

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

Schedule 18
Freedom of Information and Protection of Privacy

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SCHEDULE 18

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

1. PURPOSE

- (a) The purpose of this Schedule 18 [*Freedom of Information and Protection of Privacy*] is to identify Design-Builder's obligations in relation to managing Project Records for the purposes of the *Freedom of Information and Protection of Privacy Act* RSA 2000 c F-25 ("FOIP Act").
- (b) For the purposes of this Schedule 18 [*Freedom of Information and Protection of Privacy*], "personal information" has the same meaning as it does in the FOIP Act.
- (c) Design-Builder shall comply with the requirements of this Schedule 18 [*Freedom of Information and Protection of Privacy*] in relation to the collection, use, disclosure, storage or destruction of Project Records in its custody or control unless it receives the City's express written direction to manage those records in a different manner.

2. DESIGN-BUILDER'S ROLE

- (a) As Design-Builder has contracted to provide services under contract with the City, Design-Builder is deemed by the FOIP Act to be the City's employee and any Project Records held by Design-Builder or its subsidiaries are deemed to be within the City's custody and control and subject to the FOIP Act.
- (b) Design-Builder agrees to manage Project Records in accordance with the requirements of the FOIP Act, and, without limitation, Design-Builder shall:
 - (i) ensure the security of any record containing personal information within its custody or control;
 - (ii) retain and be able to produce Project Records, unless they are destroyed in accordance with a records retention and destruction schedule agreed to by the City;
 - (iii) meet the FOIP Act's requirements for the collection, use, or disclosure of any record containing personal information;
 - (iv) prohibit the disclosure of third party business information if it meets the requirements for non-disclosure under the FOIP Act; and
 - (v) cooperate with the City's FOIP head (the City Manager) or delegate to ensure that the City is able to perform its duties and functions under the FOIP Act, regardless of the physical location of Project Records.
- (c) If the City receives a request for Project Records that are within Design-Builder's custody or control, Design-Builder shall provide to the City such Project Records as are requested by the City within 5 Business Days of receipt of a written request from the City, in order to provide for sufficient time for the City to meet its statutory obligations and timelines for redacting and disclosing records or engaging third parties as required by the FOIP Act. The provisions of Sections 16.3 [*Confidential Information*] and 16.4 [*Disclosure of Confidential Information*] of the Agreement shall apply to any Confidential Information contained in such Project Records. Design-Builder may make representations to the City

if it considers that any such Project Records contain business or other information that meets the requirements for non-disclosure under the FOIP Act.

- (d) Design-Builder may not disclose Project Records that are within Design-Builder's custody or control to third parties without the City's express written consent, except as provided in this Schedule 18 [*Freedom of Information and Protection of Privacy*], or as otherwise required to comply with a subpoena, warrant or order made by a court, person or body having jurisdiction in Alberta to compel production of information, or with an Alberta rule of court that relates to the production of information, provided that Design-Builder, to the extent possible, first provides the City with notice of the subpoena, warrant, order, or rule.
- (e) Design-Builder shall not destroy Project Records, except in accordance with a mutually agreed upon retention and destruction schedule, or with the City's express written consent.

3. DISCLOSURE OF PROJECT RECORDS

- (a) Subject to Section 2(c) above, Design-Builder may only disclose Project Records within its custody or control to the Design-Builder's employees and Sub-contractors who need the information in the Project Records to perform their functions, and otherwise only in accordance with the City's express written consent.
- (b) Without limiting the generality of Section 3(a) above, Design-Builder shall not disclose Project Records containing personal information, third party business information, or intergovernmental affairs information, except as provided for in this Agreement or as expressly directed by the City.

4. COLLECTION AND USE OF PERSONAL INFORMATION

Design-Builder may only collect and use or access personal information in strict compliance with the requirements for collection and use as provided in the FOIP Act.

5. PROTECTION OF PERSONAL INFORMATION

- (a) Design-Builder must ensure the security of Project Records containing personal information within its custody or control by making reasonable arrangements to protect it from unauthorized collection, use, access, disclosure or destruction, and shall provide to the City specific information regarding the steps taken to fulfill this requirement.
- (b) Design-Builder shall make changes requested by the City for the purpose of meeting current or new technological change or privacy and records best practices and due diligence requirements in relation to the collection, use, access, disclosure, storage or destruction of Project Records within the custody or control of Design-Builder containing personal information.

6. STORAGE AND ACCESS TO PERSONAL INFORMATION

Design-Builder shall not store personal information from or in Project Records on cloud based solutions or outside of Canada without the City's prior express written consent, such consent not to be unreasonably withheld. Design-Builder shall provide the City with any information or assistance the City requires in order to conduct privacy impact assessments, due diligence or evaluations as part of the City determining whether or not to provide consent.

7. PRIVACY POLICIES

Promptly upon the City's request, Design-Builder shall provide to the City copies of Design-Builder's and its Subcontractor's privacy policies, procedures, practices, guidelines and similar documents to allow the City to perform due diligence requirements under the FOIP Act in relation to the collection, use, access, disclosure, storage and destruction of Project Records within the custody or control of Design-Builder.

8. NOTICE OF BREACH

Design-Builder shall immediately notify the City of any unauthorized use, access, or disclosure of Project Records containing personal information or third party business information, and shall provide as much detailed information as the City requests in relation to the breach. Design-Builder shall take prompt mitigation steps as directed by the City.

9. VIDEO, RADIO AND TELEPHONE SURVEILLANCE

Design-Builder shall ensure that the surveillance system and any radio systems or telephone systems included in the Infrastructure comply with the requirements of the FOIP Act and applicable City directives, procedures, guidelines and related documents. Design-Builder shall provide the City with any information or assistance the City requires in order to conduct privacy impact assessments, due diligence or evaluations, including, but not limited to, technological security reviews, in relation to such systems.

10. SUB-CONTRACTORS

Design-Builder shall incorporate the provisions of this Schedule 18 [*Freedom of Information and Protection of Privacy*] into the Subcontracts, and shall cause the Subcontractors to incorporate the provisions of this Schedule 18 [*Freedom of Information and Protection of Privacy*] into all Subcontracts.

11. NON-PERFORMANCE EVENTS

Failure by Design-Builder to comply with the obligations set forth in this Schedule 18 [*Freedom of Information and Protection of Privacy*] may constitute Non-Performance Events and may result in adjustments to the Payments, as more particularly provided in Schedule 16 [*Payment Mechanism*].

12. SURVIVAL

The provisions of this Schedule 18 [*Freedom of Information and Protection of Privacy*] survive the expiry or termination of this Agreement.