THE CITY OF EDMONTON

DESIGN-BUILD AGREEMENT
CAPITAL LINE SOUTH LRT EXTENSION

Schedule 8
Intellectual Property

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SCHEDULE 8

INTELLECTUAL PROPERTY

1.   INTERPRETATION

1.1   Definitions

In this Schedule 8 *[Intellectual Property]*, capitalized terms have the meanings given in Schedule 1 *[Definitions and Interpretation]* and the following capitalized terms have the following meanings:

(a)   "**Assigned Intellectual Property**" has the meaning given in Section 3.4(a) *[Assignments]*.

(b)   "**Assignee**" has the meaning given in Section 3.4(a) *[Assignments]*.

(c)   "**Assignor**" has the meaning given in Section 3.4(a) *[Assignments]*.

(d)   "**City Intellectual Property**" means:

   (i)   Intellectual Property that is:

      (A)   Owned by the City or licensed by the City from a third party other than Design-Builder or a Subcontractor prior to the Effective Date;

      (B)   created, developed or acquired by the City or any City Personnel during the Term but outside the Project Work and that is Owned by the City or licensed by the City from a third party other than Design-Builder or a Subcontractor; or

      (C)   created, developed or acquired by the City or any City Personnel during the Term and within the Project Work, but which is not Design-Builder Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property, and that is Owned by the City or licensed by the City from a third party other than Design-Builder or a Subcontractor,

      and which is used by or on behalf of the City, or provided by or on behalf of the City to Design-Builder or any Subcontractor, or obtained or used by Design-Builder or a Subcontractor, in the performance of their respective obligations in respect of the Project or under this Agreement;

   (ii)   the Disclosed Data;

   (iii)   any Design Data that is specified in a Change pursuant to Schedule 13 *[Changes]* or by separate agreement of the City and Design-Builder to be Owned by the City;

   (iv)   all Modifications to any of the items listed in Subsections 1.1(d)(i), 1.1(d)(ii) and 1.1(d)(iii) above, whether made by or on behalf of Design-Builder, the City or any Subcontractor alone, jointly with each other or with any other Person;

   (v)   all Modifications to Design-Builder Intellectual Property made after the Effective Date by the City, or by anyone on behalf of the City other than Design-Builder, alone, jointly with each other or with any Person other than Design-Builder, as permitted by this Schedule 8 *[Intellectual Property]*;

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(vi)   all Modifications to Subcontractor Intellectual Property made after the Effective Date by the City, or by anyone on behalf of the City other than the applicable Subcontractor, alone, jointly with each other or with any Person other than the applicable Subcontractor, as permitted by this Schedule 8 *[Intellectual Property]*; and

(vii)   all Modifications made by or for the City to any Escrow Materials and to the Intellectual Property to which the Escrow Materials relate as permitted by Subsection 4.7(e) *[Escrow Agreements]* and provided for in Subsection 4.7(i) *[Escrow Agreements]*.

(e)   "**City Personnel**" means Persons acting on behalf of the City or employed, engaged or retained by the City in connection with the exercise of the City's rights or the performance of the City's obligations in connection with the Project or under this Agreement, including the City's direct and indirect consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of the City and the City's direct and indirect consultants, contractors and subcontractors, excluding Design-Builder and any Subcontractor and their respective Personnel.

(f)   "**Deliverable**" means any item required to be supplied or delivered by Design-Builder to the City within the Project Work at any time during the Term, and whether as part of the Design or Construction, including deliverable requirements specified in Schedule 5 *[D&C Performance Requirements]*, and including Intellectual Property and Source Materials required to be delivered pursuant to this Schedule 8 *[Intellectual Property]*.

(g)   "**Delivered**" means, with respect to any item of Intellectual Property, that the Intellectual Property is:

(i)   a Deliverable;

(ii)   incorporated, embedded or otherwise included in any Deliverable or the Infrastructure at any time during the Term, and whether as part of Design or Construction;

(iii)   necessary for the performance and completion of the Project Work, or any Equivalent Activity;

(iv)   necessary for the Use or Modification by or on behalf of the City of any Deliverable, of any part of the Infrastructure, or of any Intellectual Property in accordance with the rights granted to the City hereunder; or

(v)   necessary for the City to carry out any Permitted Purpose in respect of the Intellectual Property in connection with the Infrastructure,

and that the Use of the Intellectual Property for any of the purposes provided for in Subsections 1.1(g)(iii), 1.1(g)(iv) or 1.1(g)(v) above will not infringe the Intellectual Property Rights of any Person.

(h)   "**Design-Builder Embedded Software**" means computer software that is Owned by Design-Builder and that is included, embedded or otherwise incorporated into the Infrastructure.

(i)   "**Design-Builder Intellectual Property**" means:

(i)   Intellectual Property that is:

(A) Owned by Design-Builder prior to the Effective Date; or

(B) created, developed or acquired by Design-Builder or any Design-Builder Personnel during the Term but outside the Project Work and that is Owned by Design-Builder;

(ii) the Design-Builder Licensed Software (including the Source Materials for the Design-Builder Licensed Software);

(iii) the Design-Builder Embedded Software (including the Source Materials for the Design-Builder Embedded Software);

(iv) Technical Documentation for any of the Intellectual Property listed in the other clauses of Subsection 1.1(i) above or for any Infrastructure supplied by Design-Builder;

(v) the Project Intellectual Property;

(vi) the Design Data, excluding any Design Data that is specified in a Change pursuant to Schedule 13 *[Changes]* or by separate agreement of the City and Design-Builder to be Owned by the City; and

(vii) all Modifications to any of the foregoing, whether made by or on behalf of Design-Builder, the City or any Subcontractor alone, jointly with each other or with any other Person, but excluding Modifications described in Subsections 1.1(d)(v) and 1.1(d)(vii) above.

(j) "**Design-Builder Licensed Software**" means any computer software that is Owned by Design-Builder, is not Design-Builder Embedded Software and is delivered, supplied or otherwise provided by Design-Builder under this Agreement as or as part of any Deliverable.

(k) "**Design-Builder Personnel**" means Persons acting on behalf of Design-Builder or employed, engaged or retained by Design-Builder in connection with the exercise of Design-Builder's rights or the performance of Design-Builder's obligations under this Agreement, including Design-Builder's direct and indirect consultants, contractors and Subcontractors and the employees, officers, directors, volunteers and agents of Design-Builder and Design-Builder's direct and indirect consultants, contractors and Subcontractors.

(l) "**Determined Breach**" has the meaning given in Section 4.3(d)(i) *[Additional City License Terms]*.

(m) "**Embedded Software**" means the Design-Builder Embedded Software, Subcontractor Embedded Software and Third Party Embedded Software.

(n) "**Equivalent Activity**" means any activity, undertaking or operation relating to the Infrastructure done by the City, or any other Person acting on behalf of or under the authority of the City, which activity, undertaking or operation, if done by Design-Builder, would be or would have been within the Project Work, including activities, undertakings and operations within the scope of the Project Work.

(o) "**Escrow Agent**" means a recognized provider of escrow services selected by Design-Builder and having a location within the Province of Alberta from which the Escrow Agent will perform the Escrow Agent's obligations relevant to this Agreement.

(p)   "**Escrow Agreement**" means an escrow agreement that meets the requirements of Section 4.7 *[Escrow Agreements]* and pursuant to which Escrow Materials are held by the Escrow Agent and the City is designated as a beneficiary party.

(q)   "**Escrow Materials**" means:

(i)   with respect to Software, the Source Materials for that Software;

(ii)   with respect to Embedded Software, the Source Materials for that Embedded Software; and

(iii)   with respect to any Infrastructure, the Source Materials for that Infrastructure   .

(r)   "**Escrow Materials Provider**" means:

(i)   with respect to any Software, the Licensor of that Software;

(ii)   Design-Builder with respect to the Design-Builder Embedded Software;

(iii)   the applicable Subcontractor with respect to any Subcontractor Embedded Software;

(iv)   the applicable third party licensor with respect to any Third Party Embedded Software; and

(v)   with respect to any Infrastructure, whichever of Design-Builder and one or more Subcontractors is the supplier of the Infrastructure.

(s)   "**Escrow Materials Provider Event of Default**" means:

(i)   where the Escrow Materials Provider is Design-Builder, a Termination Event has occurred in accordance with Section 13.8 *[Termination Events]* of this Agreement; and

(ii)   where the Escrow Materials Provider is a Subcontractor, any default has occurred with respect to the Escrow Materials Provider under the applicable Subcontract as a result of which the Subcontract is or may be terminated.

(t)   "**Escrowed Deliverable**" means Software, Embedded Software, or Infrastructure in respect of which Escrow Materials are deposited in escrow under an Escrow Agreement entered into pursuant to Section 4.7 *[Escrow Agreements]*.

(u)   "**Harmful Code**" means a virus, worm, "Trojan Horse", or other code or routine that manifests contaminating or destructive properties that might damage, harm, detrimentally interfere with, or otherwise adversely affect a Deliverable, any Intellectual Property or the Infrastructure or any computer system, hardware, software, equipment, or services in connection with which the Deliverable or Intellectual Property is Used or any related data.

(v)   "**Held Rights**" has the meaning given in Section 3.4(b) *[Assignments]*.

(w)   "**Included Source Materials**" has the meaning given in Section 4.2(d) *[License by Design-Builder to the City]*.

(x)   "**Infringed Party**" has the meaning given in Section 4.14(c) *[Design-Builder Indemnity]*.

(y) "**Infringement Claim**" means any Claim that any Design-Builder Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property used in the performance of the Project Work or incorporated into or forming part of the Infrastructure or any Modification to City Intellectual Property made by a Subcontractor infringes or violates the Intellectual Property Rights of any Person other than the City or a City Person, whether or not such Claim is proven.

(z) "**Infringing Intellectual Property**" has the meaning given in Section 4.14(c) *[Design-Builder Indemnity]*.

(aa) "**Intellectual Property**" means discoveries, research, developments, designs, industrial designs, improvements, innovations, inventions, software, computer programs and code of all types, layouts, interfaces, applications, tools, databases, hardware, methods, concepts, processes, know-how, formulae, mask works, works subject to copyright, and other technologies, works and creations now existing or developed in the future, whether or not registered or registerable, patentable or non-patentable, or confidential or non-confidential.

(bb) "**Intellectual Property Rights**" means any and all intangible, intellectual, proprietary and industrial property rights of any nature and kind whatsoever, whether or not registered or registerable, including:

   (i) copyrights, moral rights, rights of authorship and attribution, neighbouring rights, and other rights in works of authorship;

   (ii) patents;

   (iii) database rights;

   (iv) rights in respect of industrial designs, integrated circuit topographies, and mask works;

   (v) rights in respect of trademarks, trade names, service marks, slogans, domain names, URLs or logos;

   (vi) rights protected by trade secrets and confidentiality obligations; and

   (vii) all applications and registrations (including renewals, extensions, continuations, divisions, reissues and restorations) relating to any of the rights provided for in Subsections 1.1(bb)(i) to 1.1(bb)(vi) above now or hereafter in force and effect throughout all or any part of the world.

(cc) "**IP Certificate**" has the meaning given in Section 4.15(a) *[Updated Certifications]*.

(dd) "**License**" means a non-exclusive License granting the rights and subject to the restrictions and limitations provided for in this Schedule 8 *[Intellectual Property]*.

(ee) "**License Breach Order**" has the meaning given in Section 4.3(d) *[Additional City License Terms]*.

(ff) "**Licensed Intellectual Property**" means, with respect to any License, the Intellectual Property (including Source Materials and Escrow Materials, where applicable) and Intellectual Property Rights that are within the scope of that License as provided for in this Schedule 8 *[Intellectual Property]*.

(gg) "**Licensee**" means, with respect to any License granted or required to be granted or caused to be granted by Design-Builder pursuant to this Schedule 8 *[Intellectual Property]*, the City or any permitted assignee under this Agreement that is the holder of that License at the relevant time.

(hh) "**Licensor**" means:

   (i)   Design-Builder with respect to the Design-Builder Licensed Software;

   (ii) the applicable Subcontractor with respect to any Subcontractor Included Software or Subcontractor Separately Licensed Software; or

   (iii) the applicable third party licensor with respect to any Third Party Licensed Software.

(ii) "**Lock**" means a "time bomb", "logic bomb", "back door", "drop-dead device" or any other disabling or limiting code, design or routine that might be used to interrupt, lock, disable, erase, limit the functionality or Use of, or otherwise adversely affect, or facilitate unauthorized access to, a Deliverable, any Intellectual Property or the Infrastructure or the computer system, hardware, software, equipment, or services in connection with which the Deliverable or Intellectual Property is Used or any related data.

(jj) "**Modification**" means all corrections, modifications, enhancements, improvements, supplements, customizations or derivative works, and "**Modify**" means to make a Modification. For clarity, the configuration of any Software or other Deliverable using Software Tools for, or other features, toolkits and functions of, the Software or other Deliverable does not constitute a Modification of the Software or other Deliverable.

(kk) "**Open Source Software**" means open source code, free code, community source code or any other computer software or code (including libraries or other software components):

   (i)   for which the source code (human-readable code) is generally distributed or made available (whether under a license agreement or otherwise) to the public; or

   (ii) that is distributed, made available or used pursuant to a license agreement or other terms and conditions (such as the GNU General Public License or the GNU Lesser General Public License) that requires Design-Builder, the City or any other Person to make available or disclose any Intellectual Property, including computer software or code or derivative works, whether in source code or object code format, to any other Person or to license or waive any rights (including Intellectual Property Rights) in, to or associated with the computer software or any other Intellectual Property, computer software or code or any Modification, or any related Intellectual Property Rights.

(ll) "**Ownership**" means, with respect to any Intellectual Property, ownership of all right, title and interest in and to that Intellectual Property and all Intellectual Property Rights therein, and "**Own**", "**Owned**" and "**Owner**" will have corresponding meanings.

(mm) "**Permitted Combination**" means, with respect to any Intellectual Property, any combination of that Intellectual Property with any other Intellectual Property that is contemplated or permitted by the documentation or specifications for the first Intellectual Property or that is contemplated or permitted by this Agreement, including the Project Requirements.

(nn)   "**Permitted Purposes**" means:

(i)   during the Term, exercise of the City's rights and performance of the City's obligations under the Agreement;

(ii)   during the Term, any activity, undertaking or operation within the Project Work, including Design and Construction of the Infrastructure;

(iii)   both during and after the Term, any Equivalent Activity in relation to the Infrastructure;

(iv)   both during and after the Term, any operation and maintenance of the Infrastructure and any expansion or extension of the Infrastructure, including any System Enhancement, and any operation and maintenance of the Capital Line LRT and any expansion or extension of the Capital Line LRT;

(v)   both during and after the Term, the interface and interoperation of the Infrastructure with any other light rail project undertaken by or on behalf of the City, including any expansion or extension of the Infrastructure, including any System Enhancement, the Capital Line LRT and any expansion or extension of the Capital Line LRT;

(vi)   both during and after the Term, the interface and interoperation of the Infrastructure and any expansion or extension of the Infrastructure, including any System Enhancement, with any computer systems, other systems, software and databases of the City or other third party;

(vii)   both during and after the Term, the interface and interoperation of the Capital Line LRT and any expansion or extension of the Capital Line LRT with the Infrastructure and any expansion of the Infrastructure, including any System Enhancement; and

(viii)   both during and after the Term, so long as the Licensee is the City, any other Governmental Authority:

(A)   the provision of governmental services and the conduct of operations, maintenance, refurbishment, repair, alteration, upgrade, replacement and other activities provided in connection or otherwise associated with the Infrastructure and the Lands by the City, or any Governmental Authority or any emergency service provider; and

(B)   the development of transportation standards, policies and procedures related to the Infrastructure.

(oo)   "**Personnel**" means:

(i)   with respect to Design-Builder, Design-Builder Personnel;

(ii)   with respect to the City, City Personnel; and

(iii)   with respect to any Subcontractor, its Subcontractor Personnel.

(pp)   "**Project Intellectual Property**" means Intellectual Property that is created or developed, or Ownership of which is acquired, by Design-Builder, any Subcontractor or any Design-Builder Personnel or Subcontractor Personnel, whether alone or together with each other

or any other Person, during the Term and within the Project Work, but excluding Software, Embedded Software, Escrow Materials, Design Data and Technical Documentation.

(qq) "**Replacement Work**" has the meaning given in Section 4.8(c) *[Reverse Engineering License]*.

(rr) "**Software**" means any Design-Builder Licensed Software, Subcontractor Included Software, Subcontractor Separately Licensed Software and Third Party Licensed Software, but does not include Embedded Software.

(ss) "**Software Maintenance and Support**" means, with respect to any Software, the software maintenance and support services for that Software that form part of Maintenance or that are provided separately under a software maintenance and support agreement with the Licensor of that Software.

(tt) "**Software Tools**" means, with respect to any Software or Embedded Software, any routines, compilers, bootstraps, analyzers, monitors, toolkits and other software tools used by the licensor of the Software or Embedded Software in connection with the programming, compiling, maintenance, debugging, analysis, configuration, customization, verification or monitoring of the Software or Embedded Software;

(uu) "**Source Materials**" means:

(i) with respect to any Software or Embedded Software:

(A) a complete source code version of the Software or Embedded Software, in machine-readable form which, when compiled, will produce the executable version of the Software or Embedded Software and in human-readable form with annotations in the English language or another language acceptable to the City, acting reasonably, in both cases on a storage medium suitable for long term archival storage;

(B) a complete copy, in English or another language acceptable to the City, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials, including programmer's notes, technical or otherwise, for the Software or Embedded Software as may be required for a competent computer programmer possessing ordinary skills and experience, to further develop, maintain and operate the Software or Embedded Software without further recourse to the Escrow Materials Provider, which will include, to the extent the following items have been or are created for the Software or Embedded Software, general flow charts, input and output layouts, field descriptions, volumes and sort sequence, data dictionary, file layouts, processing requirements and calculation formulae, circuit diagrams and the details of all algorithms; and

(C) all Software Tools for the Software or Embedded Software, to the extent not previously delivered with the Software or Embedded Software; and

(ii) with respect to any Infrastructure, a complete copy, in English or another language acceptable to the City, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other

explanatory materials for the Infrastructure as may be required for a Person skilled in the applicable technology other than the supplier of the Infrastructure to specify the performance of the Infrastructure or replacement parts thereof and to maintain and operate the Infrastructure without further recourse to the supplier, which will include, to the extent the following items have been or are created for the Infrastructure, pseudocode descriptions, flowcharts and state diagrams.

(vv) "**Subcontractor Embedded Software**" means computer software that is Owned by a Subcontractor and that is fixedly embedded (such as in a computer chip) in the Infrastructure.

(ww) "**Subcontractor Included Software**" means any computer software that is Owned by a Subcontractor, is not Subcontractor Embedded Software or Subcontractor Separately Licensed Software, and is delivered, supplied or otherwise provided by the Subcontractor under its Subcontract as or as part of any Deliverable.

(xx) "**Subcontractor Intellectual Property**" means, with respect to each Subcontractor:

   (i)   Intellectual Property that is:

      (A)   Owned by the Subcontractor prior to the Effective Date; or

      (B)   created, developed or acquired by that Subcontractor during the Term but outside the Project Work and that is Owned by the Subcontractor;

   (ii)   the Subcontractor Included Software (including the Source Materials for the Subcontractor Included Software);

   (iii)   the Subcontractor Embedded Software (including the Source Materials for the Subcontractor Embedded Software);

   (iv)   the Subcontractor Separately Licensed Software (including the Source Materials for the Subcontractor Separately Licensed Software);

   (v)   Technical Documentation for any of the Intellectual Property listed in the other clauses of Subsection 1.1(ww) above or for any Infrastructure supplied by the Subcontractor; and

   (vi)   all Modifications to any of the foregoing, whether made by or on behalf of Design-Builder, the City or any Subcontractor alone, jointly with each other or with any other Person, but excluding Modifications described in Subsections 1.1(d)(vi) and 1.1(d)(vii) above.

(yy) "**Subcontractor Personnel**" means, with respect to any Subcontractor, Persons acting on behalf of that Subcontractor or employed, engaged or retained by that Subcontractor in connection with the exercise of that Subcontractor's rights or the performance of that Subcontractor's obligations under its Subcontract, including that Subcontractor's direct and indirect consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of that Subcontractor and that Subcontractor's direct and indirect consultants, contractors and subcontractors.

(zz) "**Subcontractor Separately Licensed Software**" means any computer software, including Subcontractor Embedded Software, that is:

   (i)   Owned by a Subcontractor;

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(ii) a Deliverable or embedded, included or otherwise included in a Deliverable; and

(iii) licensed to the City pursuant to a license agreement that is specific to the computer software and which has been approved by the City in accordance with Subsection 4.4(b) *[Licenses with Subcontractors]*.

(aaa) "**System Enhancement**" means any expansion or extension of or Modification to the Infrastructure.

(bbb) "**Technical Documentation**" means technical documentation and information relating to any Infrastructure supplied or Intellectual Property licensed under this Agreement or any Subcontract, including software documentation, user and operating manuals, maintenance and repair manuals, parts lists and other materials relevant to the use, operation, maintenance or repair of the Infrastructure or Intellectual Property.

(ccc) "**Third Party Embedded Software**" means computer software that is not Owned by the City, Design-Builder or a Subcontractor and that is included, embedded or otherwise incorporated into the Infrastructure.

(ddd) "**Third Party Intellectual Property**" means Intellectual Property Owned by a Person other than the City, Design-Builder or a Subcontractor.

(eee) "**Third Party Licensed Software**" means any computer software that is not Owned by the City, Design-Builder or a Subcontractor, and is not Third Party Embedded Software.

(fff) "**Undisclosed Functionality**" means a functionality (including the capability to automatically communicate with or transmit data to any person or computer system) that is not expressly required by this Agreement or otherwise expressly agreed to by the City.

(ggg) "**Use**" means, with respect to any Intellectual Property, to do any and all things with that Intellectual Property that the Owner of that Intellectual Property and the Intellectual Property Rights therein could do, including to load, transmit, access, execute, use, store, display, copy, reproduce, adapt, configure, translate, distribute, incorporate into other materials, including into procurement documentation, practice, construct, manufacture, make and have made, but (i) specifically excluding the right to Modify, (ii) specifically excluding the right to file for any patent, copyright or other Intellectual Property Right in respect of such Intellectual Property, and (iii) subject to any limitations in the provisions of this Schedule 8 *[Intellectual Property]* pursuant to which a License is granted.

1.2 Other

A reference in this Schedule 8 *[Intellectual Property]* to a Section or Subsection number is to the Section or Subsection bearing that number in this Schedule 8 *[Intellectual Property]*, unless expressly stated otherwise.

2. SUMMARY OF OWNERSHIP AND LICENSES

2.1 Summary Table

The following is a summary of the Ownership and Licenses granted in respect of each category of Intellectual Property referred to in this Schedule 8 *[Intellectual Property]*.

IP Category	City	Design-Builder	Subcontractor
City Intellectual Property	Ownership	License to Use and Modify for the Project	License to Use and Modify for the Project
Design-Builder Intellectual Property (including Design-Builder Licensed Software and Source Materials therefor, but excluding Design-Builder Embedded Software)	License to Use for the Infrastructure License to Modify to the extent Source Materials are provided in the Deliverable, not required or released from escrow License to Reverse Engineer	Ownership	License to Use and Modify for the Project (if required for Subcontractor's work)
Design-Builder Embedded Software and Source Materials therefor	License to Use for the Infrastructure in which it is embedded License to Modify to the extent Source Materials are provided in the Deliverable, not required or released from escrow License to Reverse Engineer	Ownership	License to Use for the Project (if required for Subcontractor's work)
Subcontractor Intellectual Property (including Subcontractor Included Software and the Source Materials therefor, but excluding items listed separately below)	License to Use for the Infrastructure License to Modify to the extent Source Materials are provided in the Deliverable, not required or released from escrow License to Reverse Engineer	License to Use and Modify for the Project	Ownership
Subcontractor Embedded Software and Source Materials therefor	License to Use for the Infrastructure in which it is embedded License to Modify to the extent Source Materials are provided in the Deliverable, not required or released from escrow License to Reverse Engineer	License to Use and Modify for the Project	Ownership
Subcontractor Separately Licensed Software	License to Use for the Infrastructure as per the applicable license agreement	License to Use for the Project as per the applicable license agreement	Ownership
Source Materials for Subcontractor	License to Use and Modify for the	Not applicable	Ownership

IP Category	City	Design-Builder	Subcontractor
Separately Licensed Software	Infrastructure upon release from escrow License to Reverse Engineerr		
Project Intellectual Property	License to Use for the Infrastructure License to Modify to the extent Source Materials are provided in the Deliverable, not required or released from escrow License to Reverse Engineer	Ownership	License to Use and Modify for the Project (if required for Subcontractor's work)
Design Data	Unless otherwise agreed, License to Use and Modify for the Infrastructure	Unless otherwise agreed, Ownership	License to Use and Modify for the Project (if required for Subcontractor's work)
Third Party Intellectual Property	Subject to third party License agreement, License to Use and Modify for the Infrastructure	Subject to third party License agreement, License to Use and Modify for the Project	Subject to third party License agreement, License to Use and Modify for the Project

2.2 Conflicts

In the event of any conflict between the summary table in Section 2.1 *[Summary Table]* and any other provision of this Schedule 8 *[Intellectual Property]*, the latter provision will govern.

3. OWNERSHIP

3.1 Design-Builder

Subject to this Schedule 8 *[Intellectual Property]*, as between the Parties, Design-Builder will be and remain the sole Owner of the Design-Builder Intellectual Property, provided that nothing in this Schedule 8 *[Intellectual Property]* will transfer to Design-Builder any Ownership of, or grant to Design-Builder any right in respect of, City Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Design-Builder Intellectual Property, except for the Licenses granted under Section 4.1 *[License by City to Design-Builder]*.

3.2 City

Subject to this Schedule 8 *[Intellectual Property]*, as between the Parties, the City will be and remain the sole Owner of the City Intellectual Property, provided that nothing in this Schedule 8 *[Intellectual Property]* will transfer to the City any Ownership of, or grant to the City any right in respect of, the Design-Builder Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any City Intellectual Property, except for the Licenses granted under Sections 4.2 *[License by Design-Builder to the City]*, 4.3 *[Additional City License Terms]*, 4.4 *[Licenses with Subcontractors]*, 4.7 *[Escrow Agreements]* and 4.8 *[Reverse Engineering License]*.

3.3 Subcontractor

Subject to this Schedule 8 *[Intellectual Property]*, as between the City and Design-Builder, but subject to any agreement to the contrary between Design-Builder and any Subcontractor, each Subcontractor will be and remain the sole Owner of its Subcontractor Intellectual Property.

3.4 Assignments

(a)   If, notwithstanding Sections 3.1 *[Design-Builder]*, 3.2 *[City]* or 3.3 *[Subcontractor]*, either Party (the "**Assignor**") retains, acquires or owns any right, title or interest, including any Intellectual Property Rights, in or to anything that is to be Owned by another Person (the "**Assignee**") pursuant to Sections 3.1 *[Design-Builder]*, 3.2 *[City]* or 3.3 *[Subcontractor]*, as applicable, (the "**Assigned Intellectual Property**"), then the Assignor will irrevocably and unconditionally assign, and for no further consideration and without any further act or formality does hereby irrevocably and unconditionally assign, to the Assignee all of the Assignor's worldwide right, title and interest in and to the Assigned Intellectual Property, including all Intellectual Property Rights therein, free and clear of all liens, claims, charges or encumbrances, but subject to any Licenses granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 8 *[Intellectual Property]*.

(b)   If and to the extent that the assignment pursuant to Subsection 3.4(a) above is not effective on the date hereof or on any future date, either generally or pursuant to the laws of any jurisdiction, then any and all right, title and interest, including Intellectual Property Rights, in and to the Assigned Intellectual Property that is retained, acquired or Owned by the Assignor (collectively, the "**Held Rights**") will be held by the Assignor for the exclusive benefit and use of the Assignee, except for any Licenses granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 8 *[Intellectual Property]*, and the Assignor will execute and deliver to the Assignee all transfers, assignments, documents and instruments as may be necessary to irrevocably and unconditionally transfer and assign to the Assignee the Held Rights, free and clear of all liens, claims, charges or encumbrances, promptly upon receipt of such transfers, assignments, documents and instruments from the Assignee, and will otherwise cooperate with the Assignee to give effect to, record and register the Assignee's Ownership of the Held Rights.

(c)   Design-Builder will include in each Subcontract provisions equivalent to Subsections 3.4(a) and 3.4(b) above with respect to Design Data and any Modifications thereto, and will enforce those provisions against each Subcontractor to the extent necessary to ensure that the City remains at all times the sole Owner of all Design Data agreed to be Owned by the City and any Modifications thereto. Design-Builder will include in each Subcontract a provision making the City an express third party beneficiary of the provisions in the Subcontract that are equivalent to Subsections 3.4(a) and 3.4(b) above in respect of Design Data and Modifications thereto, with the right to enforce those provisions against the Subcontractor.

(d)   Design-Builder will use reasonable efforts to include in each Subcontract provisions equivalent to Subsections 3.4(a) and 3.4(b) above with respect to City Intellectual Property (excluding Design Data) and any Modifications thereto, and will enforce those provisions against each Subcontractor to the extent included in the relevant Subcontract and to the extent necessary to ensure that the City remains at all times the sole Owner of all City Intellectual Property (excluding Design Data) and any Modifications thereto. Design-Builder will include in each Subcontract a provision making the City an express third party beneficiary of the provisions in the Subcontract that are equivalent to Subsections 3.4(a) and 3.4(b) above in respect of City Intellectual Property (excluding Design Data) and Modifications thereto, with the right to enforce those provisions against the Subcontractor. If the Subcontract for any Subcontractor does not include the

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provisions specified in this Subsection 3.4(d), then notwithstanding Subsection 4.1(b) *[License by City to Design-Builder]*, Design-Builder will not permit that Subcontractor or any of its Subcontractor Personnel to Modify City Intellectual Property.

3.5   Personnel

The City and Design-Builder will, and Design-Builder will include in each Subcontract an obligation of each Subcontractor to, ensure that their respective Personnel will by duly executed written agreement or by operation of law, irrevocably and unconditionally:

(a)   sell, assign and transfer to the party by which each Personnel is employed or engaged all right, title and interest, including all Intellectual Property Rights, that the Personnel may have in or to any and all Intellectual Property referred to in this Schedule 8 *[Intellectual Property]* and all Modifications thereto, such that the agreements as to Ownership of Intellectual Property pursuant to Sections 3.1 *[Design-Builder]*, 3.2 *[City]* and 3.3 *[Subcontractor]* and the assignments by each of the City and Design-Builder pursuant to Section 3.4 *[Assignments]*, and by each Subcontractor pursuant to its Subcontract, include all right, title and interest, including all Intellectual Property Rights, of its Personnel; and

(b)   waive all non-transferable rights, including moral rights, to the extent permissible under the governing law, that each Personnel has or may have in any Intellectual Property assigned by the Personnel pursuant to Subsection 3.5(a) above in favour of the assignee and its successors, assigns and licensees, including the City.

3.6   Residuals

Notwithstanding any other provision of this Agreement to the contrary, Design-Builder and each Subcontractor and their respective Personnel will be free to use and employ their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of the Project and any services performed hereunder, provided that:

(a)   Design-Builder and each Subcontractor will, and will require their respective Personnel to, not disclose or use the City's Confidential Information except as expressly permitted pursuant to the terms of this Agreement; and

(b)   nothing in this Section 3.6 will be deemed to grant to Design-Builder, any Subcontractor, any Design-Builder Personnel or Subcontractor Personnel or any other Person any right or license in respect of any City Intellectual Property or any Intellectual Property Rights therein, other than the limited right or license granted herein, if any.

3.7   Ownership of Tangible Deliverables

The City will own, and Design-Builder will transfer or cause to be transferred to the City, ownership of all right, title and interest in and to all Deliverables, provided that ownership of a Deliverable does not constitute ownership of any Intellectual Property embodied, embedded or otherwise included in the Deliverable or any Intellectual Property Rights in the Deliverable, all of which will be governed by the provisions of Sections 3.1 *[Design-Builder]*, 3.2 *[City]*, 3.3 *[Subcontractor]* and 3.4 *[Assignments]* and subject to the licenses in Section 4 *[Licenses]*.

3.8 Use and Modification of Design Data

Notwithstanding the Ownership by Design-Builder or the City of the Design Data, the City agrees that the City will not, nor will the City permit any other Person to, Use or Modify the Design Data other than for the Permitted Purposes, without the prior written consent of Design-Builder.

4. LICENSES

4.1 License by City to Design-Builder

(a)   Subject to Subsection 4.1(g) below, the City hereby grants and agrees to grant to Design-Builder a royalty free, fully paid-up, limited License to Use and Modify City Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Design-Builder of the Project Work and Design-Builder's obligations under this Agreement, including any warranty obligations thereunder.

(b)   Subject to Subsections 3.4(d) *[Assignments]* and 4.1(g) below, Design-Builder may sublicense its rights under the License granted in Subsection 4.1(a) above to any Subcontractor for the sole purpose of and only to the extent necessary for the performance by that Subcontractor of the Subcontractor's obligations under its Subcontract, including any warranty obligations thereunder.

(c)   Except as provided in Subsection 4.1(b) above, Design-Builder may not transfer, assign, sublicense or otherwise dispose of the License granted under Subsection 4.1(a) above without the express prior written consent of the City, which consent may be given or refused by the City in its absolute and unfettered discretion.

(d)   Design-Builder may provide and disclose, and permit Subcontractors to provide and disclose, City Intellectual Property and all related information and documentation (including Confidential Information) to any of their respective Personnel involved in the performance of the Project Work, provided that Design-Builder and each Subcontractor will be responsible for anything done or failed to be done by any of their respective Personnel or other Person to whom they provide and disclose City Intellectual Property, including a breach by any of their respective Personnel or other Person of Design-Builder's obligations of confidentiality in respect of any Confidential Information that is or is part of City Intellectual Property.

(e)   Design-Builder may make, and permit Subcontractors to make, copies of City Intellectual Property as may be reasonably necessary for Use and Modification of the City Intellectual Property in accordance with the License granted pursuant to Subsection 4.1(a) and sublicenses granted pursuant to Subsection 4.1(b) above. All copies of City Intellectual Property will be Owned by the City and licensed to Design-Builder and sublicensed to Subcontractors pursuant to Subsections 4.1(a) and 4.1(b) above. Except as permitted by Subsections 4.1(a) and 4.1(b) above and this Subsection 4.1(e), the licensee will not copy, Modify, disassemble, reverse engineer, decompile, translate or otherwise obtain or create the source code for any City Intellectual Property.

(f)   Design-Builder will not, and will require the Subcontractors to not, remove from any City Intellectual Property any markings or notices with respect to the ownership thereof, copyright therein or the confidentiality thereof.

(g)   If any City Intellectual Property consists of or contains Third Party Intellectual Property, the rights granted to Design-Builder pursuant to Subsections 4.1(a) and 4.1(b) above will be subject to the terms and conditions of the license agreement between the City and the licensor of the Third Party Intellectual Property. The City will provide to Design-Builder a

copy of any applicable third party license agreement (which may be redacted as to financial and other terms not relevant to use of the Third Party Intellectual Property by Design-Builder and Subcontractors), or where prohibited from doing so by obligations of confidentiality to the third party licensor, a summary of the obligations, limitations and restrictions applicable to use of the Third Party Intellectual Property by Design-Builder and Subcontractors. Design-Builder will comply, and will require each Subcontractor to comply, with the terms and conditions of any applicable third party license agreement (as set out in the copy or summary of the third party license agreement provided by the City to Design-Builder) to the extent applicable to Design-Builder and the Subcontractor. If requested by the City, Design-Builder will, and will require any Subcontractor to, execute and deliver to the City and the third party licensor an agreement that includes reasonable terms for the protection of the confidentiality of the Third Party Intellectual Property and an acknowledgement of the third party licensor's ownership thereof. If Design-Builder or its Subcontractors are unable to, or will incur material additional costs in order to, comply with any applicable third party license agreement, or if Design-Builder or its Subcontractors refuse to enter into an agreement with the third party licensor on the terms contemplated in the preceding sentence, the Project Work will be altered through a Change pursuant to Schedule 13 *[Changes]* to permit Design-Builder and its Subcontractors to comply with the third party license agreement and to address the additional costs of compliance, or to exclude the use of the Third Party Intellectual Property that is licensed under the third party license agreement.

(h)   The License granted to Design-Builder under Subsection 4.1(a) above will terminate upon the completion or termination of the Project Work, including Design-Builder's warranty obligations. Each sublicense granted by Design-Builder to a Subcontractor under Subsection 4.1(b) above will terminate upon the completion or termination of the services being performed by the Subcontractor under the applicable Subcontract, including the Subcontractor's warranty obligations.

4.2   License by Design-Builder to the City

(a)   Design-Builder hereby grants and agrees to grant to the City a License to:

   (i)   Use:

      (A)   Design-Builder Intellectual Property (including Design-Builder Licensed Software and Design-Builder Embedded Software, but excluding Design Data that forms part of the Design-Builder Intellectual Property) that is Delivered, provided that the Use of Design-Builder Embedded Software will be limited to Use as part of and for the Use of the Infrastructure in which the Design-Builder Embedded Software is included, embedded or otherwise incorporated; and

      (B)   Subcontractor Intellectual Property (including Subcontractor Included Software and Subcontractor Embedded Software, but excluding Subcontractor Separately Licensed Software) that is Delivered, provided that the Use of Subcontractor Embedded Software will be limited to Use as part of and for the Use of the Infrastructure in which the Subcontractor Embedded Software is included, embedded or otherwise incorporated;

   (ii)   subject to Subsections 4.2(c), 4.2(d) and 4.2(e) and Section 4.7 *[Escrow Agreements]*, Modify:

      (A)   Design-Builder Intellectual Property (including Design-Builder Licensed Software and Design-Builder Embedded Software, but excluding Design

Data that forms part of the Design-Builder Intellectual Property) that is Delivered; and

(B) Subcontractor Intellectual Property (including Subcontractor Included Software and Subcontractor Embedded Software, but excluding Subcontractor Separately Licensed Software) that is Delivered;

(iii) Use and Modify Design Data that forms part of the Design-Builder Intellectual Property,

for the Permitted Purposes. The City will not Use or Modify any Design-Builder Intellectual Property or Subcontractor Intellectual Property except as expressly permitted by this Schedule 8 *[Intellectual Property]* or any other provision of this Agreement.

(b) Subject to Subsections 4.2(c) and 4.2(d) below and Section 4.7 *[Escrow Agreements]*, the Licenses granted pursuant to Subsection 4.2(a) above in respect of Design-Builder Licensed Software, Design-Builder Embedded Software, Subcontractor Included Software and Subcontractor Embedded Software apply to the only object code versions thereof.

(c) To the extent that the ability of the City to Modify any Licensed Intellectual Property is dependent upon access to Escrow Materials for that Licensed Intellectual Property, the City will not exercise its right to Modify that Licensed Intellectual Property pursuant to Subsection 4.2(a)(ii) above:

(i) unless and until the City has obtained those Escrow Materials pursuant to Section 4.7 *[Escrow Agreements]* and the applicable Escrow Agreement, upon which the License granted in respect of those Source Materials pursuant to Subsection 4.7(e) *[Escrow Agreements]* will also apply; or

(ii) except as provided in Section 4.8 *[Reverse Engineering License]*.

(d) If all or any part of the Source Materials for any Licensed Intellectual Property are included with the Licensed Intellectual Property when Delivered to the City pursuant to the Subcontract ("**Included Source Materials**"), the License granted pursuant to Subsection 4.2(a)(ii) above will include the License to:

(i) Modify the Licensed Intellectual Property to the extent possible and permissible using the Included Source Materials for the Permitted Purposes;

(ii) Use and Modify the Included Source Materials to enable the City to Use and Modify the Licensed Intellectual Property to which the Included Source Materials relate for the Permitted Purposes;

(iii) where the Licensed Intellectual Property is Design-Builder Licensed Software, Design-Builder Embedded Software, Subcontractor Included Software and Subcontractor Embedded Software, recompile versions of that software from the Included Source Materials, which recompiled versions will be deemed to form part of that software and be subject to the terms of this Schedule 8 *[Intellectual Property]*; and

(iv) disclose the Included Source Materials, or any part thereof, only to City Personnel as reasonably required for the purposes provided for in Subsections 4.2(d)(i), 4.2(d)(ii) and 4.2(d)(iii) above, provided that the City Personnel to whom Included Source Materials are disclosed are bound by

obligations of confidentiality in respect of the Included Source Materials disclosed to them, the breach of which will constitute a breach by the City of its obligations of confidentiality in respect of the Included Source Materials.

(e) The City agrees that:

(i) during the Term, it will not exercise its rights under any License, including its right to Use and Modify any Licensed Intellectual Property, in a manner that would violate any other provision of this Agreement or interfere with the ability of Design-Builder or any Subcontractor to carry out the Project Work or violate or otherwise adversely affect any safety certifications relating to the Infrastructure, except as may be necessary to protect the Infrastructure and the City's rights under this Agreement or to mitigate any loss to the City where Design-Builder or any Subcontractor is in breach of this Agreement, a Subcontract, any other agreement relating to the Project or the Infrastructure or Applicable Law;

(ii) Design-Builder and the Subcontractors will be released from their warranty obligations under this Agreement and the Subcontracts to the extent that any breach of warranty results from a Modification made by or on behalf of the City, unless such Modification was made with the prior written consent of Design-Builder or the applicable Subcontractor; and

(iii) any Direct Losses incurred by Design-Builder or a Design-Builder Person caused by: (A) the City in the exercise of its right to Modify any Licensed Intellectual Property; or (B) Design-Builder or any Subcontractor in the exercise of their rights to Use any City Intellectual Property in accordance with the terms and conditions of this Agreement, will constitute a Relief Event, except to the extent, with respect to (A), such Modification was made with the prior written consent of Design-Builder or the applicable Design-Builder Person or otherwise addressed through the operation of Schedule 13 *[Changes]*. This covenant will survive the termination of this Agreement.

(f) If pursuant to Subsection 4.2(a) above and by virtue of the definition of Delivered in Subsection 1.1(g) *[Definitions],* the City is granted a License in respect of any Design-Builder Intellectual Property or Subcontractor Intellectual Property that is not a Deliverable or incorporated, embedded or otherwise included in any Deliverable or the Infrastructure, Design-Builder will, or will cause the applicable Subcontractor to, physically supply and deliver to the City the Design-Builder Intellectual Property and Subcontractor Intellectual Property that falls within the definition of Delivered but has not previously been physically supplied and delivered to the City, together with all related Technical Documentation as may be necessary for the City to Use and Modify that Design-Builder Intellectual Property and Subcontractor Intellectual Property in accordance with the Licenses granted herein.

(g) Design-Builder will, in respect of the Design-Builder Intellectual Property and any Included Source Materials therefor, and will cause each Subcontractor in respect of its Subcontractor Intellectual Property and any Included Source Materials therefor to, provide to the City sufficient training and consulting services to ensure that the City is able to carry out all Equivalent Activities and Permitted Purposes in respect of the Design-Builder Intellectual Property and the Subcontractor Intellectual Property, excluding Equivalent Activities and Permitted Purposes that require access to and Use and Modification of Escrow Materials other than the Included Source Materials. If directed by the City, Design-Builder will, and will cause each Subcontractor to, provide the training and consulting services directly to the third parties retained by the City. In addition, Design-Builder will, and will cause each Subcontractor to, disclose and provide to the City all trade secrets, know-how, documentation and other information of any kind

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whatsoever within their possession or control as may be necessary for the City to carry out all Equivalent Activities and Permitted Purposes in respect of the Design-Builder Intellectual Property and the Subcontractor Intellectual Property, excluding any of the foregoing that form part of the Escrow Materials.

4.3   Additional City License Terms

(a)   Each License granted pursuant to Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]* is irrevocable, perpetual, royalty free, fully paid-up, and permits Use by the Licensee on an enterprise basis without restriction or limitation as to users (whether by number, identity or otherwise), location, authorized system or otherwise, as part of the Infrastructure. Without limiting the generality of the foregoing, each License granted pursuant to Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]* will survive the expiry or termination of the Term and this Agreement.

(b)   Each License granted pursuant to Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]* may be transferred, assigned, sublicensed and otherwise disposed of by the Licensee subject to and in accordance with this Agreement, provided that the Licenses in respect of Design-Builder Embedded Software and Subcontractor Embedded Software may only be transferred together with the Infrastructure in which that software is included, embedded or otherwise incorporated.

(c)   Except as provided in Subsection 4.3(d) below, Design-Builder will not be entitled to terminate or rescind any License granted under Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]*, and if the Licensee commits any breach of or default under this Schedule 8 *[Intellectual Property]*, whether material or not and whether that breach or default is or is not capable of being remedied, Design-Builder's rights and remedies in respect of that breach or default will be limited to those rights and remedies other than termination or rescission of the Licenses granted under Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]* that may exist at law or in equity, it being acknowledged by Design-Builder that the Licenses granted under Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]* are perpetual and irrevocable. No breach of or default under this Schedule 8 *[Intellectual Property]* by the Licensee will constitute a repudiation by the Licensee of the Licenses granted under Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]*. For greater certainty, nothing in this Subsection 4.3(c) restricts or limits Design-Builder's remedies of damages or injunctive relief to compensate for or restrain any breach of the provisions of this Schedule 8 *[Intellectual Property]*.

(d)   If Design-Builder obtains an order (a "**License Breach Order**") from an arbitrator or court of competent jurisdiction pursuant to Schedule 20 *[Dispute Resolution Procedure]* pursuant to which:

(i)   it is determined that a Licensee has committed a breach of Subsection 4.2(a) *[License by Design-Builder to the City]* or 4.7(e) *[Escrow Agreements]* in respect of any Licensed Intellectual Property (the "**Determined Breach**"); and

(ii)   it is ordered that the Licensee cease the Determined Breach,

and if the Licensee has not ceased the Determined Breach within thirty (30) days after the date on which the License Breach Order was delivered to the Licensee (with a copy to the City if the City is not the Licensee), Design-Builder may give notice to the Licensee (with a copy to the City if the City is not the Licensee) demanding that the Licensee

comply with the License Breach Order within a further thirty (30) day period, and if the Licensee does not comply with the License Breach Order within that further thirty (30) day period, Design-Builder may:

(iii)   if the Determined Breach is pursuant to Subsection 4.2(a) *[License by Design-Builder to the City]* or both Subsections 4.2(a) *[License by Design-Builder to the City]* and 4.7(e) *[Escrow Agreements]*, terminate the Licenses granted pursuant to Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]*, but only for the Licensed Intellectual Property in respect of which the Determined Breach occurred; or

(iv)   if the Determined Breach is pursuant to only Subsection 4.7(e) *[Escrow Agreements]*, terminate the License granted pursuant to Subsection 4.7(e) *[Escrow Agreements]*, but only for the Escrow Materials in respect of which the Determined Breach occurred.

(e)   The Licensee may provide and disclose the Licensed Intellectual Property and all related information and documentation (including Confidential Information) to any employee, contractor, subcontractor, consultant, service provider, outsourcer or other Person retained or engaged by the Licensee in connection with the Permitted Purposes, and each employee, contractor, subcontractor, service provider, outsourcer or other Person may exercise all rights to Use and Modify the Licensed Intellectual Property as may be granted by the Licensee to that Person within the scope of the Licenses granted by Design-Builder to the Licensee pursuant to this Schedule 8 *[Intellectual Property]*, provided that the Licensee will be responsible for anything done or failed to be done by any employee, contractor, subcontractor, service provider, outsourcer or other Person to whom the Licensee provides and discloses the Licensed Intellectual Property, including a breach by any employee, contractor, subcontractor, service provider, outsourcer or other Person of the City's obligations of confidentiality in respect of any Confidential Information that is or is part of Licensed Intellectual Property.

(f)   Each License granted pursuant to Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]* with respect to Design-Builder Licensed Software and Subcontractor Included Software permits Use by the Licensee in multiple environments or instances, including for training, development, testing, staging, and disaster recovery and in one or more live, production or operating environments, but only within the Permitted Purposes.

(g)   The Licensee may make copies of the Licensed Intellectual Property as may be reasonably necessary for Use and Modification of the Licensed Intellectual Property in accordance with the Licenses granted pursuant to Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]*. Subject to Section 3.7 *[Ownership of Tangible Deliverables]*, all copies of Licensed Intellectual Property will be Owned by Owner of the original Licensed Intellectual Property and licensed to the Licensee pursuant to Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]*. Except as permitted by Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]*, this Section 4.3 *[Additional City License Terms]* or the Escrow Agreement, the Licensee will not copy, Modify, disassemble, reverse engineer, decompile, translate or otherwise obtain or create the source code for any Design-Builder Intellectual Property, Design-Builder Licensed Software, Design-Builder Embedded Software, Subcontractor Intellectual Property, Subcontractor Included Software, Subcontractor Separately Licensed Software or Subcontractor Embedded Software.

(h) The Licensee will not remove from any Licensed Intellectual Property any markings or notices with respect to the ownership thereof, copyright therein or the confidentiality thereof.

(i) Design-Builder will use reasonable commercial efforts to ensure that each Deliverable and all Intellectual Property included in each Deliverable as and when delivered to the City do not contain Harmful Code, a Lock or Undisclosed Functionality. Upon notice by the City that a Deliverable or any item of Intellectual Property as delivered to the City contained Harmful Code, a Lock or Undisclosed Functionality, Design-Builder will promptly repair or replace the Deliverable or item of Intellectual Property so that the Deliverable or item of Intellectual Property does not contain the Harmful Code, Lock or Undisclosed Functionality (as applicable).

(j) Design-Builder will provide all maintenance and support for any Design-Builder Licensed Software and the Subcontractor Included Software as may reasonably be necessary for Design-Builder to properly perform its overall Project Work obligations and requirements consistent with Good Industry Practice for these types of activities and Infrastructure. As of Construction Completion, Design-Builder will assign to the Licensee any third party maintenance and support contracts as requested by the Licensee, and, if requested by the Licensee, Design-Builder will arrange for maintenance and support contracts (on reasonable commercial terms) to be entered into by the Licensee and a third party for the provision of the maintenance and support services that were being provided by Design-Builder or any Subcontractor for any Design-Builder Licensed Software and the Subcontractor Included Software. Design-Builder will also, at the City's expense, provide all other reasonable transitional support that the Licensee may request as a Change at the time that is not already provided for in this Agreement.

(k) For clarity, all references in this Section 4.3 *[Additional City License Terms]* to the Licenses granted pursuant to Section 4.2 *[License by Design-Builder to the City]* include the License granted pursuant to Subsection 4.7(e) *[Escrow Agreements]*, as provided for in Subsection 4.7(f) *[Escrow Agreements]*.

(l) For clarity, the City acknowledges and agrees that the Licenses granted pursuant to Sections 4.2 *[License by Design-Builder to the City]* and 4.8 *[Reverse Engineering License]* do not permit the City or any other Licensee, transferee, assignee or sublicensee to commercialize any Licensed Intellectual Property by licensing or otherwise providing any Licensed Intellectual Property, with or without commercial gain, to any third party for Use by that third party or any other third party. This Subsection 4.3(l) is for clarity only and does not in any way restrict or limit the rights of the City or any other Licensee to Use and Modify Licensed Intellectual Property for the Permitted Purposes in accordance with this Schedule 8 *[Intellectual Property]*.

4.4 Licenses with Subcontractors

(a) Subject to Subsection 4.4(b) below, Design-Builder will obtain from each Subcontractor the right to grant the Licenses under and on the terms and conditions described in Sections 4.2 *[License by Design-Builder to the City]*, 4.3 *[Additional City License Terms]* and 4.8 *[Reverse Engineering License]* in respect of the Subcontractor Intellectual Property.

(b) If any Subcontractor intends to supply software that would be included in the Infrastructure (including Subcontractor Embedded Software) pursuant to license terms other than those provided for in Sections 4.2 *[License by Design-Builder to the City]*, 4.3 *[Additional City License Terms]* and 4.8 *[Reverse Engineering License]*, Design-Builder will provide to the City the license agreement for that software in advance of making any

commitment to include that software in the Infrastructure, and will not include that software in the Infrastructure unless the City has expressly approved the license agreement for that software in writing, which approval will not be unreasonably withheld. The City will notify Design-Builder in writing within ten (10) Business Days after Design-Builder provides the license agreement whether the City approves or rejects the license agreement and, if the City rejects the license agreement, its detailed reasons for that rejection. If Design-Builder does not receive the City's written notice within the ten (10) Business Day period, then the City will be deemed to have approved the software license.

(c)   Design-Builder will obtain from each Subcontractor the right to Use and Modify the Subcontractor Intellectual Property to the extent necessary for Design-Builder to enter into and perform its obligations under this Agreement (including the grant of the Licenses in Sections 4.2 *[License by Design-Builder to the City]*, 4.3 *[Additional City License Terms]* and 4.8 *[Reverse Engineering License]* with respect to all Subcontractor Intellectual Property), on terms that are not in breach of or conflict with this Agreement.

(d)   Design-Builder will grant to each Subcontractor the right to Use and Modify City Intellectual Property and Design-Builder Intellectual Property to the extent necessary for each Subcontractor to perform its obligations under its Subcontract, on terms that are not in breach of or conflict with this Agreement.

4.5   Third Party Intellectual Property

(a)   Design-Builder will not, and will not permit any Design-Builder Personnel, Subcontractor or Subcontractor Personnel to, incorporate, embed or otherwise include any Third Party Intellectual Property in the Infrastructure or any Deliverable unless:

   (i)   for Third Party Intellectual Property other than Third Party Embedded Software, the Third Party Intellectual Property is provided by the Owner thereof pursuant to a license agreement that:

      (A)   grants to the Licensee rights and terms and conditions equivalent to or better than the rights and terms and conditions granted under the Licenses in Sections 4.2 *[License by Design-Builder to the City]*, 4.3 *[Additional City License Terms]* and 4.8 *[Reverse Engineering License]*, including being assignable in accordance with Subsection 4.3(b) *[Additional City License Terms]*, and, where the Third Party Intellectual Property is software or includes software, provides for the maintenance and support of that software on terms acceptable to the City and an Escrow Agreement in accordance with Section 4.7 *[Escrow Agreements]*; or

      (B)   has been expressly approved in writing by the City, which approval will not be unreasonably withheld,

   and the license agreement, if not entered into with the City directly, has been assigned or is freely assignable to the City; and

   (ii)   for Third Party Embedded Software, either (i) the Third Party Embedded Software is embedded in the Infrastructure and may be used by the Licensee or any subsequent owner of the Infrastructure as part of and for the Use of the Infrastructure upon the purchase of the Infrastructure, without any separate license or other obligation or restriction, or (ii) the Third Party Embedded

Software is subject to a license agreement that complies with Subsection 4.5(a)(i) above.

(b)   The City will notify Design-Builder in writing within ten (10) Business Days after Design-Builder provides the proposed license agreement pursuant to Subsection 4.5(a)(i)(B) above whether the City approves or rejects the license agreement and, if the City rejects the license agreement, its detailed reasons for that rejection. If Design-Builder does not receive the City's written notice within the (10) Business Day period, then the City will be deemed to have approved the license.

(c)   If Design-Builder, Design-Builder Personnel, Subcontractor or Subcontractor Personnel incorporates, embeds or includes any Third Party Intellectual Property in the Infrastructure or any Deliverable other than in compliance with this Section 4.5 *[Third Party Intellectual Property]*, then in addition to any other rights and remedies the City may have against Design-Builder, Design-Builder will at its sole expense take all necessary steps to comply with this Section 4.5 *[Third Party Intellectual Property]* or, if Design-Builder is unable to do so, to remove the Third Party Intellectual Property and replace the Third Party Intellectual Property with Design-Builder Intellectual Property that provides substantially the same or better functionality, performance, operation and results as the Third Party Intellectual Property and which will operate within the Infrastructure and the Deliverable without any material degradation of or materially adverse effect on the Infrastructure or the Deliverable, and which will be subject to either: (i) the acceptance testing specified in this Agreement that applied to all or part of the Infrastructure or Deliverable in which the Third Party Intellectual Property was previously embedded or included in the Infrastructure or Deliverable; or (ii) if no acceptance testing was specified in this Agreement as applying to the part of the Infrastructure or the Deliverable in which the Third Party Intellectual Property was previously embedded or included in the Infrastructure or the Deliverable, acceptance testing of a nature and extent as would be suitable and acceptable in similar circumstances. Upon acceptance of the applicable part of the Infrastructure or the Deliverable, the Intellectual Property that replaces the previously included Third Party Intellectual Property will be included in the Design-Builder Intellectual Property for the purposes of the Licenses granted pursuant to Sections 4.2 *[License by Design-Builder to the City]*, 4.3 *[Additional City License Terms]* and 4.8 *[Reverse Engineering License]*.

4.6   Open Source Software

(a)   Notwithstanding any other provision of this Agreement, and unless expressly consented to in writing by the City in each instance (which consent will not be unreasonably withheld or delayed), Design-Builder will ensure that Open Source Software is not incorporated, embedded or otherwise included in any Deliverable or the Infrastructure and will ensure that no aspect of the Deliverable or the Infrastructure or any other item to be provided by Design-Builder under this Agreement requires the use of Open Source Software to function, operate or perform in its intended fashion.

(b)   If Design-Builder wishes to request the City's consent to the use of Open Source Software, Design-Builder will make the request in writing and will expressly identify the Open Source Software and describe the intended use of the Open Source Software, and will provide to the City all documents and information as may be reasonably requested by the City to enable the City to assess the potential security and other risks associated with the proposed use of the Open Source Software.

(c)   For greater certainty, and in addition to this Section 4.6 *[Open Source Software]*, if Open Source Software is Third Party Intellectual Property then all aspects of Section 4.5 *[Third Party Intellectual Property]* will also apply to the Open Source Software.

4.7 Escrow Agreements

(a) Design-Builder will enter into an Escrow Agreement for the Escrow Materials for any Software, Embedded Software, or Infrastructure supplied by Design-Builder on terms that comply with this Section 4.7 *[Escrow Agreements]*, or amend its existing Escrow Agreement for the Escrow Materials for that Software, Embedded Software, or Infrastructure to comply with this Section 4.7 *[Escrow Agreements]*, and add the Licensee as a beneficiary under the Escrow Agreement. If requested by the City at any time during the Term, Design-Builder will make reasonable efforts to have any Subcontractor and any third party licensor that is supplying or has supplied any Software, Embedded Software, or Infrastructure to the Project to enter into an Escrow Agreement on terms that comply with this Section 4.7 *[Escrow Agreements]*, or to amend its existing Escrow Agreement for the Escrow Materials for that Software, Embedded Software, or Infrastructure to comply with this Section 4.7 *[Escrow Agreements]*, and add the Licensee as a beneficiary under the Escrow Agreement. Design-Builder will, and will ensure that each other Escrow Materials Provider does, comply with its obligations under each Escrow Agreement to which it is a party pursuant to this Section 4.7 *[Escrow Agreements]*.

(b) The Escrow Materials Provider will deposit with the Escrow Agent the Escrow Materials for the Escrowed Deliverable and all Modifications thereto provided by the Escrow Materials Provider as part of the Project Work, Software Maintenance and Support (if purchased by the Licensee) or any other services performed by the Escrow Materials Provider for the Licensee, and in the case of Software the Escrow Materials Provider will update the Escrow Materials to conform to the then-current version of the Software in use by the Licensee after each relevant Modification has been made.

(c) The Licensee will have the right, on reasonable notice to the Escrow Materials Provider and the Escrow Agent, to verify that the Escrow Materials conform to the Escrowed Deliverable supplied to and in use by the Licensee to which the Escrow Materials relate; in addition, the Licensee may purchase any additional verification services offered by the Escrow Agent and the Escrow Materials Provider will cooperate with the Licensee and the Escrow Agent in the performance of those verification services.

(d) The Licensee will have the right to obtain from the Escrow Agent a copy of the Escrow Materials provided by a particular Escrow Materials Provider upon any of the following events:

  (i) the Escrow Materials Provider is bankrupt;

  (ii) a trustee, receiver, manager, receiver-manager, custodian or Person having similar authority is appointed for the Escrow Materials Provider or its business and assets and is not released or removed within 30 days after the appointment;

  (iii) the Escrow Materials Provider ceases to carry on business;

  (iv) an Escrow Materials Provider Event of Default has occurred;

  (v) in the case of an Escrowed Deliverable that is Software, if the Licensee is purchasing Software Maintenance and Support for the Software in respect of which the Escrow Materials have been deposited, and either:

    (A) the Escrow Materials Provider has given the Licensee notice that the Escrow Materials Provider will no longer provide Software Maintenance and Support; or

<table>
<tr>
<td style="vertical-align: top; width: 10%;">(B)</td>
<td>the Escrow Materials Provider defaults in the performance of Software Maintenance and Support and does not remedy that default within thirty (30) days after receipt of notice from the Licensee demanding that the Escrow Materials Provider do so;</td>
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<tr>
<td style="vertical-align: top; width: 10%;">(vi)</td>
<td>in the case of an Escrowed Deliverable that is Software, if the Licensee is not purchasing Software Maintenance and Support for the Software and the City requires access to the Escrow Material in order to carry out any Permitted Purpose; or</td>
</tr>
<tr>
<td style="vertical-align: top;">(vii)</td>
<td>in the case of an Escrowed Deliverable other than Software, the Escrow Materials Provider ceases to manufacture and supply replacements for the Escrowed Deliverable or replacement parts for the Escrowed Deliverable that are within the scope of the Escrow Materials for that Escrowed Deliverable.</td>
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(e)   Upon the release of Escrow Materials to the Licensee in accordance with this Section 4.7 *[Escrow Agreements]* and the applicable Escrow Agreement, the Escrow Materials Provider grants to the Licensee a License to:

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<tr>
<td style="vertical-align: top; width: 10%;">(i)</td>
<td>Use and Modify the Escrow Materials to enable the Licensee to Use and Modify the Escrowed Deliverable to which the Escrow Materials relate for the Permitted Purposes, and where the Escrowed Deliverable is or contains Licensed Intellectual Property in accordance with the License applicable thereto;</td>
</tr>
<tr>
<td style="vertical-align: top;">(ii)</td>
<td>in the case of Escrow Materials for Software and Embedded Software, recompile versions of the Software or Embedded Software from the Escrow Materials, which recompiled versions will be deemed to form part of the Software or Embedded Software and be subject to the terms of this Schedule 8 *[Intellectual Property]*;</td>
</tr>
<tr>
<td style="vertical-align: top;">(iii)</td>
<td>in the case of Escrow Materials for Infrastructure, Use and Modify the Escrow Materials to design and manufacture, or to have designed, manufactured and supplied, replacement parts for Infrastructure; and</td>
</tr>
<tr>
<td style="vertical-align: top;">(iv)</td>
<td>reveal the Escrow Materials, or any part thereof, only to agents, employees or independent contractors of the Licensee as reasonably required for the purposes provided for in Subsections 4.7(e)(i), 4.7(e)(ii) and 4.7(e)(iii) above, provided that those agents, employees and independent contractors are bound by obligations of confidentiality in respect of any Escrow Materials disclosed to them, the breach of which will constitute a breach by the Licensee of its obligations of confidentiality in respect of the Escrow Materials.</td>
</tr>
</table>

(f)   The License granted pursuant to Subsection 4.7(e) above will:

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<tr>
<td style="vertical-align: top; width: 10%;">(i)</td>
<td>where the Escrow Materials Provider is Design-Builder, form part of the Licenses granted pursuant to Sections 4.2 *[License by Design-Builder to the City]* and 4.3 *[Additional City License Terms]*;</td>
</tr>
<tr>
<td style="vertical-align: top;">(ii)</td>
<td>where the Escrow Materials Provider is a Subcontractor, form part of the Licenses granted pursuant to Sections 4.2 *[License by Design-Builder to the City]* and 4.3 *[Additional City License Terms]* and Section 4.4 *[Licenses with Subcontractors]*, as applicable;</td>
</tr>
<tr>
<td style="vertical-align: top;">(iii)</td>
<td>where the Escrow Materials Provider is a third party, form part of the license granted by the third party to the Licensee;</td>
</tr>
</table>

<table>
<tr><td>(iv)</td><td>and in any case remain in effect for so long as the License remains in effect.</td></tr>
</table>

(g) The Escrow Materials Provider will not terminate or fail to renew the Escrow Agreement without entering into a new Escrow Agreement with a replacement escrow agent on terms and conditions substantially the same as the Escrow Agreement and this Section 4.7 *[Escrow Agreements]*.

(h) Design-Builder will pay all fees charged by the Escrow Agent in association with the addition and maintenance of the Licensee as a beneficiary under the Escrow Agreement.

(i) If the Licensee receives the Escrow Materials, then as between the Licensee and Design-Builder and notwithstanding any other provision of this Agreement, the Licensee will own all Modifications to the Escrow Materials and the Escrowed Deliverable to which the Escrow Materials relate made by or on behalf of the Licensee after receipt of the Escrow Materials and all Intellectual Property Rights in those Modifications.

4.8   Reverse Engineering License

(a) Without limiting any of the City's rights pursuant to this Agreement, at law or in equity, but subject to Subsections 4.8(b) and 4.8(c) below, Design-Builder grants to the City a License to reverse engineer any or all of the Design-Builder Intellectual Property and Subcontractor Intellectual Property if:

(i) Design-Builder (in respect of its Design-Builder Intellectual Property) or a Subcontractor (in respect of its Subcontractor Intellectual Property) has failed to comply with Subsections 4.2(f) and 4.2(g) *[License by Design-Builder to the City]* or if the Design Data, Design Drawings or any other documents and information supplied by Design-Builder is incomplete or otherwise insufficient to permit the City to install, operate, maintain, refurbish, repair, alter, upgrade, Modify, replace or otherwise Use any or all of the Project Work and the Infrastructure, excluding any ability to Modify for which access to and Use and Modification of Escrow Materials would be required; or

(ii) Design-Builder (in respect of its Escrowed Deliverables) or a Subcontractor (in respect of its Escrowed Deliverables) has failed to comply with Section 4.7 *[Escrow Agreements]* or the Escrow Materials deposited by Design-Builder or a Subcontractor are insufficient to permit the City to install, operate, maintain, repair, upgrade, Modify, replace or otherwise Use the Escrowed Deliverable to which the Escrow Materials relate and to exercise the City's rights under Section 4.7 *[Escrow Agreements]*,

provided that the reverse engineering and the results therefrom will be used for the Permitted Purposes only.

(b) The City will not exercise its right to reverse engineer an item of Design-Builder Intellectual Property or Subcontractor Intellectual Property under Subsection 4.8(a) above for the purposes of installing, operating, maintaining, repairing, upgrading, Modifying, replacing or otherwise Using any or all of the Project Work and the Infrastructure, unless the City will have first given notice to Design-Builder stipulating the documents and information which the City requires in order to install, operate, maintain, repair, upgrade, Modify, replace or otherwise Use any or all of the Project Work or the Infrastructure, and Design-Builder will have failed to deliver to the City or otherwise make those documents and information available to the City within ten (10) Business Days after receipt of the City's notice.

(c)   The City will not exercise its rights under Subsection 4.3(a) *[Additional City License Terms]* for the purposes of the replacement or rectification (including a Rectification) of all or any part of the Project Work (hereinafter referred to as "**Replacement Work**"), unless:

   (i)   the City has first given notice to Design-Builder of the Replacement Work required to be performed and:

      (A)   the Term has not expired and Design-Builder has failed to perform the Replacement Work in accordance with the terms of this Agreement; or

      (B)   if the Term has expired, the City has given Design-Builder, or the applicable Subcontractor, a reasonable opportunity to submit pricing, terms and conditions, and a schedule for performance of the Replacement Work, and the City and Design-Builder or the applicable Subcontractor are not able, within a reasonable time thereafter and following negotiations between the parties, to reach a mutually satisfactory agreement for the performance of the Replacement Work by Design-Builder or the applicable Subcontractor; or

   (ii)   at the time the City requires the Replacement Work to be performed, Design-Builder, or the applicable Subcontractor is then insolvent, bankrupt, or has ceased supplying the types of equipment, parts or components needed for the Replacement Work, or is otherwise unable to manufacture, or otherwise procure, and supply the equipment, parts or components needed for the Replacement Work within a reasonable time.

(d)   For clarity, the parties agree that for the purpose of Subsection 4.8(c) above:

   (i)   contract terms and conditions substantially in accordance with the terms and conditions of this Agreement, and pricing for the equipment, parts or components to be supplied which is representative of prices then being generally charged by Design-Builder or the applicable Subcontractor to similarly situated customers, will be deemed to be mutually satisfactory to the parties; and

   (ii)   a "reasonable opportunity" and a "reasonable time" will be interpreted in the context of the circumstances giving rise to the required Replacement Work, including the existence of any safety or environmental hazards, the requirements of the Infrastructure and the commercial interests of the City.

4.9   Non-Assertion

Design-Builder agrees not to assert, and to require its Subcontractors not to assert, any Intellectual Property Right against the City or any Licensee that would have the effect of diminishing the rights granted to the City or any Licensee under this Schedule 8 *[Intellectual Property]*. Without limiting the generality of the foregoing, Design-Builder will not sue, and will require its Subcontractors not to sue, the City or any Licensee on the basis that any Equivalent Activity or the Ownership, Use or Modification of the Infrastructure, any Deliverable or any part of the Project Work within the scope of the Permitted Purposes or as otherwise permitted by any of the Licenses infringes any Intellectual Property Right of Design-Builder or any Subcontractor.

4.10   Deliveries

Design-Builder will deliver to the City all Licensed Intellectual Property at the times specified in this Agreement, or where no time is specified, upon the occurrence of a termination of Design-Builder or a Subcontractor, as the case may be, in accordance with this Agreement or relevant Subcontract. The

media on which Software is delivered and tangible copies or embodiments of any Licensed Intellectual Property other than Software will be the sole property of the City, notwithstanding Design-Builder's, a Subcontractor's or a third party's Ownership of the Licensed Intellectual Property and the Intellectual Property Rights therein. If any Licensed Intellectual Property requires software in order to Use or Modify that Licensed Intellectual Property, Design-Builder will ensure that the required software will be available to the City at no cost, provided that such software remains available on commercially reasonable terms.

4.11 Pass Through Obligations

Design-Builder will include in all contracts with Design-Builder Personnel and in all Subcontracts with Subcontractors, and will enforce for the benefit of the City, all terms and conditions as may be necessary for Design-Builder to grant, or obtain for the City, the Ownership, Licenses, rights and benefits provided for in this Schedule 8 *[Intellectual Property]* and, where required in accordance with this Schedule 8 *[Intellectual Property]* to deposit or have deposited Escrow Materials for Escrowed Deliverables supplied by Subcontractors in accordance with Section 4.7 *[Escrow Agreements]*.

4.12 Conflicting Licenses

All Intellectual Property referenced in this Schedule 8 *[Intellectual Property]* will be licensed in accordance with this Schedule 8 *[Intellectual Property]* only, and except as provided in Section 4.4 *[Licenses with Subcontractors]* or 4.5 *[Third Party Intellectual Property]*, any form of license agreement or other terms and conditions used or provided by a licensor in association with any Intellectual Property will be of no force or effect and will not be binding on the City or any other Licensee, even if by its terms the license agreement or other terms and conditions are stated to be accepted by the installation or use of the Intellectual Property, and regardless of any acceptance of the license agreement or other terms and conditions that is required in order to install or use the Intellectual Property.

4.13 Trademarks and Names

Neither Party will use any Trade-Marks owned by the other Party without obtaining an express written trade-mark license on terms and conditions mutually satisfactory to the City and Design-Builder, each acting reasonably, or use the names or any identifying logos or otherwise of the other Party in any advertising or permit them so to be used except with the express prior written consent of the other Party.

4.14 Design-Builder Indemnity

(a)   Subject to Subsection 4.14(b) below, Design-Builder will at its cost defend the City and all City Persons against any Infringement Claim and will indemnify and hold harmless the City and all City Persons from and against all Direct Losses incurred, suffered or sustained by the City or any City Person, at any time or times, and whether before or after the expiry or termination of this Agreement, directly or indirectly caused by, resulting from, relating to or arising in connection with any Infringement Claim.

(b)   Design-Builder will not be responsible to defend, indemnify and hold harmless the City and City Persons in respect of an Infringement Claim if, but only to the extent that, the Infringement Claim is caused by, results from, relates to or arises in connection with any of the following:

(i)   the Use by Design-Builder or any Subcontractor of any City Intellectual Property in the performance of the Project Work, or the incorporation into the Infrastructure of any City Intellectual Property, in accordance with the terms of this Agreement, including this Schedule 8 *[Intellectual Property]*, provided that this Subsection 4.14(b)(i) will not apply to the extent that the Infringement Claim is caused by, results from, relates to or arises in connection with any Modification

made by Design-Builder or a Design-Builder Person to the City Intellectual Property;

(ii)   any Use by the City of Design-Builder Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property that is not in compliance with this Agreement, including this Schedule 8 *[Intellectual Property]*;

(iii)   any Use by the City of Subcontractor Intellectual Property or Third Party Intellectual Property that is not in compliance with any license terms other than those set out in this Schedule 8 *[Intellectual Property]* applicable to the Subcontractor Intellectual Property or Third Party Intellectual Property where such other license terms have been accepted by the City in accordance with this Schedule 8 *[Intellectual Property]*;

(iv)   any Modification by the City of Design-Builder Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property, where the Infringement Claim would not have occurred but for that Modification, except to the extent such Modification was made with the prior written consent of Design-Builder, the applicable Design-Builder Person or the applicable third party;

(v)   the combination by the City of (i) any Design-Builder Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property incorporated into the Infrastructure by or through Design-Builder or a Subcontractor as part of the Project Work, with (ii) any City Intellectual Property not incorporated into the Infrastructure by or through Design-Builder or a Subcontractor as part of the Project Work, where the Infringement Claim is caused by, results from, relates to or arises in connection with that combination, excluding any Permitted Combination;

(vi)   after the Term, the failure of the City to implement or cause to be implemented any Modification to or replacement of any Infringing Intellectual Property that complies with Subsection 4.14(c)(ii) below, provided that this Subsection 4.14(b)(vi) will apply only after the passage of such time period as is reasonably necessary for the City to implement or cause to be implemented such Modification or replacement.

(c)   If the normal operation, possession or Use of any Design-Builder Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property used in the performance of the Project Work or incorporated into the Infrastructure ("**Infringing Intellectual Property**") by Design-Builder, a Subcontractor or the City is found to infringe or violate the Intellectual Property Rights of any third party (the "**Infringed Party**") or if Design-Builder reasonably believes that any Design-Builder Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property is likely to be found to be Infringing Intellectual Property, Design-Builder may, at its expense:

(i)   obtain from the Infringed Party, for the benefit of Design-Builder and the City, a license which permits Design-Builder and the City to Use the Infringing Intellectual Property on the same terms and conditions as provided for in this Agreement, including this Schedule 8 *[Intellectual Property]*, or on such other terms and conditions as may be acceptable to the City in its discretion; or

(ii)   replace or Modify the Infringing Intellectual Property so that it is no longer infringing, provided that the replacement for the Infringing Intellectual Property or the Modified Infringing Intellectual Property, and the Infrastructure incorporating the replacement or Modified Intellectual Property, provides substantially the

same or better functionality, performance, operation and results as the Infringing Intellectual Property and conforms to the requirements of this Agreement, including the Project Requirements,

provided that this Subsection 4.14(c) will not apply to any Infringing Intellectual Property in respect of which Design-Builder is not obligated to defend and indemnify the City against an Infringement Claim pursuant to any of Subsections 4.14(b)(i) to 4.14(b)(vi) above.

(d)   Subsections 4.14(a) and 4.14(c) above set out Design-Builder's sole liability and obligation, and the City's sole rights and remedies, in respect of the infringement or violation by any Design-Builder Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property of the Intellectual Property Rights of any third party.

4.15   Updated Certifications

(a)   Design-Builder will, at the times specified in Subsection 4.15(b) below, provide to the City a certificate containing the information and certifications set out in Subsection 4.15(c) below (the "**IP Certificate**"). The IP Certificate will be signed by a senior officer of the Design-Builder, and will include a statement that the information contained in the IP Certificate is complete and correct to the best of each signatory's knowledge, having made due and proper investigations of all matters certified therein.

(b)   Design-Builder will provide the IP Certificate to the City at the following times:

   (i)   upon reasonable request by the City and in any event not more than semi-annually;

   (ii)   on the Construction Completion Date;

   (iii)   on the Service Readiness Date; and

   (iv)   on the date that is the end of the Warranty Period.

(c)   As provided for in this Schedule 8 *[Intellectual Property]*, each IP Certificate will contain the following:

   (i)   a certification that the IP Certificate includes all Intellectual Property that is Delivered as of the date of the IP Certificate;

   (ii)   where any part of the Infrastructure comprises components having different ownership and licenses of related Intellectual Property, the information corresponding to the categories set out in in Subsection 2.1 *[Summary Table]* in respect of each key or critical component;

   (iii)   categorization of all Intellectual Property that is Delivered as of the date of the IP Certificate in accordance with the categories of Intellectual Property set out in Subsection 2.1 *[Summary Table]* and as follows:

      (A)   description of system or subsystem;

      (B)   criticality to overall Infrastructure;

      (C)   supplier and Owner of the Intellectual Property;

(D)   whether the Intellectual Property is available from other sources; and

(E)   whether the license for the Intellectual Property will be subject to Subsection 4.4(b) *[Licenses with Subcontractors]*;

(iv)   for any Intellectual Property not yet Delivered, a description of the timetable for Design-Builder to acquire Intellectual Property if not yet acquired;

(v)   for any Licensed Intellectual Property, a statement as to whether or not there are any Included Source Materials for the Licensed Intellectual Property and, if there are, a description of those Included Source Materials;

(vi)   for each item of Intellectual Property that is not owned by the party granting the license in respect of that Intellectual Property to the City, the following information:

(A)   the name of the Owner of that item of Intellectual Property;

(B)   if the Owner of that item of Intellectual Property is not the direct licensor thereof to the party granting the license thereof to the City, the names of all intermediary parties to whom licenses are granted and who are granting licenses in respect thereof; and

(C)   certification that all of the foregoing licenses and sublicenses are in good standing, not subject to termination, and permit the granting to the City of the License under this Schedule 8 *[Intellectual Property]* or an alternate license accepted by the City in accordance with Section 4.4 *[Licenses with Subcontractors]*, 4.5 *[Third Party Intellectual Property]* or 4.6 *[Open Source Software]*;

(vii)   certification that there is no Intellectual Property that falls within the definition of Delivered in this Schedule 8 *[Intellectual Property]* in respect of which the City has not been granted a License in accordance with this Schedule 8 *[Intellectual Property]* or an alternate license accepted by the City in accordance with Section 4.4 *[Licenses with Subcontractors]*, 4.5 *[Third Party Intellectual Property]* or 4.6 *[Open Source Software]*;

(viii) a list and description of all Escrow Agreements entered into under Section 4.7 *[Escrow Agreements]* and all Escrow Materials deposited thereunder, and certification that the Escrow Materials so deposited are sufficient to allow the City to exercise its rights under Subsection 4.7(e) *[Escrow Agreements]* if those Escrow Materials should be released to the City; and

(ix)   certification that, as of the date of the IP Certificate, Design-Builder is in compliance with this Schedule 8 *[Intellectual Property]* and all Subcontractors are in compliance with the obligations required to be imposed upon or passed through to Subcontractors pursuant to this Schedule 8 *[Intellectual Property]*.

(d)   The City may request that Design-Builder provide the City with back-up documentation in respect of any matter set out in an IP Certificate, including copies of any upstream licenses of any Intellectual Property that is Delivered. Except where prevented by Applicable Law or confidentiality obligations to third parties (excluding Affiliates of Design-Builder or any of its partners and excluding Subcontractors), Design-Builder will provide all back-up documentation reasonably requested by the City. Where Design-Builder is unable to provide back-up documentation requested by the City for the

foregoing reasons, Design-Builder will provide the City with summary information or additional certifications to address the City's questions and concerns.

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Edmonton Capital Line South LRT Extension
Design-Build Agreement – Execution Version
Schedule 8 – Intellectual Property