

SCHEDULE 11

INSURANCE REQUIREMENTS

SECTION A DEFINITIONS

A1. Capitalized Terms

A1.1 Capitalized terms used in this Schedule 11 have the meanings set out in the Design Build Agreement, unless otherwise expressed in this Schedule 11.

A1.2 In this Schedule 11, in addition to the definitions set out in Schedule 1 – Definitions and Interpretations of this Design Build Agreement, the following expressions have the following meanings (and, where applicable, their plurals have corresponding meanings):

- (a) “LEG 3 exclusion” developed in the 1990s by the London Engineering Group (LEG) provides the broadest coverage by excluding only improvements to the original design, material or performance of the work beyond the damage that occurred. It essentially excludes the cost of any upgrades.
- (b) “LEG 2 exclusion” developed by the London Engineering Group (LEG) excludes only rectification costs for preventing damage caused by faulty design, materials or workmanship. Example: faulty electrical equipment at a construction site causes a fire – this would exclude the cost of replacing and installing the faulty component, but the rest of the loss would be covered.

SECTION B GENERAL INSURANCE REQUIREMENTS

B1. Insurance Act

B1.1 All insurance policies must comply with *The Insurance Act* (Manitoba) and must be provided through companies licensed, admitted and authorized to do business in Manitoba.

B2. No Limit on Obligation

B2.1 The insurance forms and limits listed below are presented as minimum requirements that Design Builder must provide. Any insurance maintained by Design Builder, whether in accordance with this Design Build Agreement or otherwise, will not reduce or limit the obligations or liabilities of Design Builder under this Design Build Agreement in any way. The insolvency or bankruptcy of any insurance company, or failure of any insurance company to pay any claim, shall not reduce or limit the obligations or liabilities of Design Builder under this Design Build Agreement in any way.

B3. Actual Form and Substance

B3.1 All insurance must be in forms and with terms and conditions acceptable to the City, acting reasonably. The policies shall require that the insurers give all named insured

30 Calendar Days prior written notice of any cancellation or material reduction in coverage or limits. All policies required to be placed and maintained by Design Builder will be with insurers reasonably acceptable to the City.

B4. Waiver of Subrogation

B4.1 All insurance policies, other than any insurance policies placed in accordance with Section D1.2(b) will contain a waiver of all rights of recovery, under subrogation or otherwise, against the City and any City Party. Such waiver will be evidenced within any certificate of insurance issued in respect of the relevant policy.

B5. Design Builder Party Insurance

B5.1 Design Builder shall ensure that all Design Builder Parties maintain any insurance required by Applicable Law or Good Industry Practice.

B6. Premiums, Deductibles/Waiting Period

B6.1 Design Builder shall be responsible for payment of all premiums and deductibles/waiting periods where policies are purchased by Design Builder except that it is acknowledged that, pursuant to the Design Build Agreement, the City shall, where the damage is directly caused by the City or a City Party, and provided that Design Builder has made a claim under Design Builder's insurance, pay the actual deductible applicable to the claim pursuant to Design Builder's insurance. Deductible amounts and waiting periods will be disclosed to Design Builder and the City.

B6.2 It is acknowledged that pursuant to Design Build Agreement, the City shall be responsible for payment of all premiums and deductibles/waiting periods where policies are purchased by the City unless the loss arising in the deductible/waiting period shall have been caused by Design Builder parties.

B6.3 All deductibles/waiting periods noted herein will be the maximum allowed on each individual policy. Design Builder may elect to have lower deductibles on its own account.

B7. Cooperation with City

B7.1 Design Builder shall cooperate, and cause each Design Builder Party to cooperate, with the City in the administration of the insurance program for the Project, including immediately and without delay notifying the City of any loss or event or circumstance that may result in a claim. Design Builder will comply, and cause each Design Builder Party to comply, with reasonable written procedures issued by the City from time to time relative to the administration of the insurance program for the Project.

B8. Blanket Policies

B8.1 Where the City is required to provide insurance under Section C below, any such insurance, at the City's sole option, may be provided through blanket policies that also cover other projects.

SECTION C CITY REQUIRED INSURANCE

- C1.1 The City shall provide, pay for and maintain an owner controlled insurance program to remain in place at all times during the performance of the Work. The City reserves the right to add, delete, revise, and redefine insurance requirements at any time, at its sole discretion, during the term of the Design Build Agreement.
- C1.2 From Mobilization the City shall provide and maintain the following owner controlled project insurance coverage to remain in place at all times until the Final Completion Date:
- (a) Wrap-Up liability Insurance in an amount of no less than \$25,000,000 inclusive per occurrence and \$25,000,000 general aggregate, covering bodily injury, personal injury, damage to existing structure (if available), broad form property damage, contingent employer's liability, sudden and accidental pollution (as per *Insurance Bureau of Canada 2313* or similar) (240 hours/240 hours), professional services exclusion applicable to professionals, pile driving, tunnelling or the removal or weakening of support of any property, building, or land, whether such support be natural or otherwise, hoist liability, and products and completed operations consistent with industry standard insurance policy wordings. Wrap-up liability insurance to also include evidence of contractual liability, unlicensed motor vehicle liability, and cross liability clauses and no exclusion for sewage treatment plants:
 - (i) Design Builder shall be responsible for deductibles up to \$100,000 maximum and \$50,000 minimum of any one loss;
 - (ii) the City will carry such insurance to cover the City, Design Builder, Design Builder Parties, and City Parties as insured's. Provision of this insurance by the City is not intended in any way to relieve Design Builder from their obligations under the terms of the Design Build Agreement. Specifically, losses relating to deductibles for insurance, as well as losses in excess of limits of coverage and any risk of loss that is not covered under the terms of the insurance provided by the City remains with Design Builder;
 - (iii) wrap-up liability insurance shall be maintained from Mobilization until the Final Completion Date of the Work and shall include an additional 36 months completed operations coverage which will take effect after the Final Completion Date; and
 - (iv) BellMTS, Manitoba Hydro, Shaw, Telus, shall be shown as additional insureds, as required by contract.
- C1.3 From the time all of the Construction Commencement Conditions have been met and with 21 Calendar Days prior notice from Design Builder of the intended construction commencement date, the City shall provide and maintain builder's risk insurance as follows:
- (a) broad form builder's risk insurance including testing and commissioning, and LEG 3 exclusion, if available, and as understood by the international

insurance industry insuring 100% of the Contract Price. Coverage will extend for at least 10 Calendar Days after the Substantial Completion Date and if all testing and commissioning has not been completed at that time, the policy will extend until such time as all testing and commissioning has been completed:

- (i) the City will carry such insurance to cover the City, Design Builder and all Design Builder Parties and Cities Party as insureds;
- (ii) provision of this insurance by the City is not intended in any way to relieve Design Builder from their obligations under the terms of the Design Build Agreement. Specifically, losses relating to deductibles for insurance, as well as losses in excess of limits of coverage and risk of loss that is not covered under the terms of insurance provided by the City remains with Design Builder;
- (iii) such insurance shall include, but not be limited to, all materials, supplies, equipment and machinery, including mechanical and electrical breakdown, extra and expediting expenses, and other property intended to be permanently incorporated in the Works and the Infrastructure. Coverage shall apply to such property while it is located at the Lands or located at temporary off-site storage or staging areas, or while in land-based transit to the Lands within the continental United States and Canada;
- (iv) coverage shall be written on an “all risk” form for direct physical damage. Limits under this insurance shall not be less than 100% of the Contract Price for physical damage to property and related expenses, provided that sub limits shall be established for losses due to certain perils, including, but not limited to, earthquake, flood and sewer back up. Any time element deductibles shall not exceed 30 Calendar Days; and
- (v) the policy shall:
 - (A) include:
 - (I) non-vitiation clause; and
 - (II) transit, off site, bylaws, debris removal, off premises power and professional fees. Some or all of these may be sub-limited.
 - (B) the maximum deductibles under this policy shall be:
 - (I) \$250,000 per occurrence but not less than \$100,000 per occurrence for damages and losses which Design Builder shall be responsible for, except as specifically addressed below;

- (II) for flood and water damages and losses, Design Builder shall be responsible for deductibles up to \$250,000 per occurrence;
 - (III) for testing and commissioning losses, Design Builder shall be responsible for deductibles up to \$250,000 per occurrence;
 - (IV) for earthquake damages and losses, Design Builder shall be responsible for deductibles up to 5% of value at the time of loss subject to a minimum of \$250,000;
 - (V) for tunnelling losses, Design Builder shall be responsible for deductibles to a maximum of \$250,000 per occurrence; and
 - (VI) such additional insurance as is provided by a LEG 3 exclusion over a LEG 2 exclusion subject to its availability will be subject to a \$250,000 per occurrence deductible which Design Builder shall be responsible for;
- (b) all risks property insurance policy for the full replacement cost insuring the Existing Infrastructure at the Lands while under renovation or decommissioning for the Project. Design Builder shall be responsible for deductibles up to \$250,000 per occurrence for losses;
 - (c) equipment breakdown for the full replacement cost insuring the Existing Infrastructure at the Lands while under renovation or decommissioning for the project. Design Builder shall be responsible for deductibles up to \$250,000 per occurrence for losses; and
 - (d) if required, cargo insurance for equipment and/or machinery that will form part of the Project and for which the seller and/or freight forwarder is not providing insurance from its origin to the Lands.

SECTION D DESIGN BUILDER INSURANCE

D1.1 Design Builder shall purchase and maintain or cause to be purchased and maintained in full force at all times from the Effective Date and until the issuance of the Certificate of Acceptance, unless otherwise stated below, the following:

- (a) commercial general liability insurance, in the minimum amount of \$10,000,000 inclusive per occurrence and \$10,000,000 general aggregate. The said commercial general liability insurance shall include coverage for products and completed operations, blanket contractual, non-owned automobile, employer's liability, cross liability clause, and unlicensed motor vehicle liability. Such policy shall not contain any exclusions or limitations for asbestos abatement, pile driving, tunnelling, and will add the City as an additional insured. BellMTS, Manitoba Hydro, Shaw, Telus, shall be shown as additional insureds, when required by contract; and

- (b) Project specific professional liability insurance in the amount of at least \$20,000,000 per claim and \$20,000,000 aggregate. Other insureds on the policy shall include all architects, engineers, individuals working on any design contributing to the Project, as applicable, whether named or unnamed in the policy and all others having an insurable interest in the Project. Professional Liability insurance to be non-cancellable by the insurer and to remain in place during the performance of the Work and for 48 months after the issuance of the Certificate of Acceptance.

D1.2 Design Builder shall purchase and maintain, or cause to be purchased and maintained in full force at all times from Mobilization and throughout the Works, unless stated otherwise, the following:

- (a) Project specific contractors pollution liability insurance in an amount not less than \$5,000,000) inclusive per occurrence and in the aggregate. The named insureds on the policy shall be the City and Design Builder. Other insureds on the policy shall include all Design Builder Parties and City Parties as applicable, whether named or unnamed in the policy and all others having an insurable interest in the Project. Such insurance shall include but not be limited to:
 - (i) pollution conditions arising suddenly or gradually including further disruption of pre-existing conditions from or in connection with the performance of the Work from Design Builder or Design Builder Party operations and completed operations;
 - (ii) blanket non-owned disposal site coverage;
 - (iii) first and third party injury and property damage claims including onsite/offsite clean-up coverage;
 - (iv) first and third party transported cargo coverage;
 - (v) civil fines and penalties and punitive damages where allowable by Applicable Law;
 - (vi) defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
 - (vii) 36 month extended reporting period or said policy to remain in force for 36 months after the Final Completion Date.
- (b) automobile liability insurance on all licensed vehicles owned or non-owned or to be used for or in connection with the Project in an amount not less than \$5,000,000) inclusive per occurrence; and
- (c) property insurance for equipment and tools used on the project that may be owned, rented, leased or borrowed.

- D1.3 Design Builder insurance pursuant to Section D1.1 and Section D1.2(a) shall not be impaired by any time element limitations, exclusionary language for sewage treatment plants or biological contaminants (mold/Legionella/bacteria). Any “insured vs. insured” exclusion shall not prejudice coverage for the City and shall not affect the City’s ability to bring suit against Design Builder as a third party. Furthermore, any “insured vs. insured” exclusion shall not affect the City’s coverage in the event of a government clean-up order.
- D1.4 Evidence of worker’s compensation coverage shall be provided to the City prior to Mobilization onto the Lands and maintained until the issuance of the Certificate of Acceptance.
- D1.5 All insurance provided by Design Builder shall contain endorsements confirming that the policy will not be cancelled or terminated without the insurer(s) providing a minimum 30 Calendar Days prior written notice by registered mail to the City at the address set out in Section 12.2 of the Design Build Agreement, unless such notice is prohibited by law or regulations of a crown corporation insurer.
- D1.6 Design Builder and/or the insurer(s) shall provide written notice by registered mail to the City at the address set out in Section 12.2 of the Design Build Agreement of any material changes to these required policies within 30 Calendar Days of the change taking effect, unless such notice is prohibited by law or regulations of a crown corporation insurer.
- D1.7 Within 14 days of execution of the Design Build Agreement, Design Builder shall provide the City with certificates of insurance, in a form satisfactory to the City Solicitor, evidencing, general liability and professional liability. Contractors pollution liability, automobile liability and any other insurances as detailed under Section D of this Schedule 11 that would be appropriate to obtain prior to commencement of construction. These certificates will stipulate that the City will be notified of cancellation or termination (endeavouring to notify the City will not be acceptable) unless such notice is prohibited by law or regulations of a crown corporation insurer. Design Builder shall provide certified copies of the applicable policies to the City upon request.

SECTION E SUBCONTRACTOR REQUIRED INSURANCE

E1. Subcontractor Required Insurance

- E1.1 Design Builder shall require each of its subcontractors (which includes subconsultants) to provide comparable insurance to that set forth under D1.1(a), D1.2(b) and D1.2(c) dependent upon their involvement in the Work, from Mobilization and throughout the Warranty Period.
- E1.2 Design Builder shall require each of its subcontractors to provide evidence of worker’s compensation as set forth under D1.4 from Mobilization until the issuance of the Certificate of Acceptance.