

SCHEDULE 11

DEVELOPMENT PHASE INSURANCE

SECTION A GENERAL INSURANCE REQUIREMENTS

A.1 Capitalized Terms

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

A.2 Insurance Act

A2.1 All insurance policies must comply with *The Insurance Act*, CCSM c I40.

A.3 No Limit on Obligations

A3.1 The insurance forms and limits listed in this Schedule 11 are represented as minimum requirements that the Development Partner shall provide, without in any way limiting the Development Partner's obligations or liabilities under the Agreement.

A.4 Actual Form and Substance

A4.1 All insurance must be in forms and with terms and conditions acceptable to the City, acting reasonably and acting in a reasonably timely manner. The City shall be deemed to be acting unreasonably if the effect of not finding certain forms or terms and conditions acceptable is to impose on the Development Partner or Development Partner Parties insurance requirements additional to the insurance requirements set out in the Agreement, including this Schedule 11. The purpose of this Section A4.1 is to give the City the right to have modified or deleted from the actual insurance policies, terms and conditions that the City becomes aware of, including becomes aware of only after receiving the certified copies of the insurance policies, that are clearly contrary to the express intent or the spirit of the insurance requirements in this Schedule 11.

A.5 Deductibles

A5.1 All deductibles are the responsibility of the Development Partner.

SECTION B INSURANCE COVERAGE

B.1 DPA Term Insurance

B1.1 During the DPA Term, the Development Partner shall obtain, and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 11:

- (a) Automobile Liability (to be maintained by the Development Partner and each of the Development Partner Parties involved in the Development Partner Services);

- (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Development Partner and each of the Development Partner Parties involved in the Development Partner Services);
- (c) Project Specific Professional Liability; (to be maintained by the Development Partner);
- (d) “All Risks” Contractors’ Equipment for all equipment or tools to be brought onto the lands (to be maintained by the Development Partner and each of the Development Partner Parties involved in the Development Partner Services); and
- (e) WCB insurance (where WCB is applicable, to be maintained by the Development Partner and each of the Development Partner Parties involved in the Development Partner Services).

B1.2 In the event Early Works will be performed by or on behalf of the Development Partner, the City may, acting reasonably, require additional insurance or revisions to the insurance coverage prescribed under this Schedule 11.

SECTION C ADDITIONAL COVER

C.1 Additional Coverage

- C1.1 Without prejudice to the other provisions of this Schedule 11, the City and the Development Partner shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.
- C1.2 The City reserves the right to require the Development Partner to purchase such additional insurance coverage as the City may reasonably require. The City also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Development Partner Services, Additional Development Partner Services, industry standards, and availability of insurance) as the City may reasonably require from time to time.

SECTION D DPA SUBCONTRACTORS

D.1 DPA Subcontractors

- D1.1 The Development Partner shall require that all DPA Subcontractors are covered by, or obtain and maintain, the insurance described in this Schedule 11. The Development Partner shall determine, acting reasonably and in accordance with industry practice, the applicable limits to be obtained and maintained for any additional insurance. The Development Partner shall be solely responsible and liable for any damages which the City may suffer as a direct result of the Development Partner’s failure to comply with the foregoing.

- D1.2 If the Development Partner receives notice that any DPA Subcontractor employed by or through the Development Partner is not covered by any insurance required by this Schedule 11 to be obtained and maintained (or caused to be obtained and maintained) by the Development Partner, the Development Partner shall:
- (a) ensure that such insurance coverage is put in place;
 - (b) remove the DPA Subcontractor from the Lands and ensure that such DPA Subcontractor does not perform any further part of the work under the Agreement until after such insurance coverage is put in place; or
 - (c) if the DPA Subcontractor cannot be covered by a particular insurance policy as required by this Schedule 11, replace such DPA Subcontractor with a new DPA Subcontractor who can be covered by insurance required by this Schedule 11 or who can obtain the required insurance coverage, it being acknowledged and agreed by the Development Partner that it shall be required to comply with any and all provisions of the Agreement relating to the termination or replacement of DPA Subcontractors or the engagement of new DPA Subcontractors.

SECTION E RENEWAL

E.1 Renewal

- E1.1 The Development Partner shall provide to the City, at least five Business Days prior to the expiry date of any policy of insurance required to be obtained and maintained (or caused to be obtained and maintained) by the Development Partner pursuant to this Schedule 11, evidence of the renewal of each such policy satisfactory to the City, acting reasonably.

SECTION F CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

F.1 Certificates of Insurance and Certified Copies of Policies

- Within 14 days of the Effective Date, the Development Partner will provide the City with certificates of insurance or certified copies of insurance policies, confirming that the insurances specified in Section B1.1 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to the City no later than 90 days after execution of the Agreement.

SECTION G FAILURE TO MEET INSURANCE REQUIREMENTS

G.1 Failure to Meet Insurance Requirements

- G1.1 If the Development Partner fails to obtain or maintain, or cause to be obtained and maintained, any of the insurance required by this Schedule 11, fails to furnish to the City a certified copy of each insurance policy required to be obtained by this Schedule 11 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then the City shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of the Development Partner.

- G1.2 If coverage under any insurance policy required to be obtained and maintained (or caused to be obtained and maintained) by the Development Partner should lapse, be terminated, or be cancelled, then, if directed by the City, all work by the Development Partner shall immediately cease until satisfactory evidence of renewal is produced.

SECTION H MODIFICATION OR CANCELLATION OF POLICIES

H.1 Modification or Cancellation of Policies

- H1.1 Except as noted in Appendix A to this Schedule 11, all insurance provided by the Development Partner shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered, or adversely materially amended without the insurer(s) giving at least 60 days' prior written notice by registered mail, at the address specified, to the City. For greater certainty, the terms "adversely reduced", "adversely materially altered", and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits, or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period, and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration, or adverse material amendment is initiated by the insurer.
- H1.2 All insurance provided by the Development Partner shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least 15 days' prior written notice by registered mail, at the address specified, to the City.
- H1.3 With respect to insurances described in Section B1.1(b), breach of any of the terms or conditions of the policies required to be provided by the Development Partner, or any negligence or willful act or omission or false representation by an insured under these policies, shall not invalidate the insurance with respect to the City, or any other insured, but only to the extent that such breach is not known to these parties.

SECTION I INSURERS

I.1 Insurers

- I1.1 All policies of insurance to be obtained and maintained (or caused to be obtained and maintained) by the Development Partner in accordance with this Schedule 11 shall be issued by financially sound insurers acceptable to the City, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Manitoba.
- I1.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:

- (a) a financial strength rating of not lower than “A-” for three out of the previous five years but not lower than “B” at any time during those five years, and a financial size category not lower than VII, such ratings being those established by A.M. Best Company (Best);
- (b) a long-term financial strength rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a short-term financial strength rating of not lower than “A-3” for three out of the previous five years and a financial enhancement rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (S&P); or
- (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to the City, acting reasonably, with respect to the insurances required by this Schedule 11.

SECTION J POLICY TERMS AND CONDITIONS

J.1 Policy Terms and Conditions

- J1.1 All policies of insurance to be obtained and maintained (or caused to be obtained and maintained) by the Development Partner in accordance with this Schedule 11 shall be in form and substance satisfactory to the City and the City’s insurance advisors, acting reasonably.
- J1.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella, and/or excess policies.

SECTION K FAILURE TO COMPLY

K.1 Failure to Comply

- K1.1 Neither failure to comply nor full compliance by the Development Partner with the insurance provisions of this Schedule 11 shall relieve the Development Partner of its liabilities and obligations under the Agreement.

APPENDIX A

Development Phase Agreement Term Insurance

During the DPA Term

Insurances to be provided, or caused to be provided, by the Development Partner.

Type	Amount	Principal Cover	Estimated Premium
<p>Automobile Liability</p>	<p>\$5 million for the Development Partner \$5 million DPA Subcontractors, sub-DPA Subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Site</p>	<p>Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle. Policies shall be endorsed to preclude cancellation, except upon 30 days' prior written notice provided to the City.</p>	
<p>Commercial General Liability and Non-Owned Automobile Liability For the Development Partner, all DPA Subcontractors, sub-DPA Subcontractors, consultants, and sub-consultants,</p>	<p>\$2 million each occurrence, and \$5 million in the annual aggregate with respect to broad form products and completed operations for the Development Partner and for any other contractor, DPA Subcontractors, sub-DPA Subcontractors, consultants, and sub-consultants, or other persons involved in the design Principal extensions (required to be provided by the Development Partner and Development Partner Parties):</p> <ul style="list-style-type: none"> • owner's and contractor's protective • blanket contractual (written) • employers liability • personal injury • cross liability and severability of interest with respect to each insured party 	<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for bodily injury (including death), products and completed operations liability. This insurance shall be maintained in effect until 24 months following Final Completion. Policies shall be endorsed to preclude cancellation, except upon 30 days' prior written notice provided to the City.</p>	

Type	Amount	Principal Cover	Estimated Premium
		<ul style="list-style-type: none">sudden and additional pollution with a \$1,000,000 sub-limitNon-Owned Automobile LiabilityWaiver of subrogation in favour of the City and City Partiespermission for unlicensed vehicles' (partial road use)unlicensed equipment	
<i>Comments</i>		<ul style="list-style-type: none">The City and City Parties, Canadian Pacific Kansas City Ltd. (CPKC), and Manitoba and its Ministers, officers, employees and agents will be identified as additional insureds along with any other utilities, as required by contract	

Development Phase Agreement Term Insurance

During the DPA Term

Insurances to be provided, or caused to be provided, by the Development Partner

Type	Amount	Principal Cover	Estimated Premium
Project Specific Professional Liability	\$15 million per claim / \$15 million in the aggregate (inclusive of defence and related costs and supplementary payments) for Development Partner and all architects, engineers and individuals working on any design contribution to the Project.	Professional Liability Insurance in connection with the Development Partner Services from beginning of first design, through the DPA Term plus coverage for an extended reporting period of not less than 24 months.	
	Principal Extensions: <ul style="list-style-type: none"> • Present, former partner, employee, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the Development Partner under a personal services contract • Claim defined as a written demand for money or a written allegation in breach in the rendering or failure to render professional services received by the Development Partner and subconsultants and resulting from a single error, omission or negligent act • Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims • Duty to defend 		

Type	Amount	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> Worldwide Territory, subject to suits brought in Canada 		
<p>“All Risks” Contractors’ Equipment</p> <p>To cover Development Partner, , DPA Subcontractors, sub-DPA Subcontractors, consultants, and sub-consultants</p>		All Risks coverage on all owned, rented, leased, or borrowed contractors’ equipment, used at the Lands	
<i>Comments</i>	<ul style="list-style-type: none"> Waiver of subrogation rights against Development Partner, The City, City Parties, DPA Subcontractors, sub-DPA Subcontractors, consultants, sub-consultants, as well as officers, directors, shareholders, and employees of the foregoing 		

All policies shall be taken out with insurers licensed in the Province of Manitoba as per Section J.

Type	Amount	Principal Cover	Estimated Premium
<p>Workers' Compensation</p>	<p>In accordance with Manitoba's <i>The Workers' Compensation Act</i>, CCSM c W200 established benefits and schedules.</p>	<p>(i) The Development Partner and its Affiliates shall obtain and maintain throughout the term of the Development Phase Agreement, at the Development Partner's expense, Workers' Compensation insurance, in accordance with the Province of Manitoba requirements.</p> <p>(ii) The Development Partner shall ensure that satisfactory evidence of Workers' Compensation insurance is provided by all Development Partner Parties, including all other consultants, sub consultants, contractors, DPA Subcontractors, Suppliers, and tradesmen working on the Lands.</p> <p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon completion of the Development Partner Services, the Development Partner shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, the Development Partner shall deliver to the City evidence of the Workers' Compensation coverage maintained by any person involved in the Development Partner Services, or confirmation of that person's exemption from Workers' Compensation coverage.</p>	