[Failure to Insure]*, the City may, acting reasonably, require that any Person, including but not limited to Design-Builder or any Subcontractor, shall not access the Site if any insurance relating to such access or Person is not obtained or maintained as required under this Agreement.

4. UNINSURABILITY

4.1 Uninsurability – Design-Builder

- (a) Notwithstanding Section 1 *[Insurance Requirements]* but subject to compliance by Design-Builder with all of its obligations pursuant to this Section 4 *[Uninsurability]*, Design-Builder shall not be obligated to maintain insurance against a risk that has become uninsurable. A risk shall be considered to have become uninsurable only if and for so long as Design-Builder can demonstrate to the City's satisfaction (acting reasonably) that:
 - (i) insurance against that risk is generally not available with Qualified Insurers; or
 - (ii) the insurance premium payable or the terms and conditions generally required by Qualified Insurers for insuring such risk are such that the risk is generally not being insured against.
- (b) Upon Design-Builder becoming aware of an uninsurable risk, Design-Builder shall in a timely manner, and in any event within 15 Business Days of becoming aware of same, give the City notice of the uninsurable risk, including all relevant details in relation to such risk, including such details as may be reasonably requested by the City.
- (c) Design-Builder and the City shall, as soon as possible following the provision of the notice referred to in Section 4.1(b), meet to discuss, in good faith, the appropriate means by which the uninsurable risk should be managed and, if Design-Builder and the City are able to agree to alternative arrangements, the uninsurable risk shall be managed in accordance with such alternative arrangements.
- (d) In the event that Design-Builder and the City, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an uninsurable risk within 15 Business Days of the expiry of the period referred to in Section 4.1(a), the City may, in its discretion, either:
 - (i) elect to assume responsibility for the uninsurable risk and, in respect of the year in which the relevant risk becomes uninsurable and every year thereafter, withhold in equal instalments over the course of such year, from the Payment(s) otherwise due to Design-Builder in that year an amount equal to the annual premium (index linked) relating to the uninsurable risk as was current on the day immediately prior to the date on which the relevant risk became an uninsurable risk, in which case this Agreement shall continue in full force and effect; or

- (ii) terminate this Agreement pursuant to Section 14.3 [*Termination Upon Force Majeure or Limited Relief Event*] and, in accordance with the provisions of Schedule 27 [*Compensation on Termination*], pay to Design-Builder and amount equal to the Non-Default Termination Sum;

provided further that if the City has not exercised or does not exercise its right to terminate the Agreement pursuant to Section 4.1(d)(ii) above, and if a loss occurs in respect of that uninsurable risk, then the City may, in its discretion, either:

- (iii) pay to Design-Builder an amount equal to the insurance proceeds that would have been payable to the Design-Builder in connection with such uninsurable risk had the relevant insurance continued to be available (having regard to the coverage limits specified in this Schedule and any applicable deductibles), in which case this Agreement shall continue in full force and effect; and, in the event that the loss includes damage to the Infrastructure, then Design-Builder shall proceed as if the repairs necessitated by the loss were required by the City pursuant to a Change Directive under Schedule 13 [*Changes*]; or
 - (iv) terminate this Agreement pursuant to Section 14.3 [*Termination Upon Force Majeure or Limited Relief Event*] of the Agreement and, in accordance with the provisions of Schedule 27 [*Compensation on Termination*], pay to Design-Builder and amount equal to the Non-Default Termination Sum.
- (e) With respect to any uninsurable risk, Design-Builder shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the uninsurable risk as can be insured in the available insurance market from time to time.
 - (f) Where a risk which was previously an uninsurable risk ceases to be so, Design-Builder shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule in respect of the risk and the provisions of this Section 4 [*Uninsurability*] shall no longer apply to such risk.
 - (g) If the City makes a payment to or on behalf of Design-Builder in place of insurance proceeds that would have been payable pursuant to Section 4.1(d)(d)(iii), then the City, to the extent of the amount paid, shall be subrogated to Design-Builder's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the uninsurable risk before it became uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

4.2 Uninsurability – City

- (a) Notwithstanding Section 1 [*Insurance Requirements*] but subject to compliance by the City with all of its obligations pursuant to this Section 4 [*Uninsurability*], the City shall not be obligated to maintain insurance against a risk that has become uninsurable. A risk shall be considered to have become uninsurable only if and for so long as the City can demonstrate (acting reasonably) that:
 - (i) insurance against that risk is generally not available with Qualified Insurers; or
 - (ii) the insurance premium payable or the terms and conditions generally required by Qualified Insurers for insuring such risk are such that the risk is generally not being insured against.

- (b) Upon the City becoming aware of an uninsurable risk, the City shall in a timely manner, and in any event within 15 Business Days of becoming aware of same, give Design-Builder notice of the uninsurable risk, including all relevant details in relation to such risk, including such details as may be reasonably requested by Design Builder.
- (c) The City and Design-Builder shall, as soon as possible following the provision of the notice referred to in Section 4.2(b), meet to discuss, in good faith, the appropriate means by which the uninsurable risk should be managed and, if the City and Design-Builder are able to agree to alternative arrangements, the uninsurable risk shall be managed in accordance with such alternative arrangements.
- (d) In the event that the City and Design-Builder, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an uninsurable risk within 15 Business Days of the expiry of the period referred to in Section 4.2(a) above, the City may, in its discretion, either
 - (i) elect to assume responsibility for the uninsurable risk and this Agreement shall continue in full force and effect; or
 - (ii) terminate this Agreement pursuant to Section 14.3 [*Termination Upon Force Majeure or Limited Relief Event*] and, in accordance with the provisions of Schedule 27 [*Compensation on Termination*], pay to Design-Builder an amount equal to the Non-Default Termination Sum;

provided further that if the City has not exercised or does not exercise its right to terminate the Agreement pursuant to Section 4.2(d)(iv) above, and if a loss occurs in respect of that uninsurable risk, then the City may, in its discretion, either:

- (iii) pay to Design-Builder an amount equal to the insurance proceeds that would have been payable to Project in connection with such uninsurable risk had the relevant insurance continued to be available (having regard to the coverage limits specified in this Schedule and any applicable deductibles), in which case this Agreement shall continue in full force and effect; and, in the event that the loss includes damage to the Infrastructure, then Design-Builder shall proceed as if the repairs necessitated by the loss were required by the City pursuant to a Change Directive under Schedule 13 [*Changes*]; or
- (iv) terminate this Agreement pursuant to Section 14.3 [*Termination Upon Force Majeure or Limited Relief Event*] of the Agreement and, in accordance with the provisions of Schedule 27 [*Compensation on Termination*], pay to Design-Builder an amount equal to the Non-Default Termination Sum.
- (e) With respect to any uninsurable risk, the City shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the uninsurable risk as can be insured in the available insurance market from time to time.
- (f) Where a risk which was previously an uninsurable risk ceases to be so, the City shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule 17 [*Insurance and Performance Security Requirements*] in respect of the risk and the provisions of this Section 4.2 [*Uninsurability - City*] shall no longer apply to such risk.

- (g) If the City makes a payment to or on behalf of Design-Builder in place of insurance proceeds that would have been payable pursuant to Section 4.2(d)(d)(iii), then the City, to the extent of the amount paid, shall be subrogated to Design-Builder's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the uninsurable risk before it became uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

5. PERFORMANCE SECURITY REQUIREMENTS

5.1 Bonds

Design-Builder shall obtain or cause to be obtained and deliver or cause to be delivered to the City, original executed and sealed Bonds, as stipulated in this Section 5 [*Performance Security Requirements*]. Each of the Bonds shall be properly executed by a Surety or by an agent or attorney in fact for the Surety, in which latter case, Design-Builder is required to submit with such bonds a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to the City to evidence the authority of the agent or the attorney in fact.

5.2 Bond Requirements

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

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

5.3 Delivery of Performance Bond

At least five Business Days prior to Commercial Close, Design-Builder shall deliver or cause to be delivered to the City a performance bond, in the form attached as Appendix 17B [*Form of Performance Bond*] and including an endorsement in the form of Appendix 17D [*Form of Performance Bond Endorsement*], which shall be in an amount that is not less than fifty (50) percent of the Total Capital Cost Amount.

5.4 Delivery of Labour and Material Payment Bond

At least five Business Days prior to Commercial Close, Design-Builder shall deliver or cause to be delivered to the City a labour and material payment bond, in the form attached as Appendix 17C [*Form of Labour and Material Payment Bond*], which shall be in an amount that is not less than fifty (50) percent of the Total Capital Cost Amount.

APPENDIX 17A: INSURANCE REQUIREMENTS

Insurances to be provided, or caused to be provided, by the City

Type	Amount	Maximum deductibles	Principal cover
<p>1.1 “All Risks” Course of Construction including Boiler and Machinery</p>	<p>Limit of Liability of [REDACTED] including property of every description for incorporation into the Project Work, including Light Rail Vehicles supplied by the City.</p> <p>Soft Costs [REDACTED].</p> <p>For clarity, coverage does not extend to include Existing Infrastructure.</p> <p>For clarity, coverage for Light Rail Vehicles supplied by the City commences once they are delivered at Lew Lawrence OMF or other location.</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Replacement Cost Valuation (Property) • Most Recent Technology Replacement Cost Valuation (Equipment or Machinery) • Flood (to policy limit with annual aggregate) • Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) • Cold and hot testing and commissioning per the DB Agreement • Electronic data processing equipment and media, including the cost to restore or recreate data • Margin of profit extension for contractors • Non-vitiation cause • Increased costs due to bylaws or ordinances including demolition, increased costs of repairs and replacement [REDACTED] minimum sub-limit) • Soft costs, not less than 100% of recurring/continuing soft costs 	<p>Deductibles and waiting periods not to exceed the following maximums and, if more than one deductible applies, the highest one shall apply:</p> <p>Earthquake, 3% of value at risk at time of loss / [REDACTED]</p> <p>Flood, [REDACTED] per occurrence</p> <p>Water damage, [REDACTED] per occurrence, first claim / [REDACTED] per occurrence, second claim / [REDACTED] per occurrence each subsequent claim</p> <p>Underground losses, [REDACTED] per occurrence</p> <p>[REDACTED] LEG 3 (new construction only and subject to availability to be determined)</p> <p>Testing and commissioning [REDACTED]</p>	<p>“All Risks” course of construction insurance covering the full insurable replacement cost of the Project Work, including physical loss or damage including boiler and machinery covering all materials property, structures and equipment purchased for, entering into or forming part of the Project Work while located anywhere within Canada or the United States of America during construction, erection, installation and testing of the Project Work.</p> <p>Coverage shall be maintained continuously from Commercial Close until Construction Completion Date.</p> <p>Coverage shall be primary without any right of contribution of any other insurance carried by the City.</p>

- Debris removal and cleanup (██████████ minimum sub-limit) per occurrence
- Expediting expense (██████████ minimum sub-limit)
- Extra expense (██████████ minimum sub-limit) 10% / ██████████ minimum /
- Interruption by civil authority or apparent civil authority (8 weeks) (██████████ sub-limit) (time element and sublimit applicable only to non-physical damage losses) ██████████ maximum
- Prevention of ingress or egress (8 weeks) (██████████ minimum sub-limit) (time element and sublimit applicable only to non-physical damage losses) contractors' equipment – subject to insurer review and approvals
- Unnamed locations (including off-site storage) (██████████ minimum sub-limit) All other insured perils ██████████ per occurrence
- Professional fees, including costs to establish quantum of any covered loss (██████████ minimum sub-limit) 48 hour waiting period applicable to Off Premises Services, Service Interruption
- Fire fighting expense (██████████ minimum sub-limit)
- Off-premises service interruption (██████████ minimum sub-limit)
- Transit (██████████ minimum sub-limit)
- Green building and LEED upgrades (██████████ minimum sub-limit)
- Valuable papers (██████████ minimum sub-limit)
- Accounts receivable (██████████ minimum sub-limit); and
- Costs of cleanup and removal of contamination (██████████ minimum sublimit)
- LEED rectification, commissioning and testing expenses (██████████ minimum sub-limit)
- 24 months cessation of coverage

Principal Exclusions and Special Clauses:

- Cyber risk
- Mould, fungi and fungal derivatives
- Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum LEG 2 standard
- Exclusion for contractor's equipment, except scaffolding and hoarding
- War risk
- Terrorism
- Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial

use

- Contractors' equipment (unless values are declared, and details of risks are reviewed and accepted by Insurers)
- Horizontal directional drilling endorsement (NTD: Applicability to be confirmed, depending on construction methods)
- Piling endorsement
- Groundwater pumping endorsement
- Communicable disease
- Sanctions clause
- Excluded territories endorsement (Ukraine, Russia and Belarus)

Comments:

- Include as Named Insureds the following entities: Design-Builder, the City, City Person, Subcontractors, consultants and sub-consultants.
- No provision permitted allowing a coinsurance penalty
- Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured
- Additional key extensions of coverage:
 - Underground services, temporary works involved in the Project Work such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the construction of the Project
 - Waiver of subrogation against all Named, Additional and unnamed Insureds other than with respect to design professionals where the loss arises from their professional services
 - Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded
 - Errors and omissions clause
 - Breach of conditions
 - Interim claims payment clause
 - No early occupancy restrictions
 - Permit use and occupancy of the incomplete Project Work by the City
 - Permission for immediate repairs

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

- Towing/on-hook coverage
- Non-owned automobile liability
- Legal liability for damage to non-owned automobiles (SEF 94)
- Loading and unloading of automobiles
- Unlicensed equipment
- Permission for unlicensed vehicles (partial road use)
- Blanket contractual liability (written and oral)
- Cross liability and severability of interests
- “All risks” tenant’s legal liability
- Intentional injury committed to protect persons or property
- Voluntary medical payments
- Employee benefits administrative errors and omissions
- Prairie or forest fire fighting expenses
- Non-vitiation clause
- Worldwide territory (suits brought in Canada/US)
- Limited UAV (maximum 20 kilograms)

Principal Exclusions and Special Clauses:

- Injury to employees where Workers Compensation provides valid coverage
- Property in the care, custody or control of the insured, except during the Broad Form Products and Completed Operations extension period and damage to Existing Infrastructure as noted
- Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Site
- Physical damage to the Project Work, except damage to Existing Infrastructure and during the Broad Form Products and Completed Operations extension period as noted
- Cyber risk
- Mould, fungi and fungal derivatives
- Professional liability of engineers, architects and other consultants
- Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use
- Asbestos
- Lead
- Silica

- Contractors' rework
- USA jurisdiction clause
- Sanctions clause
- Terrorism
- War risks
- Damage to / destruction of / loss of / loss of use of TBMs
- Communicable disease
- Excluded territories endorsement (Ukraine, Russia and Belarus)

Comments:

- Include as Named Insureds the following entities: Design-Builder, the City, City Person, Subcontractors, consultants and sub-consultants
- Directors, officers, shareholders, employees of the insured parties involved in the Project Work as Additional Insured.
- Insurance is primary without right of contribution of any other insurance carried by any Named Insured.
- Aggregate limits will be permitted for products and completed operations, prairie and forest fire fighting expenses, sudden and accidental pollution and hostile fire pollution liability and employee benefits administrative errors & omissions liability; no policy general aggregate will be permitted
- Waiver of subrogation of insurers' rights of recovery against all Named and/or Additional Insureds, including Design-Builder, the City, City Person, Subcontractors, consultants, sub-consultants, engineers and architects (other than for their professional liability), as well as officers, directors, employees, servants and agents of the foregoing

Type	Amount	Maximum deductibles	Principal cover
1.3 Project Specific Professional Liability	<p>████████████████████ (inclusive of defence and related costs and supplementary payments)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Primary insurance extension • Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the named insured under a personal services contract, subject to reporting and individual acceptance of each one by the insurer • Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services by a named insured and resulting from a single error, omission or negligent act • Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims • Duty to defend, even if the allegations are groundless, false or fraudulent • Worldwide territory (suits brought in Canada) <p>Principal Exclusions and Special Clauses:</p> <ul style="list-style-type: none"> • Insured v. insured • Express warranties or guarantees • Estimates on profit, return • Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project Work or the construction documents • Design or manufacture of any good or products sold or supplied by the Named Insured • Terrorism • Nuclear liability • Judgments and awards deemed uninsurable by law • Liability assumed under design contract, unless such liability 	<p>██████████ per claim, all other losses</p>	<p>Project Specific Professional Liability Insurance in connection with the design and construction of the Project Work from beginning of first design, until Construction Completion Date plus coverage for an extended reporting period of not less than 36 months effective from Construction Completion Date, subject to a maximum total policy term of ten (10) years, including the extended reporting period.</p> <p>Coverage shall be primary without any right of contribution of any other insurance carried by the City.</p>

would have attached to the Named Insured by law in the absence of such agreement

- Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees
- Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies
- Sanctions clause
- LRV design and transit (except professional services rendered in relation to relevant work performed under this Agreement by or on behalf of Design-Builder
- Communicable disease
- Excluded territories endorsement (Ukraine, Russia and Belarus)

Comments:

- Include as Named Insureds the following entities: all engineers, architects, and other professional consultants that provide professional design services in connection with the Project (subject to any reporting provision)
- Professional services covered: per policy's definition.
- Coverage from first design activity, including without limitation preliminary design, until Construction Completion Date plus extended reporting period of not less than 36 months, subject to a maximum total policy term of ten (10) years, including the extended reporting period
- Coverage provided to present, former partners, executive officers, directors and shareholders of named insureds, and to individuals or personal corporations retained by named insureds
- The City to have right to bring claims if City property is damaged as a result of design or other professional error or omission

Type	Amount	Maximum deductibles	Principal cover
1.4 Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability)	<p>████████████████████ (inclusive of defense and related costs and supplementary payments)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Hazardous substances occurring or emanating from the Site during the policy period • First party restoration and clean-up costs • Duty to defend • Coverage for non-owned disposal sites, including transportation (reporting required) • Emergency response costs • Contractual liability • Underground/above ground storage tanks (reporting required) • Non-vitiation clause • Automobile difference in conditions • Microbial matter (including fungus or mould) • Canada/US territory <p>Principal Exclusions and Special Clauses:</p> <ul style="list-style-type: none"> • Terrorism • War • Intentional non-compliance • Prior knowledge / known condition / pre-existing condition (exception for events of exacerbation, aggravation, worsening) • Workers Compensation • Employers’ liability • Professional liability • Nuclear liability • Property damage to motor vehicles during transportation • Sanctions clause • Communicable disease • Excluded territories endorsement (Ukraine, Russia and Belarus) 	<p>██████████ per claim</p>	<p>Pollution Liability insurance on an occurrence basis, covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and off-Site, as required.</p> <p>Coverage shall be maintained continuously from Commercial Close until Construction Completion Date plus coverage for an extended reporting period of not less than 36 months effective from Construction Completion Date.</p> <p>Coverage shall be primary without any right of contribution of any other insurance carried by the City.</p>

Comments:

- Include as Named Insureds the following entities: Design-Builder, the City, City Person, Subcontractors, consultants and sub-consultants
- Directors, officers, shareholders, employees of the insured parties involved in the Project Work as Additional Insureds
- Waiver of subrogation of insurers' rights of recovery against all Named and/or Additional Insureds, including Design-Builder, the City, City Person, Subcontractors, as well as officers, directors, employees, servants and agents of the foregoing
- Insurance is primary without right of contribution of any other insurance carried by any Named Insured
- Diminution of third-party property value and natural resource damage included in the definition of property damage
- Cover not restricted by time element

Insurances to be provided, or caused to be provided, by the Design-Builder

Type	Amount	Maximum deductibles	Principal cover
1.5 Automobile Liability	<p>Automobile liability insurance for third party property damage and bodily injury, including accident benefits, arising out of the use of any automobile in connection with the Project, including all vehicles owned, operated or licensed in the name of Design-Builder, Subcontractors, consultants and sub-consultants.</p> <p>Insured limits of not less than ██████████ per occurrence in respect of Design-Builder vehicles.</p> <p>Insured limits of not less than ██████████ per occurrence in respect of vehicles of Subcontractors, consultants, and sub-consultants, and workers, trades or other persons working on or at the Site.</p>		<p>Standard Owners Form For all vehicles operated by Design-Builder, Subcontractors, consultants and sub-consultants, operated in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Coverage shall be maintained continuously from Commercial Close until the later of the termination or expiry of the Warranty Period.</p>
1.6 Aircraft Liability and or Watercraft Liability (if an exposure exists)	<p>If aircraft or watercraft are used in connection with the Project, and except to the extent covered under the Wrap-up Commercial General Liability insurance set out in Section 1.2 [<i>Wrap-Up Commercial General Liability</i>] of this Appendix 17A, Design-Builder shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, liability insurance for damage to property and bodily injury or death (including passenger liability) arising in respect of the use of owned and non-owned aircraft and watercraft by Design-Builder or Subcontractors in connection with the Project.</p>		<p>Aircraft Liability and or Watercraft Liability</p> <p>Coverage shall be maintained continuously from Commercial Close until the later of the termination or expiry of the Warranty Period.</p>

Insured limits of not less than [REDACTED] per occurrence, including not less than [REDACTED] per passenger for aircraft liability insurance, as applicable.

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

Comments:

- The City as Additional Insured
- Insurers to waive their rights of recovery and subrogation against the City

1.7 “All Risks” Ocean Marine Cargo (if applicable)

If marine transport is used to transport any materials, equipment or property destined to be supplied under or used during the Project, Design-Builder shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, all risks marine cargo transit property insurance for such materials, equipment or property, which will include the following terms:

- An insured value of not less than the full replacement value of materials, equipment or property in transit
- No co-insurance provisions

“All Risks” Ocean Marine Cargo

Coverage shall be maintained during marine transit, on a full replacement value basis, with no coinsurance provision.

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

Comments:

- Include as Named Insureds the following entities: Design-Builder, the City, Subcontractors, consultants and sub-consultants

1.8 “All Risks” Contractors’ Equipment

“All Risks” property insurance for equipment owned, leased, rented or borrowed for use on the Project which will include the following terms with an insured value of not less than the actual cash valuation of insured equipment.

All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment, used at the Site.

Coverage shall be maintained continuously from Commercial Close

until the later of the termination or expiry of the Warranty Period.

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

Comments:

- Insurers to waive their rights of recovery and subrogation against Design-Builder, the City, Subcontractors, consultants and sub-consultants and the shareholders, officials, directors, officers, employees, servants, consultants and agents of the foregoing

<p>1.9 Commercial General Liability and Non-Owned Automobile Liability (including Off- Site Operations and performance of Design-Builder obligations during Warranty Period)</p>	<p>[REDACTED] with respect to Design-Builder</p> <p>[REDACTED] with respect to Subcontractors, consultants, and sub-consultants, workers, trades or other persons involved in the Project.</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Owner’s and contractor’s protective liability • Blanket contractual liability (written) • Direct and contingent employer’s liability • Personal injury (nil participation) • Cross liability and severability of interests • Hazardous operation XCU (blasting/demolition/excavating/ • Underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading and similar operations • Permission for unlicensed vehicles • Permission to occupy an incomplete facility • Loss of use without property damage • Broad form property damage • Broad form completed operations • Tenant’s legal liability 	<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use) and including Broad Form Products and Completed Operations Liability</p> <p>This Commercial General Liability Insurance will include cover for off-site activities connected to the Project and Products and Completed Operations Liability beyond the “Wrap-Up” Commercial General Liability Insurance policy’s Products and Completed</p>
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- No exclusion for abuse/molestation, or a specific endorsement to the policy providing coverage for abuse/molestation
- Intentional injury committed to protect persons or property
- Watercraft (not in excess of 10 meters) unless insured elsewhere, as applicable
- Worldwide territory subject to claims being brought in Canada or the U.S.

Principal Exclusions:

- Injury to employees, where Workers Compensation provides valid coverage
- Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations
- Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Lands
- Cyber risk
- Mould, fungi and fungal derivatives
- Professional liability of engineers, architects and other professional consultants
- Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use
- Asbestos
- Lead
- Silica
- Contractor's Rework
- USA jurisdiction clause
- Terrorism
- War
- Excluded territories endorsement (Ukraine, Russia and Belarus)
- Sanctions clause
- Communicable disease

Operations extension period.

Coverage shall be maintained continuously from Commercial Close until the later of the termination or expiry of the Warranty Period.

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

Comments:

- The City as Additional Insured

**1.10
Comprehensive
Crime**

Comprehensive Crime insurance which will include the following principal extensions:

- Employee dishonesty [REDACTED]
- Broad form money and securities
- Money orders and counterfeit paper
- Depositors' forgery
- Computer fraud and funds transfer fraud
- Audit expenses
- Credit card forgery
- Custodial endorsement extension to third parties

Employee dishonesty insurance against the fraudulent/dishonest acts of employees of Design-Builder and its Affiliates including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses, Credit Card Forgery and Custodial Endorsement Extension to Third Parties.

Coverage shall be maintained continuously from Commercial Close until Construction Completion Date.

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

1.11 Cyber Risk

Cyber Risk Insurance coverage covering all damages, claims expenses, penalties, cyber extortion loss, data protection loss, business interruption and forensic expenses subject to a minimum limit of [REDACTED]

Design-Builder has the discretion to have in place a cyber risk limit higher than the minimum limit of [REDACTED] based on Design-Builder's assessment of the cyber risk.

Sub-limits:

Cyber Risk Insurance for all Damages, Claims Expenses, Penalties, Cyber Extortion Loss, Data Protection Loss, Business Interruption and Forensic Expenses including coverage for third party claims alleging

	<ul style="list-style-type: none"> • Regulatory defense and penalties ([REDACTED] minimum sub-limit) • Website media content liability ([REDACTED] minimum sub-limit) • Cyber extortion ([REDACTED] minimum sub-limit) • Data protection ([REDACTED] minimum sub-limit) • Business interruption ([REDACTED] minimum sub-limit) • Forensic expenses ([REDACTED] minimum sub-limit) • Dependent business ([REDACTED] minimum sub-limit) 	<p>bodily injury or property damage caused by a security failure or a privacy event.</p> <p>Coverage shall be maintained continuously from Commercial Close until Construction Completion Date.</p> <p>Coverage shall be primary without any right of contribution of any insurance carried by the City.</p>
<p>1.12 Directors' and Officers' Liability</p>	<p>Directors' and Officers' Insurance covering liability for directors and officers arising from their wrongful acts when acting within the scope of their duties.</p> <p>Minimum limit [REDACTED] per claim and in the aggregate for cover for entity (Side C)</p>	<p>Directors' and Officers' Insurance coverage shall be maintained continuously from Commercial Close until Construction Completion Date plus coverage for an extended reporting period of not less than 24 months.</p> <p>Coverage shall be primary without any right of contribution of any insurance carried by the City.</p>
<p>1.13 Workers' Compensation</p>	<p>In accordance with Alberta statutes established benefits and schedules</p>	<p>Cover in accordance with Applicable Law and the requirements of any Governmental Workers'</p>

compensation insurance coverage for all employees of Design-Build, Subcontractors, consultants and sub-consultants engaged in the performance of the Project Work, in accordance with Applicable Law and the requirements of any Governmental Authority.

Coverage shall be maintained continuously from Commercial Close until the later of the termination or expiry of the Warranty Period.

APPENDIX 17B: FORM OF PERFORMANCE BOND

Bond Amount [Insert Amount]

[Insert Design-Builder], as Principal, hereinafter called the “Principal”, and [Insert Surety], as Surety, duly authorized to transact the business of suretyship in Canada (the “Surety”), are held and firmly bound unto the City of Edmonton as Obligee, hereinafter called the Obligee (the “Obligee”), in the amount of [Insert Amount] of lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

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

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

Whenever the Principal shall be, and declared by the Obligee to be, in default in respect of its obligations to the Obligee under the Design-Build Agreement, the Obligee having performed the Obligee’s obligations under the Design-Build Agreement, the Surety shall promptly select and carry out one of the four following options:

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

The Surety shall not be discharged or released from liability hereunder and such liability shall not be in any way affected by any changes, alterations, additions or variations, taking or receiving of security between the Principal and the Obligee, or extension of time, or other modification of the Design-Build Agreement, by the exercise by the Obligee of any of the rights or powers reserved to it under the Design-

Build Agreement or by its forbearance to exercise any such rights or powers, including (but without restricting the generality of the foregoing) any changes in the extent or nature of the Project Work under the Design-Build Agreement or by any dealing, transaction, forbearance or forgiveness which may take place between the Principal and the Oblige.

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

It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the Construction Completion Date, or (2) the date on which the Principal is declared in default by the Oblige.

The Surety shall, in no event, be liable for a greater sum than the Bond Amount.

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

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond dated the ____ day of _____, 20__.

Signed, sealed and delivered

in the presence of:

[DESIGN-BUILDER]

By

Signature

Name of person signing

[SURETY]

By:

Signature

Name of person signing

APPENDIX 17C: FORM OF LABOUR AND MATERIAL PAYMENT BOND

NOTE: This bond is issued simultaneously with a Performance Bond]

Bond No.

Bond Amount: [Insert Amount]

[Insert Design-Builder], as Principal (hereinafter called the "Principal"), and [Insert Surety], a corporation created and existing under the [laws of Canada] and duly authorized to transact the business of Suretyship in Canada as Surety (hereinafter called the "Surety") are subject to the conditions hereinafter contained, held and firmly bound unto the City of Edmonton as Obligee (hereinafter called the "Obligee"), for the use and benefit of the Claimants, and each of their heirs, executors, administrators, successors and assigns, in the amount of [Insert amount] of lawful money of Canada for the payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

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

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

proceeding, then such act, action or proceeding shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless the Obligees against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligees by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them, may use the name of the Obligees to sue on and enforce the provisions of this Bond.

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

the Design-Build Agreement, whether or not claim for the amount of such lien(s) be presented under and against this Bond.

7. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond this ___ day of _____, 20__.

SIGNED, SEALED AND DELIVERED in the presence of:

[DESIGN-BUILDER]

By

Signature

Name of person signing

[SURETY]

By

Signature

Name of person signing

APPENDIX 17D: FORM OF PERFORMANCE BOND ENDORSEMENT

ENDORSEMENT NO.

To be attached to and form part of Bond No.:

Issued on behalf of as Principal:

Issued in favour of as Obligee:

Dated:

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

This bond is hereby amended such that the following recital:

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

is hereby deleted and replaced with the following recital:

WHEREAS, the Principal has entered into a written contract entitled Design-Build Agreement with the Obligee dated [•], 20[•] for the design and construction of the City Of Edmonton Capital Line South LRT Extension Project, which contract, including without limitation any provisions relating to an obligation on the part of the Principal for liquidated damages, as defined in the contract (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Design-Build Agreement and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Design-Build Agreement.

All other terms and conditions of the said bond remain unchanged.

Signed, sealed and dated the day of , 20[X].

Principal

[Insert Surety]

[XX], Attorney-in-Fact