

SCHEDULE 21

CONSTRUCTION PERIOD PAYMENTS

1. INTERPRETATION AND DEFINITIONS

1.1 Interpretation

- (a) In this Schedule 21, and for the purposes of all calculations pursuant to this Schedule 21, all amounts cited in respect of capital costs and/or costs in respect of the construction of the Works are amounts net of any CA holdback.

1.2 Definitions

Any capitalized term not defined in this Schedule 21 shall have the meaning given to such term in the Project Agreement. In this Schedule 21, unless the context otherwise requires:

- (a) [not used]
- (b) “**Attachment A**”, “**Attachment B**”, “**Attachment C**”, “**Attachment D**”, “**Attachment E**”, “**Attachment F**” and “**Attachment G**” mean, respectively, Attachment A, Attachment B, Attachment C, Attachment D, Attachment E, Attachment F and Attachment G to this Schedule 21.
- (c) “**Capital Costs**” means costs incurred by DB Co in connection with the Project as reflected in the Financial Model that are not DB Co Soft Costs.
- (d) “**Construction Period Deduction**” means a deduction made from a Substantial Completion Payment in accordance with Section 6.1.
- (e) “**Construction Period Event**” means an incident or state of affairs that does not meet or comply with the Construction Period Performance Criteria, which is capable of becoming a Construction Period Quality Failure.
- (f) “**Construction Period Failure Category**” means the failure category described in the fourth column of the tables in Attachment E.
- (g) “**Construction Period Failure Type**” means the failure type described in the third column of the tables in Attachment E.
- (h) “**Construction Period Month**” means a calendar month during the Construction Period, except that:

- (i) the first Construction Period Month shall run from Financial Close until the end of the calendar month in which Financial Close occurs; and
 - (ii) the last Construction Period Month shall run from the first day of the calendar month in which the last Final Completion Date falls until the last Final Completion Date.
- (i) **“Construction Period Payment”** means a payment, which shall be no more frequent than once a month, calculated in accordance with this Schedule 21 and shall include the Financial Close CPP.
 - (j) **“Construction Period Payment Application”** has the meaning set out in Section 3.3(a).
 - (k) **“Construction Period Performance Criteria”** means the level of performance (as set out in the column entitled “Requirements to be met” in Attachment E) that DB Co must achieve to avoid a Construction Period Event for a failure to achieve compliance with the applicable Project Agreement requirement.
 - (l) **“Construction Period Quality Failure”** means any failure by DB Co to comply with the requirements set out in the column entitled “Requirements to be met” corresponding to the Construction Period Performance Criteria designated as Construction Period Failure Type “CPQF” in Attachment E.
 - (m) **“Construction Period Quality Failure Deduction”** has the meaning given in Section 6.2(a).
 - (n) **“Contested Non-Conforming Works”** means Works in respect of which the City have given Notice to DB Co, pursuant to Section 51 of the Project Agreement (but not a Non-Conformance Report initiated by the City pursuant to Schedule 11 – Integrated Management System Requirements), that, in the opinion of the City, such Works are not in accordance with the Project Agreement, and DB Co has asserted that, in DB Co’s opinion, such Works are in accordance with the Project Agreement.
 - (o) **“Credit Rules”** means the rules set out in Attachment F.
 - (p) **“Critical Construction Period Quality Failure”** means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Critical” in Attachment E.
 - (q) **“Critical Qualifying NCR”** means a Qualifying NCR raised by the City or DB Co on a Critical Non-Conformance that requires all or any portion of DB Co Accepted Works to be removed or repeated because such DB Co Accepted Works have, or would reasonably be expected to have, a significantly adverse or materially adverse impact on:
 - (i) the safety of the Project, the environment, System Users or the public;
 - (ii) statutory and regulatory requirements;
 - (iii) the quality of the Works; or
 - (iv) the durability of the Works.
 - (r) **“Critical Qualifying Process NCR”** means a Qualifying Process NCR raised by the City or DB Co on a Non-Conformance that requires physical progress on the Works to be stopped for longer than twenty-four (24) hours.

- (s) “**DB Co Accepted Works**” means all physical elements of the Works that have been accepted by DB Co as meeting its acceptance criteria for those Works, pursuant to its Inspection and Test Plan.
- (t) “**DB Co Construction Period Payment Documentation**” has the meaning set out in Section 3.1(c).
- (u) “**DB Co Funding Amount**” means, for each Payment Period, [REDACTED]% of the Total Capital Cost Incurred to Date for the applicable Payment Period.
- (v) “**DB Co Officer Construction Period Payment Certificate**” has the meaning set out in Section 3.1(d).
- (w) “**DB Co Soft Costs**” means the special purpose vehicle costs, accounting, tax, audit costs, rating agency fees, bid fee cost, independent certifier costs, pre-construction costs (e.g. bid pursuit costs, financial advisor, legal advisor, insurance advisor), other ancillary fees, interest and fees paid in connection with the Financing, in each case, in accordance with and as reflected in the Financial Model and incurred by DB Co in connection with the Project (or with respect to the interest or fees paid in connection with the Financing for purposes of calculating the Total Capital Cost Incurred to Date actually incurred by DB Co and verified pursuant to the Lender Advance Confirmations).
- (x) “**Earned Value**” means the budgeted cost of work performed in respect of each Payment Period, measured using the Earned Value Measurement Techniques and the Performance Measurement Baseline.
- (y) “**Earned Value Measurement Techniques**” means the techniques used to measure Earned Value established by DB Co and agreed with the Independent Certifier in accordance with the “Practice Standard for Earned Value Management” (2nd Edition, published in 2011 by the Project Management Institute, Inc.).
- (z) “**Earned Value Progress Ratio**” means, as of a Payment Calculation Date, the aggregate total Earned Value achieved by DB Co and certified by the Independent Certifier divided by the Projected Earned Value (Cumulative).
- (aa) “**Financial Close CPP**” means the Construction Period Payment to be made by the City to DB Co on Financial Close.
- (bb) “**Financing**” means the financing with the Lenders to finance the costs of the Project pursuant to the Lending Agreements.
- (cc) “**IC Construction Period Payment Authorization Certificate**” has the meaning set out in Section 3.3(c).
- (dd) “**Lender Advance Confirmations**” has the meaning set out in Section 3.1(a).
- (ee) “**Lender Advances**” has the meaning set out in Section 3.1(a)(i).
- (ff) “**Medium Construction Period Quality Failure**” means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Medium” in Attachment E.

- (gg) “**Medium Qualifying NCR**” means a Qualifying NCR raised by the City or DB Co on a Medium Non-Conformance for all or any portion of DB Co Accepted Works that is not a Critical Qualifying NCR.
- (hh) “**Medium Qualifying Process NCR**” means a Qualifying Process NCR raised by the City or DB Co on a Non-Conformance that requires changes to a Works Submittal being used by DB Co in its delivery of the Works that is not a Critical Qualifying NCR.
- (ii) “**Minor Construction Period Quality Failure**” means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Minor” in Attachment E.
- (jj) “**Minor Construction Period Quality Failure Tolerance**” has the meaning given in Section 6.3(a).
- (kk) “**Minor Qualifying NCR**” means a Qualifying NCR raised by the City on a Minor Non-Conformance on all or any portion of the Works that have been inspected and tested or approved by DB Co at a Witness Point or Hold Point, pursuant to the relevant Inspection and Test Plan but are not yet DB Co Accepted Works. For clarity, a Minor Qualifying NCR does not mean a Qualifying NCR raised by DB Co.
- (ll) “**Minor Qualifying Process NCR**” means a Qualifying Process NCR raised by the City on a Minor Non-Conformance that is not a Critical Qualifying Process NCR or Medium Qualifying Process NCR. For clarity, a Minor Qualifying Process NCR does not mean a Qualifying Process NCR raised by DB Co.
- (mm) “**Mobilization Credit**” has the meaning given in Section 1.3(e) of Attachment F.
- (nn) “**Monthly Non-Conformance Report**” means the monthly report to be submitted by DB Co in accordance with Section 2.11 of Schedule 11 – Integrated Management System Requirements.
- (oo) “**NCR**” means a Non-Conformance Report.
- (pp) “**Non-Conformance**” has the meaning given in Schedule 11- Integrated Management System Requirements.
- (qq) “**Non-Conformance Report**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- (rr) “**Payment Application Requirements**” has the meaning set out in Section 3.3(a).
- (ss) “**Payment Calculation Date**” means the date set out in Column 2 of Table A that is the date to be used as the “Payment Calculation Date” for the applicable Construction Period Payment, subject to Section 2.2(a)(ii).
- (tt) “**Payment Period**” means the payment period(s) identified in Column 1 of Table A.
- (uu) “**Performance Measurement Baseline**” is the Capital Cost loaded Works Schedule, at detailed activity level, that has achieved “NO COMMENT” or “MINOR COMMENT” status in accordance with Section 13 of the Project Agreement, as amended from time to time by the parties in accordance with Section 13 of the Project Agreement.

- (vv) **“Projected Capital Costs”** means, in respect of each Payment Period, the amount set out in Column 3A of Table A.
- (ww) **“Private Capital Invested”** means the total amount of Financing advanced and utilized in the Project to fund the Works, comprising the aggregate of all DB Co Funding Amounts.
- (xx) **“Projected Construction Period Payment”** means, in respect of each Construction Period Payment, the amount set out in Column 9 of Table A, which shall equal [REDACTED]% of the Projected Eligible Construction Period Payment for the applicable Payment Period.
- (yy) **“Projected Construction Period Payment (Cumulative)”** means, in respect of each Construction Period Payment, the amount set out in Column 10 of Table A.
- (zz) **“Projected DB Co Funding Amount”** means, in respect of each Payment Period, the amount set out in Column 6 of Table A, which shall equal [REDACTED]% of the Projected Eligible Construction Period Payment for the applicable Payment Period.
- (aaa) **“Projected DB Co Funding Amount (Cumulative)”** means, in respect of each Payment Period, the amount set out in Column 7 of Table A.
- (bbb) **“Projected DB Co Soft Costs”** means, in respect of each Payment Period, the amount set out in Column 3 of Table A.
- (ccc) **“Projected Earned Value”** means, in respect of each Construction Period Payment, the amount set out in Column 3B of Table A.
- (ddd) **“Projected Eligible Construction Period Payment”** means, in respect of each Construction Period Payment, the amount set out in Column 4 of Table A, which shall be the sum of the Projected DB Co Soft Costs and Projected Capital Costs.
- (eee) **“Projected Eligible Construction Period Payment (Cumulative)”** means, in respect of each Construction Period Payment, the amount set out in Column 5 of Table A.
- (fff) [not used]
- (ggg) **“Qualifying NCR”** means a Non-Conformance Report in accordance with Schedule 11 – Integrated Management System Requirements regarding any Non-Conformance discovered in the physical elements of any of the Works:
- (i) for which DB Co has continued, or has stated the intention to continue, construction of the Works past the relevant Witness Point or Hold Point in contravention of the Inspection and Test Plan; or
 - (ii) following DB Co’s stated completion of a task or component and DB Co’s statement that the requirements for Design and Construction Certification have been met in respect of such Works and such Works have been inspected and tested by DB Co pursuant to the Inspection and Test Plan,
- and shall include “Critical Qualifying NCR”, “Medium Qualifying NCR” or “Minor Qualifying NCR”.

- (hhh) “**Qualifying Process NCR**” means a Non-Conformance Report in accordance with Schedule 11 – Integrated Management System Requirements regarding any Non-Conformance discovered in the Project Operations as described in Attachment E, and shall include “Critical Qualifying Process NCR”, “Medium Qualifying Process NCR” or “Minor Qualifying Process NCR”.
- (iii) “**Remedial Period**” means the period allowed for remedying a Construction Period Quality Failure in accordance with the fifth column of the tables in Attachment E.
- (jjj) “**Repeated Minor Construction Period Quality Failure**” has the meaning set out in Section 6.3(c).
- (kkk) “**Request for Payment**” has the meaning set out in Section 3.3(a)(i).
- (lll) “**Supplementary Payment Calculation Date**” has the meaning set out in Section 2.3(a).
- (mmm) “**Table A**” means the Table A set out in Attachment A.
- (nnn) “**Total Capital Cost**” means \$[REDACTED]
- (ooo) “**Total Capital Cost Incurred to Date**” means the cumulative amount of the Total Capital Cost determined as of each Payment Calculation Date as the sum of:
 - (i) the cumulative aggregate of Capital Costs up to, and including, the Payment Period as set out in Table A, multiplied by the Earned Value Progress Ratio; and
 - (ii) the cumulative aggregate of DB Co Soft Costs up to, and including, the Payment Period as set out in Table A.
- (ppp) “**Unpaid Construction Period Payment**” means any portion of the Projected Eligible Construction Period Payment (Cumulative) set out in Table A that is unpaid after the last Construction Period Payment set out in Table A.

2. PAYMENTS BY THE CITY

2.1 Obligation to Pay

(a) The City shall pay to DB Co:

- (i) the Construction Period Payments; and
- (ii) the Substantial Completion Payments,

in accordance with the Project Agreement and this Schedule 21.

2.2 Calculation of the Construction Period Payments

(a) Each Construction Period Payment shall be calculated in accordance with the following:

- (i) subject to Section 2.2(a)(ii) and Section 2.3, the number of Construction Period Payments to be paid by the City is set out in Table A;
- (ii) the first actual Payment Calculation Date shall be the first Payment Calculation Date set out in Table A and each Payment Calculation Date thereafter shall occur on the applicable Payment Calculation Date set out in Table A;
- (iii) each Construction Period Payment shall equal the lesser of:
 - (A) the Projected Construction Period Payment (Cumulative) set out in Table A for the applicable Payment Period less the total value of all Construction Period Payments made by the City prior to the date of calculation; or
 - (B) the Total Capital Cost Incurred to Date minus the DB Co Funding Amounts prior to and including the applicable Payment Period less the total value of all Construction Period Payments made by the City prior to the date of calculation;

provided that, the amount of the Financial Close CPP shall be as determined in accordance with Section 3.4.

2.3 Payment of Unpaid Construction Period Payment Prior to Substantial Completion

(a) After the expiration of all Payment Calculation Dates set out in Column 2 of Table A, DB Co may identify additional Payment Calculation Dates (each a “**Supplementary Payment Calculation Dates**”) for the purposes of seeking payment of any Unpaid Construction Period Payment, or any portion thereof, in accordance with the following:

- (i) DB Co shall provide at least 30 days’ Notice to the City of each Supplementary Payment Calculation Date;
- (ii) All provisions of this Schedule 21 with respect to the application for, and calculation and Independent Certifier review of, a Construction Period Payment shall apply mutatis mutandis to an application for, and calculation and Independent Certifier review of, a payment pursuant to this Section 2.3;
- (iii) Each Supplementary Payment Calculation Date shall occur no more than once a month;

and

- (iv) any Unpaid Construction Period Payment, or any portion thereof, not paid pursuant to this Section 2.3 shall be paid in accordance with Section 4.2.

2.4 [Not Used]

2.5 Calculation of Substantial Completion Payment

- (a) Subject to Section 2.3, the payment to be made by the City following Substantial Completion shall be calculated in accordance with the following:
 - (i) The payment made following Substantial Completion shall equal,
 - (A) the Substantial Completion Payment; **plus**
 - (B) in respect of West Substantial Completion any Unpaid Construction Period Payment as of the date of payment of the West Substantial Completion Payment.
 - (ii) For clarity, DB Co acknowledges and agrees that,
 - (A) the Substantial Completion Payments are intended to act as a “take-out” payment for Private Capital Invested in the Project;
 - (B) DB Co has structured its Construction Period Payments and the Substantial Completion Payments to ensure that the Total Capital Cost of the Project is paid in a timely manner, and satisfied in full from the final Substantial Completion Payment; and
 - (C) the City has the authority to pay up to **[REDACTED]**% of Total Capital Costs through payment of the Construction Period Payments, plus the Substantial Completion Payments.

3. CONSTRUCTION PERIOD PAYMENTS

3.1 Information to be Provided by DB Co – Lender Advance Confirmations and DB Co Construction Period Payment Documentation

- (a) In order to enable the City and the Independent Certifier to calculate and verify Earned Value, the progress of the Works, the Capital Costs, DB Co Soft Costs and the Construction Period Payments, DB Co shall deliver to the City Representative and the Independent Certifier:

- (i) evidence of all Private Capital Invested, including copies of all draw requests, reports, information, and documentation supporting, or required to be submitted to the Lenders, the Lenders' technical advisor and/or the Lenders' Agent, as the case may be, in respect of DB Co's applications for advances, draws, releases of funds or payments by the Lenders under the Lending Agreements ("**Lender Advances**"); and
 - (ii) all payment or advance confirmations issued by or on behalf of the Lenders including, for clarity, issued by the Lenders' technical advisor,
- (items in Section 3.1(a)(i) and Section 3.1(a)(ii) collectively referred to as "**Lender Advance Confirmations**"). Acceptable forms of confirmation would include such proof as wire transfer statements and/or bank statements and any other evidence as agreed between the City and DB Co.
- (b) DB Co shall acquire, from the Lenders or the Lenders' Agent, as part of the Financing and in a form and content acceptable to the City Representative, the right for DB Co to receive, and to deliver to the City and the Independent Certifier, copies of all Lender Advance Confirmations. DB Co shall deliver to the City Representative and the Independent Certifier, copies of all Lender Advance Confirmations within two Business Days following receipt of each Lender Advance by DB Co.
 - (c) In order to enable the City and the Independent Certifier to calculate and verify progress of the Earned Value of the Works, the Capital Costs, the DB Co Soft Costs and the Construction Period Payments, DB Co shall submit, to the Independent Certifier,
 - (i) all information required by Schedule 33 – Works Reports and Schedule 12 – Works Scheduling Requirements; and,
 - (ii) any other information reasonably required by the Independent Certifier to allow the Independent Certifier to assess the Earned Value, the Capital Costs, the DB Co Soft Costs and the payment to be made under Section 2.2(a)(iii)(B) and to assess the Total Capital Cost Incurred to Date,(collectively, the "**DB Co Construction Period Payment Documentation**").
 - (d) In conjunction with all Construction Period Payment Applications, DB Co shall complete and deliver to the City Representative and the Independent Certifier a DB Co officer certificate in substantially the form set out in Attachment C confirming the information set out therein ("**DB Co Officer Construction Period Payment Certificate**").

3.2 Intentionally Deleted

3.3 Submission and Review of DB Co Construction Period Payment Applications

- (a) No later than five days after each Payment Calculation Date, DB Co shall prepare, complete and deliver an application for payment of the applicable Construction Period Payment (a "**Construction Period Payment Application**") to the City Representative and the Independent Certifier. Each Construction Period Payment Application shall consist of,

- (i) a request for payment substantially in the form attached as Attachment B, including all documents contemplated in the request for payment pursuant to Attachment B (each, a “**Request for Payment**”);
 - (ii) except to the extent already delivered to the City, the Lender Advance Confirmations;
 - (iii) except to the extent already delivered to the City, the DB Co Construction Period Payment Documentation; and
 - (iv) a DB Co Officer Construction Period Payment Certificate certifying the amount of Total Capital Cost Incurred to Date, as of the applicable Payment Calculation Date.
- (collectively, (i) – (iv), the “**Payment Application Requirements**”).
- (b) DB Co shall cooperate with the City Representative and the Independent Certifier to permit the Independent Certifier’s review and assessment of the DB Co Construction Period Payment Documentation, the Lender Advance Confirmations and all other documentation submitted with the Construction Period Payment Application. Such cooperation shall include responding to inquiries by the Independent Certifier so that the Independent Certifier can verify any and all matters related to the DB Co Construction Period Payment Documentation and the Lender Advance Confirmations, and the statements contained therein, to the reasonable satisfaction of the Independent Certifier.
 - (c) Within five Business Days after the receipt by the Independent Certifier of a duly completed Construction Period Payment Application, the Independent Certifier shall review the Total Capital Cost Incurred to Date claimed in the Construction Period Payment Application and shall perform such inquiries, investigations and inspections as are necessary for the Independent Certifier to be able to verify Earned Value and Total Capital Cost Incurred To Date and shall provide a certificate (an “**IC Construction Period Payment Authorization Certificate**”) to the City Representative and the DB Co Representative setting out:
 - (i) a certification to the City of the Total Capital Cost Incurred to Date, in accordance with the Works Report; and
 - (ii) a calculation of the Construction Period Payment pursuant to Section 2.2, and a calculation of the corresponding DB Co Funding Amount for such Payment Period,
 - (d) The City shall, subject to and in accordance Article 4 of the Project Agreement and no later than five Business Days after the date of the IC Construction Period Payment Authorization Certificate, pay the applicable Construction Period Payment to DB Co.
 - (e) DB Co covenants and agrees that DB Co shall,

- (i) carry out the Works and make all payments due and payable to the Construction Contractor in respect of the Works and to the applicable recipients of the DB Co Soft Costs without further payments from the City other than Construction Period Payments, and the Substantial Completion Payments as set out in this Schedule 21; and
- (ii) continue to comply with the provisions of the Project Agreement and the CA including complying with all holdback and trust obligations from its own resources, if necessary, and as required under the CA.

3.4 Financial Close CPP

The preceding Sections 3.1 and 3.3 are subject to this Section 3.4.

The amount of the Financial Close CPP shall be [REDACTED]% of the mobilization costs.

Notwithstanding Sections 3.1 and 3.3, all deliveries of documents and other information, and related determinations, shall be made by the parties during the period prior to Financial Close so that the Financial Close CPP may be made by the City on Financial Close as part of the agreed flow of funds on that date. All required deliveries and other information shall be advised by the parties to each other in a timely manner.

4. SUBSTANTIAL COMPLETION PAYMENTS

4.1 Substantial Completion Payments

- (a) [Not used]
- (b) Once DB Co believes that it has satisfied:
 - (i) all requirements for East Substantial Completion, it shall deliver the East Substantial Completion Notice contemplated in Section 25.4 of the Project Agreement; and
 - (ii) all requirements for West Substantial Completion, it shall deliver the West Substantial Completion Notice contemplated in Section 25.4 of the Project Agreement.
- (c) The City shall, once all preconditions to eligibility for payment have been satisfied in accordance with the provisions of the Project Agreement, and subject to Article 4 of the Project Agreement, pay to DB Co:
 - (i) upon issuance of the East Substantial Completion Certificate, the East Substantial Completion Payment, plus, for clarity, applicable HST, on the East Substantial Completion Payment Date; and
 - (ii) upon issuance of the West Substantial Completion Certificate, the West Substantial Completion Payment plus, for clarity, applicable HST, less any Lane Closure Adjustment and Bus Rapid Transit Lane Closure Adjustment, on the West Substantial Completion Payment Date.

4.2 Payment of Remaining Unpaid Construction Period Payments

- (a) Subject to Section 2.3, once DB Co believes that it has satisfied all requirements for West Substantial Completion, it shall deliver an application for payment of any remaining Unpaid

Construction Period Payments for the Works to the City Representative and the Independent Certifier substantially in the form attached as Attachment D (the “**Unpaid Construction Period Payment Application**”) which shall provide all documentation in respect of such Unpaid Construction Period Payments. Once all of the conditions for payment of the West Substantial Completion Payment have been satisfied by DB Co, the City shall pay or cause to be paid to DB Co all such Unpaid Construction Period Payments.

5. GENERAL

- (a) DB Co shall provide direction to the City as to a bank account with a Schedule 1 Bank in Canada or an alternative bank in Canada provided such bank is permitted under the Lending Agreements, where each Construction Period Payment, the Substantial Completion Payments and any Unpaid Construction Period Payments, together with applicable HST, are to be deposited.
- (b) DB Co acknowledges and agrees that payment by the City of Construction Period Payments, the Substantial Completion Payments and the Unpaid Construction Period Payments in accordance with this Schedule 21 constitutes payment by the City to DB Co in satisfaction of the City’s obligation to pay Construction Period Payments and the Substantial Completion Payments, as applicable, to DB Co under the Project Agreement and in satisfaction of any trust obligation of the City with respect to such payments under Section 7 of the CA pursuant to Section 10 of the CA.
- (c) DB Co shall provide to the City, from time to time and no later than 5 Business Days after a request from the City, such information and documentation as the City may require (including certification in writing by a DB Co officer addressed to the City and the Independent Certifier, to demonstrate that the proceeds of the Construction Period Payments, and the Substantial Completion Payments are being used to pay duly authorized costs of the Works, special purpose vehicle costs , Financing costs, and other costs incurred to complete the Works) to verify that all amounts due and payable in respect of the costs of the Works, special purpose vehicle costs, Financing costs and other costs incurred to complete the Works for the applicable period in excess of the applicable Construction Period Payment or Substantial Completion Payment are being satisfied and to satisfy all holdback and trust obligations owed to the Construction Contractor and other Subcontractors from time to time under the CA.
- (d) Notwithstanding anything to the contrary in this Schedule 21 or the Project Agreement,
 - (i) the City is not obligated to make any payment to DB Co (including for clarity, any Construction Period Payments or Substantial Completion Payments) unless all conditions precedent applicable to such payment pursuant to this Schedule 21 have been satisfied by DB Co; and
 - (ii) the City is not obligated to make payment to DB Co if, in connection with the Works, the City is or becomes aware,
 - (A) that a claim for lien under the CA has been registered against the Lands; or
 - (B) that a notice of lien or claim for lien under the CA has been made against or in respect of the Lands or the holdbacks required to be maintained under the CA; or

- (C) that there has been a failure by DB Co or any DB Co Party to comply with the requirements of the CA, including a failure to satisfy the statutory holdbacks under the CA in respect of the Works,

(in each case to the extent that any such liens, claims or failures have been caused by an act or omission of DB Co or any DB Co Party), and provided that no payment from the City shall be withheld or delayed on the grounds of any liens registered or claimed, where such liens have been duly released, discharged or vacated in accordance with the requirements of the CA.

- (e) No Construction Period Payment, or Substantial Completion Payment or partial or entire use or occupancy of the New City Infrastructure, the New MTO Infrastructure or the Lands shall constitute acceptance by the City of the Works in accordance with the Project Agreement.
- (f) If the City or DB Co, acting in good faith, dispute a determination of the Independent Certifier made pursuant to this Schedule 21, the City shall pay the amounts in dispute in accordance with the determination of the Independent Certifier and the Party that wishes to dispute the decision of the Independent Certifier may refer such Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) Sections 4.2, 4.6 and 4.7 of the Project Agreement apply to Construction Period Payments, and the Substantial Completion Payments.
- (h) Notwithstanding anything to the contrary in the Project Agreement, the City shall not make any deduction, set-off or withholding from any Construction Period Payment or Unpaid Construction Period Payment other than in accordance with this Schedule 21.

6. CONSTRUCTION ENFORCEMENT DEDUCTIONS

6.1 Construction Period Deductions

- (a) If, at any time prior to Substantial Completion, DB Co commits a Construction Period Quality Failure, the City may, in its sole discretion, assess and accumulate a Construction Period Deduction and deduct the total of all Construction Period Deductions from the West Substantial Completion Payment.

6.2 Calculation of the Construction Period Deductions

- (a) Each Construction Period Deduction shall be calculated in accordance with the following formula:

$$TCPD_n = \sum CPD_n$$

Where:

$TCPD_n$ means the total Construction Period Deduction applicable to Payment Period n; and

$\sum CPD_n$ means the sum of Construction Period Deductions in respect of the relevant Payment Period in relation to Construction Period Quality Failures calculated in accordance with this Schedule 21 (the “**Construction Period Quality Failure Deduction**”)

- (b) The deduction attributable to each Construction Period Quality Failure shall be as follows:
- (i) in the case of a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by DB Co, there shall be no deduction;
 - (ii) in the case of a Medium Construction Period Quality Failure for a Non-Conformance Report initiated by DB Co, each deduction shall equal \$[REDACTED];
 - (iii) in the case of a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City:
 - (A) the first deduction shall equal \$[REDACTED]; and
 - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period, shall be [REDACTED] per cent of the immediately previous deduction but shall not exceed [REDACTED] per cent of the first deduction;
 - (iv) in the case of a Medium Construction Period Quality Failure for a Non-Conformance Report initiated by the City:
 - (A) the first deduction shall equal \$[REDACTED]; and
 - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal [REDACTED] per cent of the immediately previous deduction but shall not exceed [REDACTED] per cent of the first deduction; and
 - (v) in the case of a Critical Construction Period Quality Failure for a Non-Conformance Report initiated by either Party:
 - (A) the first deduction shall equal \$[REDACTED]; and
 - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal [REDACTED] per cent of the immediately previous deduction but shall not exceed [REDACTED] per cent of the first deduction.
- (c) For clarity, subject to DB Co's right to Dispute the Construction Period Quality Failure, the occurrence of a Construction Period Quality Failure will immediately give rise to a right, on behalf of the City, to apply a Construction Period Quality Failure Deduction against the Substantial Completion Payment, irrespective of the Remedial Period permitted.
- (d) After the occurrence of a Construction Period Quality Failure, DB Co shall remediate the Construction Period Quality Failure prior to the expiration of the applicable Remedial Period set out in Attachment E.
- (A) If, prior to the expiration of the applicable Remedial Period, DB Co demonstrates, to the satisfaction of the City Representative, acting reasonably, that it has remedied the Construction Period Quality Failure, no further

Construction Period Deduction shall be made in respect of that Construction Period Quality Failure.

- (B) If DB Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period, the City, may, in its sole discretion, apply a further Construction Period Deduction, calculated in accordance with this Section 6.2, and a further Remedial Period (or Remedial Periods) of the same duration shall be deemed to have commenced.
- (C) The City may, in their sole discretion, apply the applicable Construction Period Deduction each time DB Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period until such time as DB Co demonstrates, to the satisfaction of the City Representative, acting reasonably, that it has remediated the applicable Construction Period Quality Failure.

6.3 Tolerances for Minor Construction Period Quality Failures for Non-Conformance Reports Initiated by the City

- (a) The City shall assess Construction Period Quality Failures on a Construction Period Month by Construction Period Month basis. Except as provided in Section 6.3(c), the City shall not apply a Construction Period Deduction due to a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City in respect of any Construction Period Month in which the total number of Minor Construction Period Quality Failures for Non-Conformance Reports initiated by the City for that Construction Period Month is less than or equal to [REDACTED] (the “**Minor Construction Period Quality Failure Tolerance**”).
- (b) If the Minor Construction Period Quality Failure Tolerance is exceeded, the City may, in their sole discretion, apply a Construction Period Deduction for each Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City in excess of the Minor Construction Period Quality Failure Tolerance during the applicable Construction Period Month.
- (c) If, in any Construction Period Month, a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City is due to circumstances that are substantively the same cause as a previous Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City (within the same Construction Period Month or in a different Construction Period Month) (a “**Repeated Minor Construction Period Quality Failure**”), then a Construction Period Deduction shall be made in respect of the third and each subsequent Repeated Minor Construction Period Quality Failure, irrespective of the Minor Construction Period Quality Failure Tolerance.

6.4 Administration of Construction Period Quality Failures and Construction Period Deductions

- (a) Subject to Sections 6.4(b) to 6.4(e) inclusive, the City shall use the Monthly Non-Conformance Report produced by DB Co for the purposes of calculating the relevant Construction Period Deductions.
- (b) If either Party believes that there is an error or omission in a Monthly Non-Conformance Report, that Party shall promptly provide Notice to the other Party of such error or omission. Immediately after a Notice given pursuant to this Section 6.4(b), DB Co and the City shall

attempt to resolve or clarify the error or omission and amend the applicable Monthly Non-Conformance Report, to their mutual satisfaction, acting reasonably. Subject to Section 6.4(e), if the Parties fail to resolve or clarify the error or omission within ten Business Days after a Notice given pursuant to this Section 6.4(b), either Party may refer the matter to the Dispute Resolution Procedure. Subject to Section 6.4(d) and Section 6.4(e), the Parties are prohibited from giving Notice of an error or omission pursuant to this Section 6.4(b) after the expiration of 60 days after the date of the applicable Monthly Non-Conformance Report.

- (c) Subject to Section 6.4(e), if DB Co fails to monitor or accurately report a Construction Period Event or Construction Period Quality Failure then, in addition to the Construction Period Deduction to be made in respect of the relevant Construction Period Quality Failure (if any), a failure to monitor or report a Construction Period Event or a Construction Period Quality Failure shall be deemed to be a Minor Construction Period Quality Failure.
- (d) In the event that any inspection or investigation by the City or DB Co pursuant to the Project Agreement reveals new errors, omissions or failures of the type referred to in Section 6.4(b) or Section 6.4(c), such errors, omissions or failures shall be dealt with in accordance with Section 6.4(b) or Section 6.4(c), as applicable, and, for clarity, the City may, in its sole discretion, apply Construction Period Deductions in respect of any Construction Period Quality Failures discovered pursuant to this Section 6.4(d) in the manner set out in Section 6.2. Any such Construction Period Deductions shall be made from the Substantial Completion Payment. For clarity, the 60 day deadline set out in Section 6.4(b) shall not apply to errors, omissions or failures revealed pursuant to this Section 6.4(d).
- (e) For the purposes of Sections 6.4(b), 6.4(c) and 6.4(d), if DB Co or a DB Co Party has engaged in fraudulent action or inaction, deliberate misrepresentation, or gross misconduct or incompetence,
 - (i) in the preparation of the Monthly Non-Conformance Report; or
 - (ii) in carrying out the Work resulting in Construction Period Quality Failures,then,
 - (iii) the 60 day deadline set out in Section 6.4(b) shall not apply; and
 - (iv) a failure to monitor or accurately report a Construction Period Event or Construction Period Quality Failure pursuant to Section 6.4(c) shall be deemed to be a Critical Construction Period Quality Failure.
- (f) For clarity, if Construction Period Performance Criteria are based upon Non-Conformance Reports, no Construction Period Deductions shall be made for a Non-Conformance Report which is subject to an objection by DB Co, a Notice of objection by DB Co or Dispute Resolution Process, pursuant to Part 7 of Schedule 11 – Integrated Management System Requirements.

6.5 Additional Requirements for Tracking and Reporting

- (a) In addition to the requirements of Section 7.2 of Part 7 to Schedule 11 – Integrated Management System Requirements, the Non Conformance Tracking System shall record Construction Period Quality Failure Deductions pursuant to this Schedule 21.

- (b) In addition to the requirements of Section 7.2 of Part 7 to Schedule 11 – Integrated Management System Requirements, the Monthly Non-Conformance Report shall contain:
 - (i) the number of Construction Period Quality Failure Deductions in each Construction Period Failure Category accrued within the last Construction Period Month pursuant to this Schedule 21; and
 - (ii) summary statistics and historic trends since Financial Close for the number of Construction Period Quality Failure Deductions in each Construction Period Failure Category each Construction Period Month pursuant to this Schedule 21.

6.6 Disputing a Non-Conformance Report During the Construction Period

- (a) In respect of the following circumstances, the Parties shall be subject to the binding determination of the Independent Certifier pursuant to Section 4.3 and 4.4 of Schedule 27 – Dispute Resolution Procedure and the Independent Certifier’s decision shall be final and shall not be subject to Dispute Resolution:
 - (i) a Notice of objection to a Non-Conformance Report has not been resolved by mutual agreement between the City and DB Co within five Business Days after the delivery of a Notice of the objection pursuant to Section 7.1(a)(v) and Section 7.1(a)(vii) of Part 7 to Schedule 11 – Integrated Management System Requirements; and
 - (ii) the Non-Conformance Report referred to in Section 6.6(a)(i) would have been a Construction Period Quality Failure with a Construction Period Failure Category of “Minor” if the Notice of objection referred to in Section 6.6(a)(i) had not been issued.

ATTACHMENT A

Table A: Payment Calculation Dates and Projected Construction Period Payments

Payment Period (Column 1)	Payment Calculation Date (Column 2)	Projected DB Co Soft Costs (Column 3)	Projected Capital Costs (Column 3A)	Projected Earned Value (Cumulative) (Column 3B)	Projected Eligible Construction Period Payment (Column 4)	Projected Eligible Construction Period Payment (Cumulative) (Column 5)	Projected DB Co Funding Amount (Column 6)	Projected DB Co Funding Amount (Cumulative) (Column 7)	[not used] (Column 8)	Projected Construction Period Payment (Column 9)	Projected Construction Period Payment (Cumulative) (Column 10)
	[Financial Close]										
1.	25-Apr-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
2.	1-May-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
3.	1-Jun-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
4.	1-Jul-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
5.	1-Aug-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
6.	1-Sep-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
7.	1-Oct-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
8.	1-Nov-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
9.	1-Dec-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
10.	1-Jan-20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
11.	1-Feb-20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
12.	1-Mar-20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]

ATTACHMENT B

Form of Request for Payment

TO: the City AND TO: [Independent Certifier]	BY: [DB Co Name] (“DB Co”)
Construction Period Payment No:	Project: Ottawa LRT Project-Stage 2 Confederation Line Extension (“Project”)
Date: [Date]	Project Agreement dated _____ (“Project Agreement”)

1. DB Co hereby makes application for payment in the amount of _____ [insert amount in words] Dollars (\$[insert amount in numbers]) which is in respect of Payment Period No. __ in Table A. This payment is for a portion of the Total Capital Costs pursuant to the terms of the Project Agreement and Schedule 21 – Construction Period Payments. Capitalized terms used and not defined herein shall have the same meaning given to them in the Project Agreement.
2. Attached to this Request for Payment is a DB Co Officer Construction Period Payment Certificate in respect of this Payment Period No. __ [Note: Use the form of certificate set out in Attachment C of this Schedule 21.];
3. DB Co hereby certifies that the Earned Value and the Total Capital Cost Incurred To Date for the applicable Payment Period qualifies DB Co for the Construction Period Payment being requested herein.
4. Attached hereto as Appendix 1 are the Lender Advance Confirmations for the period covered by this Request for Payment.
5. Attached hereto as Appendix 2 is a current Workplace Safety and Insurance Board Clearance Certificate for Construction Contractor evidencing full compliance by [DB Co/Construction Contractor] with the requirements of the *Workplace Safety and Insurance Act, 1997* (Ontario).
6. Attached hereto as Appendix 3 is a Statutory Declaration by DB Co on CCDC Form 9A (2001) evidencing compliance by DB Co with the holdback requirements of the CA.

The information and calculations contained herein and on the attachments hereto are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20 [●].

[DB Co]

per: _____

Appendix 1

Summary of any Lender Advance Confirmations for the Period

Appendix 2

Current Workplace Safety and Insurance Board Clearance Certificate

Appendix 3

Statutory Declaration by DB Co on CCDC Form 9A (2001)

ATTACHMENT C

Form of DB Co Officer Construction Period Payment Certificate

TO: the City AND TO: [Independent Certifier]	BY: [DB Co Name] (“DB Co”)
Progress Certificate/Construction Period Payment No: ____	Project: Ottawa LRT Project-Stage 2 Confederation Line Extension (“Project”)
Date: [Date]	Project Agreement dated ____ (“Project Agreement”)
	Request for Payment dated ____ (“Request for Payment”)

I, _____, the [insert title] of [DB Co] hereby certify for and on behalf of DB Co without incurring personal liability and confirm that the same be relied upon by the City and the Independent Certifier without further enquiry as of _____ [insert date] that:

1. I am a duly authorized [signing officer of][signatory for] DB Co, am familiar with the provisions of Project Agreement and have made reasonable investigations of corporate records and inquiries of other officers and senior personnel of DB Co in certifying the information set out below. Terms defined in the Project Agreement have the same meanings when used in this certificate.
2. No DB Co Event of Default has occurred and is continuing under the Project Agreement and the other Project Documents.
3. DB Co has available to it sufficient funds to achieve Substantial Completion in accordance with the Project Agreement subject to DB Co continuing to meet its obligations under the Project Agreement and in receipt of Construction Period Payments from the City.
4. All DB Co Funding Amounts that were to have been funded prior to the date of this Certificate have been funded.
5. All funds received and disbursed by DB Co in connection with the Project prior to the date of this Certificate have been used solely in respect of the payment of Total Capital Costs properly due and payable.
6. The requested Construction Period Payment amount to which this Certificate is attached does not exceed the Projected Eligible Construction Period Payment (Cumulative) set out in Table A applicable to the period to which this Certificate applies.
7. DB Co has complied with all requirements of Applicable Law in connection with the Project, including without limitation, all requirements under the *Workplace Safety and Insurance Act, 1997* (Ontario) and the CA. No claims for lien or notices of lien under the CA have been

received by DB Co or any DB Co Party which have not been duly released, discharged or vacated in accordance with the requirements of the CA, if applicable. Any notice of lien or claim for lien identified in paragraph 10 of the Request for Payment to which this Certificate is attached has been released, discharged or vacated in accordance with the requirements of the CA.

Dated this _____ day of _____, 20____.

Name: _____

Title: _____

Appendix 1 to Attachment C

Copies of any Lender Advance Confirmations

ATTACHMENT D

Form of Substantial Completion Payment Application

TO: the City AND TO: [Independent Certifier]	BY: [DB Co Name] (“DB Co”)
[East / West] Substantial Completion Payment Application	Project: Ottawa LRT Project-Stage 2 Confederation Line Extension (“Project”)
Date: [Date]	Project Agreement dated _____ (“Project Agreement”)

1. DB Co hereby makes application for the [East / West] Substantial Completion Payment [and Unpaid Construction Period Payments in the amount of [insert amount in words] Dollars (\$[insert amount in numbers])] [NTD: Unpaid Construction Period Payments to be paid at West Substantial Completion only] pursuant to the terms of the Project Agreement and Schedule 21 – Construction Period Payments. Capitalized terms used and not defined herein shall have the same meaning given to them in the Project Agreement.
2. DB Co has certified to the City that all requirements for [East / West] Substantial Completion and all conditions for issuance of the [East / West] Substantial Completion Certificate have been satisfied, and has performed all requirements and provided all assurances and documents set out in the definition of “[East / West] Substantial Completion” in the Project Agreement.
3. No DB Co Event of Default has occurred and is continuing under the Project Agreement.
4. DB Co has complied with all requirements of Applicable Law in connection with the Project, including without limitation, all requirements under the *Workplace Safety and Insurance Act, 1997* (Ontario) and the CA. No claims for lien or notices of lien under the CA have been received by DB Co or any DB Co Party which have not been duly released, discharged or vacated in accordance with the requirements of the CA.
5. Attached hereto as Appendix 1 is a current Workplace Safety and Insurance Board Clearance Certificate for DB Co evidencing full compliance by [DB Co/Construction Contractor] with the requirements of the *Workplace Safety and Insurance Act, 1997* (Ontario), as amended.
6. Attached hereto as Appendix 2 is a Statutory Declaration by DB Co on CCDC Form 9A (2001) evidencing compliance by DB Co with the holdback requirements of the CA.
7. Attached hereto as Appendix 3 is a sub-search of the title to the Lands against which a claim for lien under the CA could be registered, if applicable. Any notice of lien or claim for lien identified in such Appendix 4 has been released, discharged or vacated in accordance with the requirements of the CA.

The information and calculations contained herein and on the attachments hereto are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20 [●].

[DB Co]

per: _____

Appendix 1 to Attachment D
Workplace Safety and Insurance Board Clearance Certificate

Appendix 2 to Attachment D
Statutory Declaration by DB Co on CCDC Form 9A (2001)

Appendix 3 to Attachment D
Sub-search of the Title to the Lands

ATTACHMENT E

CONSTRUCTION PERIOD PERFORMANCE CRITERIA

Non-Conformances Discovered in Physical Elements of the Works

Table 1

Reference	Requirement to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-01: Schedule 21 – Construction Period Payments	Physical elements of the Works shall meet the requirements of the Project Agreement, such that: (a) a Critical Qualifying NCR with a ‘Pending Status’ does not occur; or (b) DB Co Accepted Works are not Contested Non-Conforming Works.	CPQF	Critical	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.
CPPC-02: Schedule 21 – Construction Period Payments	Physical elements of the Works shall meet the requirements of the Project Agreement, such that a Medium Qualifying NCR with a ‘Pending Status’ does not occur.	CPQF	Medium	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.
CPPC-03: Schedule 21 – Construction Period Payments	Physical elements of the Works shall meet the requirements of the Project Agreement, such that a Minor Qualifying NCR with a ‘Pending Status’ does not occur.	CPQF	Minor	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.

Non-Conformances that are not physical elements of the Works

Table 2

Reference	Requirement to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-04: Schedule 21 – Construction Period Payments	Works that are not physical elements of the Works shall meet the requirements of the Project Agreement, such that a Critical Qualifying Process NCR with a ‘Pending Status’ does not occur.	CPQF	Critical	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.
CPPC-05: Schedule 21 – Construction Period Payments	Works that are not physical elements of the Works shall meet the requirements of the Project Agreement, such that a Medium Qualifying Process NCR with a ‘Pending Status’ does not occur.	CPQF	Medium	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.
CPPC-06: Schedule 21 – Construction Period Payments	Works that are not physical elements of the Works shall meet the requirements of the Project Agreement, such that a Minor Qualifying Process NCR with a ‘Pending Status’ does not occur.	CPQF	Minor	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.

Specific Non-Conformances

Table 3

For clarity a deduction under Table 3 is not subject to a deduction under Table 2.

Construction Period Failure Categories defined in Table 3 shall escalate for persistent, ongoing and repeated Non-Conformances.

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-07: Project Agreement Section 11.19	DB Co shall follow protocols as set out in Section 11.19 in accordance with TTMP, Construction Access Management Plan and the Output Specification	CPQF	Medium	10 Business Days
CPPC-08: Project Agreement Section 20.1	DB Co shall provide access to the City, and the Government Entities and their respective representatives to the Lands, the New City Infrastructure, Existing Infrastructure, the New MTO Infrastructure or any workshop	CPQF	Minor	1 Business Day
CPPC-09: Project Agreement Section 20.5	DB Co shall provide access to the Independent Certifier, and all Other Contractors to the Lands, the New City Infrastructure, Existing Infrastructure, the New MTO Infrastructure or any workshop	CPQF	Minor	1 Business Day
CPPC-10: Project Agreement Section 26.2	DB Co shall ensure that there are sufficient numbers of competent staff, including all relevant grades of supervisory staff, engaged in the performance of the Works to ensure the proper performance of the Project Agreement	CPQF	Medium	20 Business Days

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-11: Schedule 12 – Works Scheduling Requirements	DB Co shall prepare and submit PBS-1 at Financial Close.	CPQF	Critical	5 Business Days
CPPC-12: Schedule 12 – Works Scheduling Requirements	DB Co shall prepare and submit, within 180 days after Financial Close, PBS 2.	CPQF	Critical	5 Business Days
CPPC-13: Schedule 12 – Works Scheduling Requirements	DB Co shall prepare and submit a Recovery Schedule in accordance with the requirements of Schedule 12 – Works Scheduling Requirements, no later than the end of the subsequent reporting period.	CPQF	Critical	5 Business Days
CPPC-14: Schedule 10 – Review Procedure	Works Schedules shall not receive a ‘Critical Comment’ or ‘Major Comment’ from the City more than once.	CPQF	Critical	n/a

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-15: Schedule 10 – Review Procedure	<p>The following Works Submittals shall not receive a “MAJOR COMMENT” or “CRITICAL COMMENT” from the City more than two times in a row for the same reason:</p> <p>(a) Design Management Plan, Construction Management Plan, Traffic and Transit Management Plan, Environmental Management Plan, Design Certificates, Construction Certificates, from Appendix A to Schedule 10 – Review Procedure; and</p> <p>(b) the Geotechnical Instrumentation Monitoring Plan from Appendix A to Schedule 10 – Review Procedure.</p>	CPQF	Medium	5 Business Days
CPPC-16: Schedule 17 – Environmental Obligations, Appendix B	Submission of Environmental Management Plan Updates	CPQF	Medium	5 Business Days
CPPC-17: Schedule 17 – Environmental Obligations, Appendix B	Submission of Annual Compliance Monitoring Report	CPQF	Medium	5 Business Days

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-18: Schedule 17 – Environmental Obligations, Appendix B	Submission Independent Environmental Audit	CPQF	Medium	5 Business Days
CPPC-19: Schedule 17 – Environmental Obligations, Appendix B	Submission of Sustainability Annual Report Card	CPQF	Medium	5 Business Days
CPPC-20: Schedule 17 – Environmental Obligations, Appendix B	Submission Independent Environmental Audit	CPQF	Medium	5 Business Days
CPPC-21: Schedule 17 – Environmental Obligations, Section 8.4	DB Co shall ensure during the Construction Period, air-borne and ground-borne noise and vibration impacts on Sensitive Receivers do not exceed the Applicable Noise and Vibration Requirements and Additional Sensitive Receiver Performance Requirements	CPQF	Critical	1 Business Day, or longer as agreed to by the City acting reasonably.
CPPC-22: Schedule 18 – Communications and Stakeholder Engagement Obligations, Part 4	DB Co shall deliver communications and stakeholder engagement activities in accordance with Schedule 18 Part 4	CPQF	Minor	1 Business Day
CPPC-23: Schedule 18 – Communications and Stakeholder Engagement Obligations, Section 5.1	DB Co shall provide Notification to the City and a draft public notification in accordance with the requirements of Schedule 18 Section 5.1	CPQF	Minor	1 Business Day

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-24: Schedule 11 – Integrated Management System Requirements, Section 4.4	DB Co shall prepare and submit each Inspection and Test Plan in respect of the Works to the City pursuant to Schedule 10 - Review Procedure at least 15 Business Days prior to performing the relevant Works.	CPQF	Minor	1 Business Day
CPPC-25: Schedule 11 – Integrated Management System Requirements, Section 5.1(b)	DB Co shall provide an updated IMS Audit Plan at twelve month intervals following submission of the initial IMS Audit Plan.	CPQF	Medium	20 Business Days
CPPC-26: Schedule 11 – Integrated Management System Requirements, Section 5.1(b)	At each occurrence of DB Co failing to follow the IMS Audit Plan without the prior agreement in writing of the City	CPQF	Medium	20 Business Days
CPPC-27: Schedule 11 – Integrated Management System Requirements, Section 5.2(c)	All IMS Non-Conformances identified by the Internal IMS Audits must be addressed and corrective measures implemented by DB Co. DB Co shall provide final audit reports to the City within 10 Business Days of the closing of the audits.	CPQF	Medium	5 Business Days
CPPC-28: Schedule 11 – Integrated Management System Requirements, Section 5.4(a)(ii)	DB Co shall prepare a Corrective Action plan, and submit it to the City within 20 Business Days of the closing of the City’s IMS Audit. At each occurrence of DB Co failing to prepare a Corrective Action plan within the required time period.	CPQF	Minor	1 Business Day

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPQC-29: Schedule 11 – Integrated Management System Requirements, Section 7.3(a)	DB Co shall resolve Non Conformances within the response time specified on the Non Conformance Reports.	CPQF	Minor	5 Business Days
CPQC-30: Schedule 26 – Record Provisions, Section 1.1	DB Co shall keep and maintain records in accordance with Schedule 26 Section 1.1	CPQF	Minor	10 Business Days

Specific Non-Conformances for Lane Closures

Table 4

Non-Conformances in the Works Requiring Immediate Action

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-31 Schedule 15-2 Part 9, Part C Article 4.4 table 4.4.1	Lane Closures shall not start earlier than the Permitted Periods for Closures on Highway 416 and 417 Mainline	CPQF	Medium	Twenty (20) minutes
CPPC-32 Schedule 15-2 Part 9, Part C Article 4.4 table 4.4.1	Lane Closures shall not end later than the Permitted Periods for Closures on Highway 416 and 417 Mainline.	CPQF	Medium	Twenty (20) minutes
CPPC-33 Schedule 15-2 Part 9, Part C Article 4.4 table 4.4.2	Lane Closures shall not start earlier than the Permitted Periods for Closures on Crossing Roads	CPQF	Medium	Twenty (20) minutes
CPPC-34 Schedule 15-2 Part 9, Part C Article 4.4 table 4.4.2	Lane Closures shall not end later than the Permitted Periods for Closures on Crossing Roads	CPQF	Medium	Twenty (20) minutes
CPPC-35 Schedule 15-2 Part 9, Part C Article 4.4 table 4.4.3	Lane Closures shall not start earlier than the Permitted Periods for Closures on Highway 416 and 417 Ramps	CPQF	Medium	Twenty (20) minutes
CPPC-36 Schedule	Lane Closures shall not end later than the Permitted Periods for Closures on	CPQF	Medium	Twenty (20) minutes

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
15-2 Part 9, Part C Article 4.4 table 4.4.3	Highway 416 and 417 Ramps.			
CPPC-37 Schedule 15-2 Part 9, Part C Article 4.5	Full Closure shall not start earlier than Permitted Periods for Closures.	CPQF	Critical	Two (2) hours
CPPC-38 Schedule 15-2 Part 9, Part C Article 4.5	Full Closure shall not end later than Permitted Periods for Closures.	CPQF	Critical	Two (2) hours

ATTACHMENT F

CREDIT RULES

1. CREDIT RULES FOR THE EVALUATION OF EARNED VALUE

1.1 Purpose of Credit Rules

- (a) The Credit Rules set out requirements agreed between the City and DB Co for use and interpretation of the Earned Value Measurement Techniques, pursuant to this Schedule 21.

1.2 Change of Credit Rules

- (a) In the event that DB Co or the City propose a change to the Credit Rules, the Independent Certifier may agree to such proposed change to the Credit Rule, provided that:
 - (i) any proposed change to the Credit Rules will result in revised Credit Rules that:
 - (A) continue to meet the Earned Value Measurement Techniques; and
 - (B) follow the principles, guidance, and intent of the Credit Rules set out in this Attachment F, wherever possible;
 - (ii) any proposed change to the Credit Rules is subject to consultation with the City and DB Co at least three months prior to the first Construction Period that uses those revised Credit Rules;
 - (iii) the Independent Certifier considers any responses made by the City and DB Co to a proposed change to the Credit Rules and the Independent Certifier provides a report justifying its decision regarding acceptance or rejection of any proposal to change the Credit Rules; and
 - (iv) prior to the start of the first Construction Period that is to use the revised Credit Rules for the evaluation of Earned Value:
 - (A) the proposed changes to the Credit Rules are agreed to by the Independent Certifier; and
 - (B) both the City and DB Co receive the revised Credit Rules from the Independent Certifier.

1.3 Selection of Measurement Methods

- (a) In principle, when selecting the appropriate measurement methods from the Earned Value Measurement Techniques, the following principles shall be applied:
 - (i) for tangible work or tasks taking three Construction Period Months or more to perform, the measurement methods shall be considered in the following decreasing order of preference:
 - (A) firstly, activity completion and physical measurement using the fixed formula 0/100 method; and
 - (B) secondly, weighted milestone;

- (ii) for tangible work or tasks taking one or two Construction Period Months to perform, the measurement methods shall be considered in the following decreasing order of preference:
 - (A) activity completion and physical measurement using the fixed formula 0/100 method; and
- (iii) for intangible work or tasks, the measurement methods shall be considered in the following decreasing order of preference:
 - (A) firstly, apportioned effort; and
 - (B) secondly, only where apportioned effort is not possible, level of effort.
- (b) Table 1 sets out the measurement methods that shall be used from the Earned Value Measurement Techniques for specific cost categories, unless there are technical reasons preventing these measurement methods from being used. The specific cost categories in Table 1 are set out in ‘Standard Cost Codes for Capital Projects – Definitions’, US Federal Transportation Administration.

Table 1: Earned Value measurement methods for specific cost categories		
Standard Cost Code	Description	Measurement Method from the Earned Value Measurement Techniques
10	Guideway	
10.01	Guideway: at-grade exclusive right-of-way (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.04	Guideway: aerial structure (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.05	Guideway: Built-up fill	Activity completion and physical measurement using the fixed formula 0/100 method
10.06	Guideway: underground cut & cover (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.07	Guideway: underground tunnel (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.09	Track: Direct fixation	Activity completion and physical measurement using the fixed formula 0/100 method
10.10	Track: Embedded	Activity completion and physical measurement using the fixed formula 0/100 method
10.11	Track: Ballasted	Activity completion and physical measurement using the fixed formula 0/100 method
10.12	Track: Special (switches, turnouts)	Activity completion and physical measurement using the fixed formula 0/100 method
20	Stations, Stops, Terminals, Intermodals	
20.01	At-grade station; stop; shelter; mall; terminal; platform	Activity completion and physical measurement using the fixed formula 0/100 method
20.03	Underground station; stop; shelter; mall;	Activity completion and physical

Table 1: Earned Value measurement methods for specific cost categories		
Standard Cost Code	Description	Measurement Method from the Earned Value Measurement Techniques
	terminal; platform	measurement using the fixed formula 0/100 method
20.05	Joint development	Activity completion and physical measurement using the fixed formula 0/100 method
30	Support Facilities: Yards, Shops and Admin Buildings	
30.01	Administration Building: Office, sales, storage, revenue counting	Activity completion and physical measurement using the fixed formula 0/100 method
30.03	Heavy maintenance facility	Activity completion and physical measurement using the fixed formula 0/100 method
30.05	Yard and Yard Track	Activity completion and physical measurement using the fixed formula 0/100 method
40	Sitework and Special Conditions	
40.01	Demolition; clearing; earthwork	Activity completion and physical measurement using the fixed formula 0/100 method
40.02	Site utilities; utility relocation	Activity completion and physical measurement using the fixed formula 0/100 method
40.03	Hazardous material; contaminated soil mitigation; ground water treatments	Activity completion and physical measurement using the fixed formula 0/100 method
40.04	Environmental mitigation, e.g. wetlands, historic/archeologic, parks	Activity completion and physical measurement using the fixed formula 0/100 method
40.05	Site structures including retaining walls; sound walls and other structures	Activity completion and physical measurement using the fixed formula 0/100 method
40.06	Pedestrian and bike access and accommodation; landscaping	Activity completion and physical measurement using the fixed formula 0/100 method
40.07	Automobile; bus; van access ways including roads; parking lots	Activity completion and physical measurement using the fixed formula 0/100 method
40.08	Temporary facilities	Activity completion and physical measurement using the fixed formula 0/100 method
50	Systems	
50.01	Train control and signals	Activity completion and physical measurement using the fixed formula 0/100 method
50.02	Traffic signals and crossing protection	Activity completion and physical measurement using the fixed formula 0/100 method
50.03	Traction power supply and substations	Activity completion and physical measurement using the fixed formula 0/100 method
50.04	Traction power distribution and catenary	Activity completion and physical measurement using the fixed formula 0/100 method

Table 1: Earned Value measurement methods for specific cost categories		
Standard Cost Code	Description	Measurement Method from the Earned Value Measurement Techniques
		method
50.05	Communications	Activity completion and physical measurement using the fixed formula 0/100 method
50.06	Fare collection system and equipment	Activity completion and physical measurement using the fixed formula 0/100 method
50.07	Central control	Activity completion and physical measurement using the fixed formula 0/100 method
80	Professional Services and Agency Costs	
80.01	Preliminary design	Weighted milestone
80.02	Final design	Weighted milestone
80.03	Project management for design and construction	Apportioned effort
80.04	Construction administration and management	Apportioned effort
80.05	Professional liability and other insurance costs	Weighted milestone
80.06	Legal; permits; review fees by other agencies, cities, etc;	Weighted milestone
80.07	Surveys, testing (quality related), investigation, inspection	Weighted milestone or apportioned effort
80.08	Start up; testing and commissioning	Weighted milestone or apportioned effort

- (c) The measurement methods associated with procurement of materials shall be in accordance with the following principles:
- (i) except as set out in Section 1.3(c)(ii), the costs of materials used in construction shall be included in the cost of each construction task and shall be evaluated for the purposes of Earned Value as part of each construction task using physical measurement; and
 - (ii) the costs of rail and large long-lead equipment manufactured off-site before installation, such as transformers and packaged air conditioning units, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by DB Co to the supplier will not be credited for the purposes of Earned Value until the rail or large equipment manufactured off-site is delivered to the Lands or a bonded warehouse.
- (d) The measurement methods associated with procurement of plant, such as cranes and road vehicles, shall be in accordance with the following principles:
- (i) the costs of plant, such as cranes and road vehicles, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by DB Co to the supplier will not be credited for the purposes of Earned Value until the plant is delivered to the Lands or a bonded warehouse.
- (e) In order to make the measurement of Earned Value more efficient during mobilization, DB Co may choose to identify a tranche of its mobilization cost, the amount of which will be equal to the mobilization cost agreed to between DB Co and the Lenders or Lenders' Consultant of the Cost of

the Works that shall be automatically credited for the purposes of measuring Earned Value at Financial Close (the “**Mobilization Credit**”), where:

- (i) the sum of the costs identified to the Mobilization Credit and the costs identified to the cost codes from Table 1 shall remain equal to the Cost of the Works;
- (ii) the scope of activity associated with the Mobilization Credit shall be documented by DB Co to the satisfaction of the Independent Certifier before the end of the second Construction Period Month in order to avoid double counting with the Earned Value for activities that are not included within the Mobilization Credit; and
- (iii) the Earned Value for the activities included within the Mobilization Credit shall be credited as Earned Value without using a measurement method from the Earned Value Management Techniques.

ATTACHMENT G

Intentionally Deleted