

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

***Schedule 7***  
***Construction Completion, Service Readiness and Final Completion***

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## SCHEDULE 7

### CONSTRUCTION COMPLETION, SERVICE READINESS AND FINAL COMPLETION

#### 1. RECORD DOCUMENTATION AND FINAL REPORTING

##### 1.1 Construction Certificates

- (a) Design-Builder shall, in accordance with the procedures set out in the Design Management Plan, the relevant Quality Documentation and the other Project Requirements, submit a Construction Certificate for each Work Package to the City prior to making an application for:
  - (i) Completion of any element of the Infrastructure that is included in the applicable Work Package; or
  - (ii) Construction Completion, in accordance with Section 2 [*Construction Completion*].
- (b) Each Construction Certificate shall contain, or refer to and be submitted with, all information used to verify and confirm that the Work Package covered by the Construction Certificate has been:
  - (i) Constructed in accordance with the applicable Final Design; and
  - (ii) Completed in accordance with the applicable Project Requirements.
- (c) For elements of the Infrastructure that are governed by the NBCAE, the Construction Certificates shall be in the forms required by the NBCAE. For all other elements the Construction Certificates shall be in the form of the “Construction Certificate - Assurance of Professional Review and Compliance” included in Appendix 4B [*Certificate Forms*] attached to Schedule 4 [*Design and Construction Protocols*] and shall be authenticated by the Designer.
- (d) For greater clarity, the Design-Builder is not required to prepare or submit Construction Certificates for City Works.

##### 1.2 Final Design and Construction Report

Design-Builder shall prepare and submit to the City a final report on the Design and Construction (the “**Final Design and Construction Report**”)

- (a) in draft form at least 30 days prior to the Construction Completion Date; and
- (b) in final form within 60 days of the Construction Completion Date.

The Final Design and Construction Report shall show the details and progression of the Design and Construction for each portion of the Infrastructure and will include, as a minimum:

- (c) an executive summary of Project scope;
- (d) Design Team information, including any substitutions to key individuals;

- (e) Design notes and check notes;
- (f) Construction team information, including any substitutions to key individuals;
- (g) the final Schedule Update with all actual start and finish dates compared to the latest Construction Schedule as a baseline;
- (h) Quality Management Reports in accordance with Schedule 9 *[Quality Management]*;
- (i) a statistical summary of safety accidents, near miss incidents, public safety incidents and injuries;
- (j) lessons learned;
- (k) any required integration with City Works; and
- (l) As-Built reports for each of the following:
  - (i) Transportation Structure(s), with each As-Built report to include:
    - (A) shop drawings for fabrication;
    - (B) weld procedures;
    - (C) mill reports for stressing strand, cable hangers, ground anchors, and concrete reinforcing steel;
    - (D) stress-strain curves for stressing strand;
    - (E) stressing calculations;
    - (F) girder camber and deflection records including final girder profiles;
    - (G) stay cable/hanger acceptance testing reports;
    - (H) mill certificates for structural steelwork, miscellaneous steelwork, and steel piles;
    - (I) non-destructive test reports, including Charpy impact, hardness, radiography, ultrasonic, magnetic particle, and dye penetrant reports;
    - (J) heat treatment records;
    - (K) concrete and asphalt mix designs;
    - (L) pile driving, pile drilling and foundation records;
    - (M) material, test, and inspection reports for coating systems;
    - (N) fabrication inspection reports for all structural steelwork, including maintenance walkways;
    - (O) concrete test results;

- (P) post-tensioning and stressing records, including for ground anchors and stay cables/hangers;
  - (Q) pre-pour inspection reports;
  - (R) material testing results, including gradation analysis for backfill materials;
  - (S) materials testing results for bridge bearings;
  - (T) ground anchor testing records; and
  - (U) any other information recorded as part of the QMS and required to document material properties or construction details;
- (ii) Track, with the As-Built report to be titled "Reports of Conformity to Trackwork Tolerances" shall have all information necessary to demonstrate construction conformity separated for each track and shall include:
- (A) records of tolerances for track and Special Trackwork;
  - (B) conformity/deviations between specified tolerances and actual As-Built conditions;
  - (C) the dates when measurements were taken;
  - (D) the name and designation of the Track to which the measurements apply;
  - (E) the chainage of each point where measurements are made at finite points, or the chainage at intervals not exceeding 3 m where measurements are made continuously;
  - (F) the design horizontal alignment and grades and the As-Built variations from design centreline and design grades;
  - (G) the design and As-Built gauge, cross level, superelevation and rates of change and variations thereof;
  - (H) shop drawings for Special Trackwork; and
  - (I) mill certificates, welding procedures and records;
- (m) a summary and notes of all public communications and engagement activities undertaken during the Construction Period; and
- (n) inclusion of any of the above prepared by the City for City Works.

### **1.3 Record Drawings**

At least 30 days prior to the Construction Completion Date, Design-Builder shall prepare and submit to the City all Record Drawings for the Infrastructure except for City Works. The Record Drawings for the Infrastructure shall:

- (a) be prepared in accordance with the City's "Standard Record Documents Guideline for High Floor LRT Projects" (May 20, 2020), available as Disclosed Data;
- (b) incorporate all As-Built information contained on the final, redlined, issued for construction Design Drawings;
- (c) be provided in the formats and quantities described in Section 2.2.2(f) *[Drawing Submissions]* of Appendix 4E *[Project Drawing Standards]* of Schedule 4 *[Design and Construction Protocols]*; and
- (d) be authenticated by the Designer in accordance with Applicable Law, and the policies and requirements of applicable Governmental Authorities and regulatory agencies, including APEGA, ASET, AAA, and AALA.

## 2. CONSTRUCTION COMPLETION

### 2.1 Initial Countdown Notice

- (a) Not less than 180 days prior to the Target Construction Completion Date and not less than 180 days prior to the Anticipated Construction Completion Date, Design-Builder shall submit a notice (the "**Initial Countdown Notice**") to the City confirming:
  - (i) the anticipated Construction Completion Date (the "**Anticipated Construction Completion Date**"); and
  - (ii) details of any events or circumstances that have the capacity to impact Design-Builder's ability to achieve Construction Completion on or before the Anticipated Construction Completion Date;
- (b) If Design-Builder has at any time reason to believe that Construction Completion will be delayed by more than five Business Days from the Anticipated Construction Completion Date, Design-Builder shall submit:
  - (i) a notice informing the City of the revised date on which Construction Completion is anticipated to occur;
  - (ii) an explanation of the reason for the delay; and
  - (iii) a remediation plan.

### 2.2 Delays in achieving Construction Completion

In the event that Design-Builder fails to achieve Construction Completion by the Target Construction Completion Date, then Design-Builder shall pay to the City as liquidated damages in respect of damages suffered and costs incurred by the City related to Design-Builder's failure to achieve Construction Completion by the Target Construction Completion Date the sum of [REDACTED] for each day following the Target Construction Completion Date until the date Construction Completion is achieved, subject to a maximum aggregate amount payable of [REDACTED]. Design-Builder and the City acknowledge and agree that such liquidated damages are not a penalty but a genuine pre-estimate of the damages suffered by the City as a result of Design-Builder failing to achieve Construction Completion by the Target Construction Completion Date.

### **2.3 Advance Notice of Application for Construction Completion**

Design-Builder acknowledges that the City will need sufficient time to complete any inspections and review the lists of Deficiencies. Accordingly, Design-Builder shall:

- (a) at least 30 days (but not more than 45 days) before the Anticipated Construction Completion Date, deliver to City a notice setting out:
  - (i) a description of all outstanding Design and Construction to be completed by Design-Builder prior to Construction Completion; and
  - (ii) a list of all Deficiencies, Nonconformities, Corrective Action Requests (as tracked in the NCR Log) and any incomplete Design and Construction that Design-Builder is aware of at the time of the notice; and
- (b) assist the City to make any advance inspections requested.

### **2.4 Deficiency List**

- (a) Prior to, and as a condition of, issuance of the Certificate of Construction Completion, Design-Builder shall, in co-operation with the City, prepare a complete list of Construction Completion Deficiencies and deliver to the City the list of Construction Completion Deficiencies, together with the Design-Builder's reasonable estimate of the cost to correct each such Construction Completion Deficiency.
- (b) Subject to the right of the parties to refer matters related to the accuracy or completeness of the list of Construction Completion Deficiencies to the Dispute Resolution Procedure, the list of Construction Completion Deficiencies shall include all items required by the City to be included on such list.

### **2.5 Conditions Precedent to Construction Completion**

Construction Completion shall only be achieved if, at the time of certification by the City, the following conditions precedent have been satisfied:

- (a) all Design and Construction has been completed in accordance with the Project Requirements, save for Construction Completion Deficiencies for which the estimated total cost of correction, as determined by the City, does not exceed 1.0% of the Total Capital Cost Amount or an amount as otherwise agreed by the City in writing;
- (b) all Major Deficiencies have been rectified;
- (c) all requirements for acceptance of Infrastructure defined in the following documents are met:
  - (i) High Floor Design Guidelines;
  - (ii) City Design & Construction Standards;
  - (iii) Edmonton Facility Consultant Manual;
  - (iv) Commissioning Consultant Manual;



- (v) City's "CCC/FAC Document Submission Guide" (February 2017) available on the City's website;
  - (vi) City's "Development Inspections Transportation Inspector Guideline" (COE-IM-GUIDE-0026 2022-05-06), available on the City's website;
  - (vii) City's "2022 Development Inspections Landscaping Inspector Guideline" (2022), available on the City's website; and
  - (viii) Any other guidelines, checklists, or related documents that provide requirements for acceptance of infrastructure by the City at completion of construction;
- (d) the Infrastructure is ready for Operational Testing when tasked to perform, provide and deliver all of its intended functions in accordance with the applicable Project Requirements;
  - (e) "substantial performance" of the Infrastructure, as defined in the *Prompt Payment and Construction Lien Act* (Alberta) has been achieved;
  - (f) the "Assurance of Design Coordination Certificate" in the form included in Appendix 4B [*Certificate Forms*] attached to Schedule 4 [*Design and Construction Protocols*] has been submitted to and Accepted by the City
  - (g) the list of Construction Completion Deficiencies has been submitted to and Accepted by the City;
  - (h) all Design Certificates, Construction Certificates and Commissioning Certificates have been submitted to and Accepted by the City;
  - (i) Building Occupancy Permits have been obtained for all Building Structures to which the NBCAE applies;
  - (j) for each City Works activity listed in Table 1-1.3.1 [*City Works*] of Schedule 5 [*D&C Performance Requirements*], the applicable "City Works Period" noted in Table 1-1.3.1 [*City Works*] following completion of all applicable antecedent works has elapsed, unless the City has provided written notification to Design-Builder that the applicable City Works are complete;
  - (k) at least 180 days has elapsed from the latest submission date of the Initial Countdown Notice to the City;
  - (l) a Safety and Security Certification Verification Report and Project Safety and Security Certificate has been issued by the Independent Safety Assessor in accordance with Section 5.3 [*Independent Safety Assessor*] of Schedule 4 [*Design and Construction Protocols*] and submitted to and Accepted by the City;
  - (m) an In-Service Road Safety Audit Certificate has been issued by the Independent Road Safety Auditor in accordance with Section 5.9 [*Road Safety Audits*] of Schedule 4 [*Design and Construction Protocols*] and submitted to and Accepted by the City;
  - (n) Building sustainability project checklists and written opinion have been delivered to the City in accordance with Section 4.4 [*LEED Silver Certification for Llew Lawrence OMF*] of Schedule 4 [*Design and Construction Protocols*];

- (o) all training has been delivered in accordance with the appropriately endorsed Infrastructure Training and Assessment Plan and in accordance with Section 3.3 *[Operational Training]* of Schedule 6 *[Testing and Commissioning]*;
- (p) a copy of all redlined, Final Design Drawings have been submitted to the City 10 Business Days prior to the Construction Completion Date in accordance with Section 6.10 *[Final Designs]* of Schedule 4 *[Design and Construction Protocols]*;
- (q) all Project Work specified in Schedule 10 *[Environmental Performance Requirements]* in respect of each Naturalization Area is complete in accordance with the requirements specified in Schedule 10 *[Environmental Performance Requirements]*;
- (r) final cleaning has been completed in accordance with Section 1-8.4.2 *[Final Cleaning]* of Schedule 5 *[D&C Performance Requirements]*;
- (s) all Record Drawings have been submitted to and Accepted by the City;
- (t) all necessary Spare Parts as set out in the Spare Parts List, pursuant to Section 5.5.10.4 *[Spare Parts]* of Schedule 4 *[Design and Construction Protocols]*, have been delivered to the City; and
- (u) the Final Design and Construction Report has been submitted and Accepted by the City.

## **2.6 Application for Construction Completion**

If Design-Builder is of the opinion that it has achieved the requirements for Construction Completion and has complied with Section 2.3 *[Advance Notice of Application for Construction Completion]*, then Design-Builder may apply to the City for Construction Completion.

## **2.7 Inspection for Construction Completion**

No later than 15 Business Days after Design-Builder delivers to the City:

- (a) an application for Construction Completion pursuant to Section 2.3 *[Advance Notice of Application for Construction Completion]*; and
- (b) all relevant Certificates and supporting documentation in accordance with the Project Requirements to confirm that all conditions precedent as described in Section 2.5 *[Conditions Precedent to Construction Completion]* have been satisfied,

the City will:

- (c) review and verify the accuracy of the Construction Completion Deficiencies;
- (d) review all other relevant Certificates and supporting documentation to determine whether all conditions precedent to Construction Completion have been satisfied; and
- (e) perform and complete an inspection of the Infrastructure to determine whether Construction Completion has been achieved.

## **2.8 Certification of Construction Completion**

No longer than 10 Business Days from the completion of the inspection under Section 2.7 [*Inspection for Construction Completion*], the City shall either:

- (a) issue the Certificate of Construction Completion for the Infrastructure (the “**Certificate of Construction Completion**”), stating the Construction Completion Date; or
- (b) notify Design-Builder of its decision not to issue the Certificate of Construction Completion and stating the reasons in detail for such decision, including the further work that is required to achieve Construction Completion.

## **2.9 Refusal to Certify Construction Completion**

The City may refuse to issue the Certificate of Construction Completion if the Infrastructure does not meet the conditions precedent to Construction Completion specified in Section 2.5 [*Conditions Precedent to Construction Completion*].

## **2.10 Completion of Further Work for Construction Completion**

In the event the City delivers a notice under Section 2.8(b) [*Certification of Construction Completion*], Design-Builder shall issue a notice to the City not less than five Business Days but not more than 15 Business Days prior to the date upon which Design-Builder expects to complete such further work or other measures necessary or appropriate to remedy or remove the cause of the City’s refusal to issue the Certificate of Construction Completion. Upon Design-Builder notifying the City that such further work or measures necessary or appropriate have been completed, the City shall within five Business Days of receipt of such notice commence, an inspection of such further work or measures and the provisions of Section 2.5 [*Conditions Precedent to Construction Completion*] through to this Section 2.10 [*Completion of Further Work for Construction Completion*], inclusive, shall thereafter apply to such notice mutatis mutandis .

## **2.11 Correction of Construction Completion Deficiencies**

Upon issuance of the Certificate of Construction Completion, Design-Builder shall proceed expeditiously to correct each Construction Completion Deficiency listed in the list of Construction Completion Deficiencies by the date that is 120 days after the Construction Completion Date, or such later date as may be reasonably required to provide sufficient time to correct the Construction Completion Deficiencies and that is agreed to by the City, acting reasonably. Each Construction Completion Deficiency listed in the list of Construction Completion Deficiencies shall have its own deadline for completion. Nothing in this Section 2 [*Construction Completion*] limits Design-Builder’s responsibilities for correction of Deficiencies that are identified after the preparation of the list of Construction Completion Deficiencies.

## **2.12 Failure to Correct Construction Completion Deficiencies**

- (a) If Design-Builder fails to correct any Construction Completion Deficiency within the time for its completion specified in Section 2.11 [*Correction of Construction Completion Deficiencies*], the City may engage others to perform the work necessary to correct such Construction Completion Deficiency at the risk and cost of Design-Builder.
- (b) The City shall be entitled to set-off costs incurred by the City to correct Construction Completion Deficiencies against amounts owing to Design-Builder pursuant to and in accordance with Section 7.6 [*Set-off*] of the Agreement.

- (c) Where the City exercises its rights pursuant to Section (a) above, and the cost of such correction or other set-off exceeds the amounts owing to the Design-Builder, Design-Builder shall reimburse the City for all such excess cost within 11 Business Days. Should additional amounts be required to correct Deficiencies in a timely manner, the City may, in its discretion, also draw upon any available other Performance Security required by this Agreement.

### **2.13 No Limitation**

The issuance of a Certificate of Construction Completion shall be without prejudice to and shall not in any way limit the rights and obligations of the Parties under and in accordance with this Agreement.

### **2.14 Disputed Certificate**

A Certificate of Construction Completion issued by the City will be final, provided, however, that Design-Builder shall be entitled to refer to the Dispute Resolution Procedure a refusal of the City to issue a Certificate of Construction Completion.

## **3. SERVICE READINESS REQUIREMENTS**

### **3.1 Support for Operational Testing**

Design-Builder acknowledges that the City will undertake Operational Testing following the Construction Completion Date, in accordance with Section 3 [*Operational Testing*] of Schedule 6 [*Testing and Commissioning*]. Design-Builder shall:

- (a) assist the City with preparation for and advancement of Operational Testing as required;
- (b) correct any Deficiencies that prevent successful completion of Operational Testing.

### **3.2 Certification of Service Readiness**

No longer than five Business Days from the successful completion of the City's Operational Testing, the City shall issue the Certificate of Service Readiness, stating the Service Readiness Date.

### **3.3 Refusal to Certify Service Readiness**

The City may refuse to issue the Certificate of Service Readiness if the Infrastructure does not permit successful completion of Operational Testing.

### **3.4 Completion of Further Work for Service Readiness Certification**

In the event the City is unable to successfully complete Operational Testing within 90 days of Construction Completion due to uncorrected Deficiencies, Design-Builder shall issue a notice to the City not less than five Business Days but no more than 15 Business Days prior to the date upon which Design-Builder expects to complete such further work or other measures necessary or appropriate to remedy the Deficiencies. Upon Design-Builder notifying the City that such further work or measures necessary or appropriate have been completed, the City shall within five Business Days of receipt of such notice resume Operational Testing and the provisions of Section 3.2 [*Certification of Service Readiness*] through to this Section 3.4 [*Completion of Further Work for Service Readiness*], inclusive, shall thereafter apply to such notice mutatis mutandis .

### **3.5 Failure to Achieve Service Readiness**

- (a) If the City is unable to successfully complete Operational Testing within 180 days of the Construction Completion Date as a result of uncorrected Deficiencies, the City may engage others to perform the work necessary to correct the Deficiencies to allow the successful completion of Operational Testing at the risk and cost of Design-Builder.
- (b) The City shall be entitled to set-off the costs incurred by the City to perform the work necessary to correct the Deficiencies against any amounts owing to Design-Builder pursuant to and in accordance with Section 7.6 [*Set-off*] of the Agreement.
- (c) Where the City exercises its rights pursuant to Section (a) above, and the cost of such correction or other set-off exceeds the amounts owing to the Design-Builder, Design-Builder shall reimburse the City for all such excess cost within 11 Business Days. Should additional amounts be required to correct Deficiencies in a timely manner, the City may, in its discretion, also draw upon any available Performance Security required by this Agreement.

### **3.6 No Limitation**

The issuance of a Certificate of Service Readiness shall be without prejudice to and shall not in any way limit the rights and obligations of the Parties under and in accordance with this Agreement.

### **3.7 Disputed Certificate**

A Certificate of Service Readiness issued by the City will be final, provided, however, Design-Builder shall be entitled to refer to the Dispute Resolution Procedure a refusal of the City to issue a Certificate of Service Readiness.

## **4. FINAL COMPLETION**

### **4.1 Advance Notice of Application for Final Completion**

- (a) Design-Builder acknowledges that the City will need sufficient time to complete any inspections for Final Completion. Accordingly, Design-Builder shall:
  - (i) at least 30 days (but no more than 45 days) before the anticipated date of Final Completion, deliver to the City a notice setting out a list of all Deficiencies identified after Construction Completion along with confirmation that they have been corrected by the Design-Builder; and
  - (ii) assist the City in making any advance inspections requested.
- (b) If Design-Builder has, at any time, reason to believe that the anticipated date of Final Completion will be delayed or achieved earlier by more than five Business Days, it shall issue a fresh notice informing the City of the new date on which Final Completion is anticipated to occur.

#### 4.2 Conditions Precedent to Final Completion

Final Completion shall only be achieved if, at the time of certification, the following conditions precedent have been satisfied:

- (a) Certificate of Service Readiness has been issued;
- (b) all Warranty Work has been completed; and
- (c) the Warranty Period has expired.

#### 4.3 Application for Final Completion

If Design-Builder is of the opinion that it has achieved the requirements for Final Completion and it has complied with Section 4.1 [*Advance Notice of Application for Final Completion*], Design-Builder may apply to the City for Final Completion.

#### 4.4 Inspection for Final Completion

No later than 10 Business Days after Design-Builder delivers to the City:

- (a) an application for Final Completion pursuant to Section 4.3 [*Application for Final Completion*];
- (b) all relevant Certificates and supporting documentation in accordance with the Project Requirements to confirm that all conditions precedent to Final Completion as set forth in Section 4.2 [*Conditions Precedent to Final Completion*] have been satisfied;

the City shall:

- (c) review all relevant Certificates and supporting documentation to determine whether all conditions precedent to Final Completion as set forth in Section 4.2 [*Conditions Precedent to Final Completion*] have been satisfied; and
- (d) perform an inspection of the Infrastructure to determine whether Final Completion has been achieved.

#### 4.5 Certification of Final Completion

Within five Business Days of the commencement of the inspection under Section 4.4 [*Inspection for Final Completion*] the City shall either:

- (a) issue the Certificate of Final Completion (the “**Certificate of Final Completion**”), stating the Final Completion Date, to the City and Design-Builder; or
- (b) notify Design-Builder of its decision not to issue the Certificate of Final Completion and state the reasons in detail for such decision, including any further work that is required to achieve Final Completion.

#### **4.6 Refusal to Certify Final Completion**

The City may refuse to issue the Certificate of Final Completion if the Infrastructure does not meet the conditions precedent to Final Completion as set forth in Section 4.2 [*Conditions Precedent to Final Completion*].

#### **4.7 Completion of Further Work for Final Completion**

In the event the City delivers a notice under Section 4.5(b) [*Certification of Final Completion*], Design-Builder shall issue to the City a notice not less than five Business Days but no more than 15 Business Days prior to the date upon which Design-Builder expects to complete such further work or other measures necessary or appropriate to remedy or remove the cause of the City's refusal to issue the Certificate of Final Completion. Upon Design-Builder notifying the City that such further work or measures necessary or appropriate have been completed, the City shall commence, within five Business Days of receipt of such notice, an inspection of such further work or measures and the provisions of Section 4.2 [*Conditions Precedent to Final Completion*] through to this Section 4.7 [*Completion of Further Work for Final Completion*], inclusive, shall thereafter apply to such notice mutatis mutandis.

#### **4.8 No Limitation**

The issuance of a Certificate of Final Completion shall be without prejudice to and shall not in any way limit the rights and obligations of the Parties under and in accordance with this Agreement.

#### **4.9 Disputed Certificate**

A Certificate of Final Completion issued by the City will be final, provided, however, that Design-Builder shall be entitled to refer to the Dispute Resolution Procedure a refusal of the City to issue a Certificate of Final Completion.

### **5. LANDSCAPE COMPLETION**

- (a) Commencing at the Construction Completion Date, until the Landscape Final Completion Date, Design-Builder shall inspect all Landscaped Areas on a monthly basis from May through to October. Design-Builder shall submit to the City a report, within 10 days after completion of each such inspection, that:
  - (i) describes the inspection, including the date and time on which the inspection was conducted, the name of the person who conducted the inspection and the weather conditions at the time of inspection;
  - (ii) details the condition of the Naturalization Areas and the Landscaped Areas at the time of inspection, noting at a minimum the following:
    - (A) percentage of seed germination and viability;
    - (B) sod establishment and viability;
    - (C) plant material viability, including but not limited to signs of nutrient deficiency, disease or pests, stress, lack of moisture, response to improper installation, salt damage, and loss of or excessive mulch;
    - (D) third party damage such as rutting, plant material loss, and removal of stakes or protective fencing; and

- (E) any outstanding deficiencies not corrected since the prior inspection;
- (iii) contains a detailed assessment of the condition and viability of the Naturalized Areas and Landscaped Areas and the mitigation measures and timelines for implementation that Design-Builder will implement to correct any Deficiencies in the condition of those areas to ensure that those areas will meet the Landscape Final Completion Requirements, as applicable, by the Landscape Final Completion Date.
- (b) The Design-Builder shall schedule inspections with the City no earlier than 30 days prior to the Landscape Final Completion Date to allow for inspection of all Naturalization Areas and Landscaped Areas to be completed prior to the Landscape Final Completion Date. The City shall issue a report to Design-Builder prior to the Landscape Final Completion Date stating whether or not the Naturalization Areas and the Landscaped Areas meet the Landscape Final Completion Requirements.
- (c) For each area that does not meet the Landscape Final Completion Requirements, as applicable, the City shall:
  - (i) identify specific Deficiencies that are to be corrected in order for the area to meet the Landscape Final Completion Requirements, as applicable;
  - (ii) provide an estimate of the cost to correct the identified Deficiencies; and
  - (iii) provide an estimate of what the total value of the landscaping work and Naturalization in the area would have been had all Landscape Final Completion Requirements applicable to such area been met.
- (d) The issuance of the report shall be without prejudice to and shall not in any way limit the rights and obligations of the Parties under and in accordance with this Agreement.
- (e) If the City's report states that all Landscape Final Completion Requirements have been met for all Naturalization and Landscaped Areas, then Design-Builder's obligations and liabilities under this Agreement with respect only to vegetation maintenance and pest management in such areas shall cease to be effective as of the Landscape Final Completion Date;
- (f) If the City's report states that the Landscape Final Completion Requirements have not been met for a portion of the Naturalization Areas and/or Landscaped Areas but the estimated cost as set out in the City's report to correct the identified Deficiencies is less than 5% of the total value (as estimated in the City's report) of what the Naturalization Areas and/or Landscape Areas would have been had all Landscape Final Completion Requirements applicable to such area been met, then Design-Builder's obligations and liabilities under this Agreement with respect only to vegetation maintenance and pest management in such area shall cease to be effective as of the Landscape Final Completion Date, and the City shall be entitled to draw on the Performance Letter of Credit or the Performance Letter of Credit Holdback, as applicable, in an amount equal to the City's estimate to correct the identified Deficiencies. For certainty, nothing in this Section (f) shall derogate from or negate any of Design-Builder's other obligations and liabilities under this Agreement for any other aspect of the Project, the Project Work or the Infrastructure.
- (g) If the City's report states that the Landscape Final Completion Requirements have not been met for a Naturalization Area or for a portion of the Landscaped Areas, and the



estimated cost as set out in the City's report to correct the identified Deficiencies is 5% or more of the total value (as estimated in the City's report) of what the Naturalization and Landscape Areas would have been had all Landscape Final Completion Requirements applicable to such areas been met, then Design-Builder shall:

- (i) promptly undertake all work identified in the City's report as required to meet the Landscape Final Completion Requirements for such area.
  - (ii) Design-Builder shall remain responsible for such area and shall continue to conduct all maintenance and monitoring of such area in accordance with the Landscape Final Completion Requirements and this Section 5 [Landscape Completion], and the Landscape Final Completion Date for such area only shall be extended for one year after the original Landscape Final Completion Date, subject to further extension in accordance with Section 9 [*Force Majeure*] or Section 10 [*Relief Events and Limited Relief Events*] of this Agreement.
  - (iii) At such revised Landscape Final Completion Date, the provisions of Section 5 [*Landscape Completion*] shall apply again and the process described shall continue for one year until the report described in Section (b) above has been delivered stating that such area meets the Landscape Final Completion Requirements for such area.
- (h) For greater certainty, for the purposes of this Section 5 [*Landscape Completion*], each Naturalization Area shall be treated as a separate area.

## 6. PICO COMPLETION

### 6.1 Initial Countdown Notice

- (a) Not less than 180 days prior to the Target PICO Completion Date and not less than 180 days prior to the Anticipated PICO Completion Date, Design-Builder shall submit a notice (the "**Initial PICO Notice**") to the City confirming:
  - (i) the anticipated PICO Completion Date (the "**Anticipated PICO Completion Date**"); and
  - (ii) details of any events or circumstances that have the capacity to impact Design-Builder's ability to achieve PICO Completion on or before the Anticipated PICO Completion Date;
- (b) If Design-Builder has at any time reason to believe that PICO Completion will be delayed by more than five Business Days from the Anticipated PICO Completion Date, Design-Builder shall submit:
  - (i) a notice informing the City of the revised date on which PICO Completion is anticipated to occur;
  - (ii) an explanation of the reason for the delay; and
  - (iii) a remediation plan.

## **6.2 Delays in achieving PICO Completion**

In the event that Design-Builder fails to achieve PICO Completion by the Target PICO Completion Date, then Design-Builder shall pay to the City as liquidated damages in respect of damages suffered and costs incurred by the City related to Design-Builder's failure to achieve PICO Completion by the Target PICO Completion Date the sum of [REDACTED] for each day following the Target PICO Completion Date until the date PICO Completion is achieved, subject to a maximum aggregate amount payable of [REDACTED]. Design-Builder and the City acknowledge and agree that such liquidated damages are not a penalty but a genuine pre-estimate of the damages suffered by the City as a result of Design-Builder failing to achieve PICO Completion by the Target PICO Completion Date.

## **6.3 Advance Notice of Application for PICO Completion**

Design-Builder acknowledges that the City will need sufficient time to complete any inspections. Accordingly, Design-Builder shall:

- (a) at least 30 days (but not more than 45 days) before the Anticipated PICO Completion Date, deliver to City a notice setting out a description of all outstanding Design and Construction to be completed by Design-Builder prior to PICO Completion; and
- (b) assist the City to make any advance inspections requested.

## **6.4 Conditions Precedent to PICO Completion**

PICO Completion shall only be achieved if, at the time of certification by the City, the following conditions precedent have been satisfied:

- (a) all Design and Construction required for completion of pre-delivery tests and PICO tests has been completed in accordance with the Project Requirements;
- (b) all pre-delivery tests and PICO tests in accordance with Subsections (d) (i) and (ii) of Section 2.4.1 [*Minimum Testing and Commissioning Requirements*] of Schedule 6 [*Testing and Commissioning*] have been completed successfully; and
- (c) at least 180 days has elapsed from the latest submission date of the Initial PICO Notice to the City.

## **6.5 Application for PICO Completion**

If Design-Builder is of the opinion that it has achieved the requirements for PICO Completion and has complied with Section 6.3 [*Advance Notice of Application for PICO Completion*], then Design-Builder may apply to the City for PICO Completion.

## **6.6 Inspection for PICO Completion**

No later than 15 Business Days after Design-Builder delivers to the City:

- (a) an application for PICO Completion pursuant to Section 6.3 [*Advance Notice of Application for PICO Completion*]; and
- (b) all relevant Certificates and supporting documentation in accordance with the Project Requirements to confirm that all conditions precedent as described in Section 6.4 [*Conditions Precedent to PICO Completion*] have been satisfied,

the City will:

- (c) review all relevant Certificates and supporting documentation to determine whether all conditions precedent to PICO Completion have been satisfied; and
- (d) perform and complete an inspection of the Infrastructure to determine whether PICO Completion has been achieved.

### **6.7 Certification of PICO Completion**

No longer than 10 Business Days from the completion of the inspection under Section 6.6 [*Inspection for PICO Completion*], the City shall either:

- (a) issue the Certificate of PICO Completion (the “**Certificate of PICO Completion**”), stating the PICO Completion Date; or
- (b) notify Design-Builder of its decision not to issue the Certificate of PICO Completion and stating the reasons in detail for such decision, including the further work that is required to achieve PICO Completion.

### **6.8 Refusal to Certify PICO Completion**

The City may refuse to issue the Certificate of PICO Completion if the Infrastructure does not meet the conditions precedent to PICO Completion specified in Section 6.4 [*Conditions Precedent to PICO Completion*].

### **6.9 Completion of Further Work for PICO Completion**

In the event the City delivers a notice under Section 6.7(b) [*Certification of PICO Completion*], Design-Builder shall issue a notice to the City not less than five Business Days but not more than 15 Business Days prior to the date upon which Design-Builder expects to complete such further work or other measures necessary or appropriate to remedy or remove the cause of the City’s refusal to issue the Certificate of PICO Completion. Upon Design-Builder notifying the City that such further work or measures necessary or appropriate have been completed, the City shall within five Business Days of receipt of such notice commence, an inspection of such further work or measures and the provisions of Section 6.4 [*Conditions Precedent to PICO Completion*] through to this Section 6.9 [*Completion of Further Work for PICO Completion*], inclusive, shall thereafter apply to such notice mutatis mutandis .