

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

SECTION A DEFINITIONS

A1. Defined Terms

In this Design Build Agreement, except where a contrary meaning is clearly intended, the following expressions have the following meanings:

A1.1 “**30% Design Submittal**” has the meaning as set out in Schedule 18 – Technical Requirements;

A1.2 “**60% Design Submittal**” has the meaning as set out in Schedule 18 – Technical Requirements;

A1.3 “**90% Design Submittal**” has the meaning as set out in Schedule 18 – Technical Requirements;

A1.4 “**Additional Operations Advisory Services**” has the meaning set out in Section H2.2(a)(i) of the Design Build Agreement;

A1.5 “**Additional Spare Parts**” has the meaning set out in Section H2.2(e)(i) of the Design Build Agreement;

A1.6 “**Additional Training**” has the meaning set out in Section H2.2(b)(i) of the Design Build Agreement;

A1.1 “**Applicable Law**” means:

(a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;

(b) any Authority Requirement; and

(c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Manitoba,

in each case, in force in the Province of Manitoba, or otherwise binding on Design Builder, any Design Builder Party, the City or any City Parties;

A1.2 “**Assigned Intellectual Property**” means all Intellectual Property owned, created, developed or acquired by Design Builder or any Design Builder Party relating to or in connection with the Works or Design Builder’s Proposal, or any aspects thereof, other than pre-existing Intellectual Property of Design Builder, and includes Design Builder’s Designs and all other plans, drawings and designs created by Design Builder or any Design Builder Party in relation to the Works or Design Builder’s Proposal;

- A1.3 “**Associated Liabilities**” has the meaning as set out in Section H15.2(b) of the Design Build Agreement;
- A1.4 “**The Association of Professional Engineers and Geoscientists Manitoba**” means the body operating as “**Engineers Geoscientists Manitoba**” or “**EGM**” that governs and regulates the practice of professional engineering and geoscience in Manitoba;
- A1.5 “**Authority Requirement**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority;
- A1.6 “**Building Permit Fee**” has the meaning set out in Section H2.2(d)(i) of the Design Build Agreement
- A1.7 “**Business Day**” means a Calendar Day other than a Saturday, Sunday or statutory holiday in the province of Manitoba or any day on which banks are not open for business in the city of Winnipeg, Manitoba;
- A1.8 “**Calendar Day**” or “**days**” means the period from one midnight to the following midnight;
- A1.9 “**Cash Allowance Amount**” means \$3,000,000;
- A1.10 “**Cash Allowance Items**” has the meaning as set out in Section H2.1 of the Design Build Agreement;
- A1.11 “**Certificate of Acceptance**” means the document issued by the City to the Design Builder pursuant to Section F7 of the Design Build Agreement;
- A1.12 “**Certificate of Operations Advisory Services Completion**” has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.13 “**Certificate of Systems Operational Testing Completion**” has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.14 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person, to direct or cause the direction of the management, actions or policies of such person;

- A1.15 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Manitoba of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Manitoba, in each case after the Submission Deadline;
- A1.16 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person;
- A1.17 “**Change Order**” means a written confirmation of a variation, addition, reduction, substitution, modification, deletion, removal or other change to the whole or any part of the Work or the Design Build Agreement;
- A1.18 “**Change Order Confirmation**” has the meaning as set out in Schedule 17 – Change Orders;
- A1.19 “**Change Order Directive**” has the meaning as set out in Schedule 17 – Change Orders;
- A1.20 “**City**” means the City of Winnipeg as continued under *The City of Winnipeg Charter*, S.M. 2002.c. 39, and subsequent amendments thereto;
- A1.21 “**City Indemnified Parties**” means the City, its affiliates, directors, officers, employees, officials, independent contractors, agents, subcontractors, successors and assigns, and for clarity includes all City Parties;
- A1.22 “**City Operations**” means the City’s use of the Infrastructure, the Existing Infrastructure, and the Lands, Site(s), Facility(ies);
- A1.23 “**City Party**” means the City and its respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the City Operations or the City Work, but excluding Design Builder and any Design Builder Party and the “City Parties” shall be construed accordingly;
- A1.24 “**City Representative**” means the person designated as such by the City on or prior to the Effective Date and any permitted replacement;
- A1.25 “**City Work**” has the meaning as set out in Section E13.1 of the Design Build Agreement;
- A1.26 “**Claim Notice**” has the meaning as set out in Section N5.1 of the Design Build Agreement;
- A1.27 “**Comment Resolution Sheet**” or “**CRS**” has the meaning as set out in Schedule 5 – Review Procedure;
- A1.28 “**Commissioning Plan**” means the plan described in Schedule 18 – Technical Requirements;

- A1.29 “**Commissioning Quality Management Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.30 “**Communications Management Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.31 “**Confidential Information**” has the meaning as set out in Section Q2.1 of the Design Build Agreement;
- A1.32 “**Construction Commencement Conditions**” has the meaning as set out in D.1.7.1 of Schedule 18 – Technical Requirements;
- A1.33 “**Construction Defect**” has the meaning as set out in Section E17.2(a) of the Design Build Agreement;
- A1.34 “**Construction Lands**” has the meaning as set out in Schedule 12 – Lands, Site(s), Facility(ies);
- A1.35 “**Construction Management Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.36 “**Construction Mitigation Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.37 “**Construction Quality Management Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.38 “**Contract Price**” means \$ [NTD to populate] being the price agreed upon for the Works as set out in the Proposal, plus the Cash Allowance Amount, for a total of \$ [NTD to populate], and any adjustments thereto made in accordance with this Design Build Agreement;
- A1.39 “**Contract Security**” has the meaning as set out in Section C1.1(a)(i) of the Design Build Agreement;
- A1.40 “**Coordination Protocol**” has the meaning as set out in Schedule 18 – Technical Requirements - Appendix 18P – Coordination Protocol;
- A1.41 “**COR Certificate**” means a valid Manitoba Certificate of Recognition and Letter of Good Standing (or Manitoba equivalency) as issued under the Certificate of Recognition (COR) Program administered by the Construction Safety Association of Manitoba or by the Manitoba Heavy Construction Association’s WORKSAFELY™ COR™ Program;
- A1.42 “**Cost Management Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.43 “**Course Lesson Plans**” has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.44 “**Court**” means a court of law of competent jurisdiction;

- A1.45 “**Decommissioning Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.46 “**Default**” means any breach by Design Builder, including any Design Builder Party, of any provision of this Design Build Agreement, including the material inaccuracy, when made, of any representation given by Design Builder in the Design Build Agreement;
- A1.47 “**Deficiencies Holdback**” has the meaning as set out in Section F3.2 of the Design Build Agreement;
- A1.48 “**Deficiencies Workplan and Schedule**” has the meaning as set out in Section F3.1 of the Design Build Agreement;
- A1.49 “**Deficiency**” or “**Deficiencies**” means any defects, deficiencies and items of outstanding work arising from or related to the work required to achieve a Milestone or Substantial Completion, as applicable;
- A1.50 “**Deficiency List**” means the list of items identified by the Independent Certifier upon inspection of the Work in response to an application for a Milestone Payment, that do not meet the criteria in the Technical Requirements;
- A1.51 “**Demobilization**” means the removal of all equipment, supplies and incidentals from the Lands, including those necessary for securing, signing, movement and staging and establishment of offices, buildings and other facilities necessary for the Work and includes the restoration of the Lands to their original condition prior to Mobilization;
- A1.52 “**Designated Change in Law**” means the following and no other changes in any Applicable Law:
- (a) a change directed specifically at construction of wastewater treatment facility industries in Manitoba or directed specifically at Design Builder, the Project, or design build arrangements of the nature of this Design Build Agreement, provided that such change was not reasonably foreseeable as of the Submission Deadline by an experienced contractor carrying out activities similar to those to be carried out by Design Builder or any Design Builder Party in relation to the Project;
- A1.53 “**Designated Design Builder Employee**” has the meaning as set out in Schedule 19 – Security Clearance Requirements;
- A1.54 “**Design Build Agreement**” has the meaning as set out in the Recitals;
- A1.55 “**Design Build Agreement Security**” has the meaning as set out in Section C1.1 of the Design Build Agreement;
- A1.56 “**Design Builder**” has the meaning as set out in the Recitals;
- A1.57 “**Design Builder Document Management Team**” has the meaning as set out in Schedule 13 – Document Management System;

A1.58 **“Design Builder Party”** means:

- (a) any person engaged by Design Builder from time to time as may be permitted by the Design Build Agreement to procure or manage the provision of the Works, including any agents of Design Builder; and
- (b) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors;

and **“Design Builder Parties”** shall be construed accordingly;

A1.59 **“Design Builder Representative”** means the person designated as such by the City on or prior to the date of the Design Build Agreement and any permitted replacement;

A1.60 **“Design Builder Schedule Remediation Plan”** means the plan described in Section E10.2(b) of the Design Build Agreement;

A1.61 **“Design Builder’s Design”** means Design Builder’s design drawings and design reports for the Infrastructure, and includes any amendments made in accordance with Section E4 of the Design Build Agreement;

A1.62 **“Design Builder’s Maintenance Management Plan”** means the plan described in Schedule 18 – Technical Requirements;

A1.63 **“Design Builder’s Management Systems and Plans”** means all of Design Builder’s systems and plans presented in Design Builder’s Proposal, or thereafter, and set out in Schedule 4 – Design Builder’s Management Systems and Plans, and including any amendments made from time to time in accordance with Section E4 of the Design Build Agreement;

A1.64 **“Design Builder’s Proposal”** means the proposal submitted by Design Builder in response to the RFP;

A1.65 **“Design Builder’s Proposal Extracts”** has the meaning as set out in Schedule 3 – Design Builder’s Proposal Extracts;

A1.66 **“Design Data”** means all drawings, reports, documents, plans, software, formulae, calculations and other data prepared by Design Builder relating to the design, construction or testing of the Infrastructure, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction;

A1.67 **“Design Management Plan”** means the plan described in Schedule 18 – Technical Requirements;

A1.68 **“Design Quality Management Plan”** means the plan described in Schedule 18 – Technical Requirements;

A1.69 **“Design Team”** has the meaning as set out in Schedule 18 – Technical Requirements;

- A1.70 **“Design Workshops”** has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.71 **“Direct Losses”** means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses;
- A1.72 **“Dispute”** has the meaning as set out in Schedule 7 – Dispute Resolution Procedure;
- A1.73 **“Dispute Resolution Procedure”** means the procedure set out in Schedule 7 – Dispute Resolution Procedure;
- A1.74 **“Document”** means a deliverable that has been prepared to address a specific topic or purpose as set out in the Design Build Agreement, including Submittals, Comment Resolution Sheets (CRSs), Non-Conformance Reports (NCRs), Request for Information (RFIs), Request for Substitutions (RFSS), Estimates, and any other report, plan, or record required by the Design Build Agreement;
- A1.75 **“Document Management Plan”** means the plan described in Schedule 18 – Technical Requirements;
- A1.76 **“Document Management System”** or **“DMS”** has the meaning as set out in Schedule 13 – Document Management System;
- A1.77 **“Effective Date”** means the date set out on the first page of this Design Build Agreement;
- A1.78 **“Eligible Insurer”** means an insurer licensed to transact business in Manitoba and who has a current rating of at least A- X from A. M. Best’s or A- from Standard and Poors or an insurer that is an agency or crown corporation of the Province of Manitoba;
- A1.79 **“Engineer of Record”** means the engineer responsible for certifying that the work was completed in accordance with the Technical Requirements, the requirements of Engineers Geoscientists Manitoba and the Design Build Agreement at each applicable Milestone, at Substantial Completion and at Final Completion;
- A1.80 **“Environmental Damage or Degradation”** means the presence of contamination in water, soil or air, in violation of Applicable Law (including Applicable Laws enacted after the time at which the Hazardous Substance causing the contamination is first present), caused by any Hazardous Substance, and includes death or injury to plants, animals or human beings resulting in whole or in part from such contamination;
- A1.81 **“Environmental Management System”** or **“EMS”** has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.82 **“Equipment Checkout”** has the meaning as set out in Schedule 18 – Technical Requirements;

- A1.83 **“Estimate”** has the meaning as set out in Schedule 17 – Change Orders;
- A1.84 **“Existing Infrastructure”** means the infrastructure located on the Lands prior to the Effective Date. It includes the interceptor sewers, channels, conduits, outfall, Administration Building, Maintenance Building, surge well, raw sewage pumping stations, screening and grit removal facilities, primary clarifiers, high purity oxygen reactors, oxygen generation system, secondary clarifiers, digesters, sludge holding tanks, digester gas infrastructure, biosolids dewatering facility, centrate treatment facility, chemical receiving, storage and feed systems, interconnecting piping, yard piping, valves and transfer structures, process piping and valves, heating ventilation and air conditioning equipment and ducting, electrical services, instrumentation, distributed control system, electrical and control panels, instrumentation and electrical cabling, grounds, roadways, drainage, watermains, land drainage sewers, utilities, fire systems, fencing and gates;
- A1.85 **“Expiry Date”** means the date that all of the following conditions are fulfilled:
- (a) Design Builder and the City have performed all obligations required under this Design Build Agreement;
 - (b) the Final Completion Certificate has been issued; and
 - (c) Design Builder has fulfilled all of its obligations pursuant to Section F7 and the City has issued a Certificate of Acceptance;
- A1.86 **“Final Completion”** means the entire Works, except those items arising under the provisions of Section E17, have been performed in accordance with this Design Build Agreement, including the completion of all items on the Deficiency List;
- A1.87 **“Final Completion Certificate”** has the meaning as set out in Section F2.8 of the Design Build Agreement;
- A1.88 **“Final Completion Date”** means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, including the completion of all items on the Deficiency List;
- A1.89 **“Final Design”** means the final design of the Infrastructure as set out in the IFC Submittal that meets the requirements of this DBA and has achieved an endorsement of “Received”, in accordance with Schedule 5 – Review Procedure, subject to further modifications made in any subsequent Submittals that achieve an endorsement of “Received”, in accordance with Schedule 5 – Review Procedure;
- A1.90 **“FIPPA”** means *The Freedom of Information and Protection of Privacy Act, 1997* (Manitoba), as amended or replaced from time to time;
- A1.91 **“Force Majeure Event”** means any war, civil war, invasion, insurrection, armed conflict, act of foreign enemy, revolution, terrorist act, interference by military authorities, nuclear explosion, tornado, earthquake, pressure waves caused by devices traveling at supersonic speeds, contamination by ionizing radiation, epidemic, or quarantine restriction that prevents, delays or interrupts the

performance of any obligation under this Design Build Agreement, other than any obligation to pay any money, and provided such event does not occur by reason of:

- (a) the negligence of the Party relying on the Force Majeure Event (or those for whom such Party is responsible pursuant to Applicable Law); or
- (b) any act or omission of the Party relying on the Force Majeure Event (or those for whom such Party is responsible pursuant to Applicable Law) that is in breach of the provisions of this Design Build Agreement;

- A1.92 **“Force Majeure Termination”** has the meaning as set out in Section P1;
- A1.93 **“Generally Accepted Accounting Principles”** or **“GAAP”** means generally accepted accounting principles in Canada, as defined in the CPA Canada Handbook, including the International Financial Reporting Standards;
- A1.94 **“Good Industry Practice”** means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
- A1.95 **“Governmental Authority”** means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the City, any aspect of the performance of the Design Build Agreement or the operation of the Infrastructure, including the Works, or the City Operations, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction and, for greater certainty, does not include any aboriginal bands, councils or self-governing entities;
- A1.96 **“Government Sales Tax”** or **“GST”** means the value added tax imposed pursuant to Part IX of the *Excise Tax Act (Canada)*;
- A1.97 **“Hazardous Substance”** means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission that is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material or hazardous substance that is or becomes regulated by or under any Applicable Law or that is or becomes classified as hazardous or toxic by or under any Applicable Law;
- A1.98 **“Health, Safety and Security Management Plan”** means the plan described in Schedule 18 – Technical Requirements;
- A1.99 **“Heritage Find”** means property of archaeological, paleontological or heritage significance or historical resources located in, under or on the Lands including discovery of human remains;

- A1.100 “**Highland Signalization Site**” has the meaning as set out in Schedule 12 – Lands, Site(s), Facility(ies)
- A1.101 “**Identified Encumbrances**” means all unregistered rights of way, easements and other similar interests that have been disclosed in writing, and duly identified as such, to Design Builder prior to the Effective Date;
- A1.102 “**IFC Submittal**” has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.103 “**Indemnifiable Taxes**” has the meaning as set out in Section H15.2(a) of the Design Build Agreement;
- A1.104 “**Indemnified Party**” has the meaning as set out in Section N5.1 of the Design Build Agreement;
- A1.105 “**Indemnifying Party**” has the meaning as set out in Section N5.1 of the Design Build Agreement;
- A1.106 “**Indemnity Claim**” has the meaning as set out in Section N5.1 of the Design Build Agreement;
- A1.107 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Design Build Agreement;
- A1.108 “**Independent Certifier Agreement**” means the contract entered into between the City, Design Builder, and the Independent Certifier in substantially the form attached as Schedule 10 – Independent Certifier Agreement;
- A1.109 “**Independent Quality Certifier**” means the individual responsible for quality assurance of the Works as set out in Schedule 18 – Technical Requirements;
- A1.110 “**Indirect Losses**” has the meaning as set out in Section N3.2 of the Design Build Agreement;
- A1.111 “**Infrastructure**” means all improvements to the Lands designed and/or constructed by Design Builder pursuant to this Design Build Agreement and includes the completed Works;
- A1.112 “**Intellectual Property**” means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right;

- A1.113 **“Intellectual Property Rights”** means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the Effective Date created, brought into existence, acquired, used or intended to be used by Design Builder, any Design Builder Party, the City, any City Party, or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Design Builder or the City) for any or all of the purposes of:
- (a) the Works, including the design and construction of the Infrastructure (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
 - (b) the Design Build Agreement; or
 - (c) any other Project Activities;
- A1.114 **“Irrecoverable Tax”** has the meaning as set out in Section H12.2 of the Design Build Agreement;
- A1.115 **“Issued for Construction Documents”** has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.116 **“Jointly Developed Materials”** has the meaning as set out in Section Q7.4 of the Design Build Agreement;
- A1.117 **“Key Individuals”** means those persons listed as key individuals in Schedule 6 – Subcontractors and Key Individuals;
- A1.118 **“Labour and Material Payment Bond”** has the meaning as set out in Section C1.1 (a)(ii) of the Design Build Agreement;
- A1.119 **“Lands”** means the:
- (a) Construction Lands; and
 - (b) Staging Area Lands;
- A1.120 **“Latent Defect”** has the meaning as set out in E17.2(b) of the Design Build Agreement;
- A1.121 **“Lien Holdback”** has the meaning as set out in Section H6.1 of the Design Build Agreement;
- A1.122 **“Lifecycle Cost Management Plan”** means the plan described in Schedule 18 – Technical Requirements;
- A1.123 **“Main Street Site”** has the meaning as set out in Schedule 12 – Lands, Site(s), Facility(ies);
- A1.124 **“Make Good”** and derivatives thereof, means as applicable, repairing, restoring, refurbishing, rehabilitating, replacing or performing filling operation on the Works as

- required in Schedule 18 – Technical Requirements or any existing components disturbed due to the Works, including any Warranty Work, to at least the condition existing prior to the disturbance;
- A1.125 “**Material Adverse Effect**” means when a Design Builder Default, taken together with any other Design Builder Defaults of a similar nature:
- (a) creates a material risk to public security and safety or to the environment;
 - (b) creates a material risk of significant liability to third parties on the part of the City; or
 - (c) demonstrates a persistent inability or unwillingness on the part of Design Builder to adhere to its obligations under this Design Build Agreement;
- and includes any breach by Design Builder of:
- (d) its obligations under Section I of the Design Build Agreement;
 - (e) its obligations under Section M1 of the Design Build Agreement (provided, to the extent the City knows Design Builder is in breach of such reporting obligations, the City will give Design Builder notice of such breach); or
 - (f) its obligations under Section M2, Section M3 or Section M4 of the Design Build Agreement;
- A1.126 “**Milestone**” means a milestone in the performance of the Works by Design Builder, and a list of the Milestones is set out in Schedule 9 – Milestone Criteria and Milestone Payments;
- A1.127 “**Milestone Certificate**” has the meaning as set out in Section H3.5;
- A1.128 “**Milestone Criteria**” has the meaning as set out in Schedule 9 – Milestone Criteria and Milestone Payments;
- A1.129 “**Milestone Items Notice**” has the meaning as set out in Section H3.6;
- A1.130 “**Milestone Payment**” has the meaning as set out in Schedule 9 – Milestone Criteria and Milestone Payments;
- A1.131 “**Mobilization**” means the first occurrence at any part of the Lands of any preparatory works and operations initiated by Design Builder, including those necessary to secure any part of the Lands to install signage, for the movement and staging of personnel, equipment, supplies and incidentals at any part of the Lands for the establishment of all offices, buildings and other facilities necessary for work on the Project and commencing construction activities at any part of the Lands;
- A1.132 “**Monthly Project Report**” has the meaning as set out in Schedule 18 – Technical Requirements;

- A1.133 “**NEWPCC Site**” has the meaning as set out in Schedule 12 – Lands, Site(s), Facility(ies);
- A1.134 “**Non-Conformance**” means a failure by Design Builder to comply with the requirements specified in the Design Build Agreement;
- A1.135 “**Non-Conformance Report**” or “**NCR**” means a document or form that identifies and summarizes the details regarding a Non-Conformance and provides notification to the City of such Non-Conformance;
- A1.136 “**Non-Conformance Report Plan**” or “**NCR Plan**” means a document or form that details the proposed correction or rectification of a Non-Conformance, including the root cause and corrective actions;
- A1.137 “**North End Sewage Treatment Plant**” or “**NEWPCC**” or “**North End Water Pollution Control Centre**” means the sewage treatment plant located at 2230 Main Street, Winnipeg, Manitoba;
- A1.138 “**Notice of Default**” means a notice from the City to Design Builder specifying a Design Builder Default;
- A1.139 “**Operations Advisory Period**” has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.140 “**Operations Advisory Services**” has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.141 “**Operations Personnel**” has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.142 “**Owner’s Advocate**” means AECOM Canada Ltd. being the engineering consulting firm engaged to provide professional expertise to the City;
- A1.143 “**Party**” means either the City or Design Builder, and “**Parties**” means collectively the City and Design Builder;
- A1.144 “**Payment Adjustment**” means an adjustment to any payment authorized under Section H7 of this Design Build Agreement and summarized in Schedule 14 – Payment Adjustments;
- A1.145 “**Permits, Licences and Approvals**” means all permissions, consents, approvals, certificates, permits, registrations, licences, agreements and authorizations required to perform the Project in accordance with this Design Build Agreement and as required by Applicable Law;
- A1.146 “**Permitting Management Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.147 “**Prevention Through Design Plan**” means the plan described in Schedule 18 – Technical Requirements;

- A1.148 **“Process Performance Guarantee”** means the criteria that Design Builder must meet as set out in Schedule 18 – Technical Requirements and evaluated by the process of performance guarantee testing and demonstrations that Design Builder must perform pursuant to Section E22 of the Design Build Agreement;
- A1.149 **“Process Performance Guarantee Letter of Credit”** has the meaning as set out in Section C1.1(b)(i) of the Design Build Agreement;
- A1.150 **“Procurement Management Plan”** means the plan described in Schedule 18 – Technical Requirements;
- A1.151 **“Project”** has the meaning as set out in the Recitals;
- A1.152 **“Project Activities”** includes:
- (a) the performance of the Works;
 - (b) the performance of all other obligations of Design Builder under the Design Build Agreement; and
 - (c) any City operation, maintenance, and/or use, of the Works and the Infrastructure;
- A1.153 **“Project Background Information”** means any and all drawings, reports, studies, data, documents or other information, regardless of form, format or medium, given or made available to Design Builder or any Design Builder Party by the City or any City Party, or which was obtained by Design Builder or any Design Builder Party from or through any other sources concerning or related to the Project;
- A1.154 **“Project Data”** means:
- (a) all Design Data; and
 - (b) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Activities or the Design Build Agreement;
- other than the Jointly Developed Materials and Project Background Information and other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction;
- A1.155 **“Project Management Plan”** means the plan described in Schedule 18 – Technical Requirements;
- A1.156 **“Project Schedule”** means Design Builder’s schedule for design and construction of the Project, set out in Schedule 2 – Design Builder’s Project Schedule, and including any amendments made from time to time in accordance with the Design Build Agreement;
- A1.157 **“Project Term”** means the period commencing on the Effective Date and expiring at midnight on the Termination Date;

- A1.158 “**Quality Management System**” or “**QMS**” has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.159 “**Recoverable Tax**” has the meaning as set out in Section H12.3 of the Design Build Agreement;
- A1.160 “**Relief Event**” has the meaning as set out in Section K1.1 of the Design Build Agreement;
- A1.161 “**Relief Event Notice**” has the meaning as set out in Section K3.1 of the Design Build Agreement;
- A1.162 “**Remedial Action**” has the meaning as set out in Section O1.2 of the Design Build Agreement;
- A1.163 “**Remediation Management Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.164 “**Request for Information**” or “**RFI**” means a request by Design Builder for additional information or clarification of the Design Build Agreement;
- A1.165 “**Request for Proposals**” or “**RFP**” means the request for proposals issued on March 10, 2020 by the City in respect of the Project;
- A1.166 “**Request for Substitution**” or “**RFS**” means a request by Design Builder for a substitution or variance from the Design Build Agreement including material, equipment, manufacturer, process or plan that would result in equal or better performance and quality offered in substitution for those specified;
- A1.167 “**Resource Management Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.168 “**Retail Sales Tax**” or “**RST**” means the retail sales tax imposed pursuant to *The Retail Sales Tax Act, 1987* (Manitoba);
- A1.169 “**Risk Management Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.170 “**SC-3**” has the meaning as set out in Schedule 12 – Lands, Site(s), Facility(ies);
- A1.171 “**Scheduled Final Completion Date**” means the day that is ____ Calendar Days after the Substantial Completion Date;
- A1.172 “**Scheduled Substantial Completion Date**” means ____, as such date may be adjusted in accordance with Sections I4, J1 or K2 of the Design Build Agreement or Schedule 17 – Change Orders;
- A1.173 “**Schedule Management Plan**” means the plan described in Schedule 18 – Technical Requirements;

- A1.174 “**Scope Management Plan**” means the plan described in Schedule 18 – Technical Requirements;
- A1.175 “**SECOR Certificate**” means a valid Manitoba Small Employer Certificate of Recognition and Letter of Good Standing (or Manitoba equivalency) as issued under the Small Employer Certificate of Recognition Program (SECOR™) administered by the Construction Safety Association of Manitoba or by the Manitoba Heavy Construction Association’s WORKSAFELY™ COR™ Program;
- A1.176 “**Senior Executive Committee**” has the meaning as set out in Section R1.1 of the Design Build Agreement;
- A1.177 “**Senior Executive Committee Meeting**” has the meaning as set out in Section R1.2 of the Design Build Agreement;
- A1.178 “**Site Conditions**” means the condition of the Lands, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions;
- A1.179 “**Site North East**” has the meaning as set out in Schedule 12 – Lands, Site(s), Facility(ies);
- A1.180 “**Staging Area Lands**” has the meaning as set out in Schedule 12 – Lands, Site(s), Facility(ies);
- A1.181 “**Submittal Schedule**” has the meaning as set out in Schedule 5 – Review Procedure;
- A1.182 “**Submittals**” means:
- (i) the information requirements set out in Schedule 18 – Technical Requirements - Appendix 18N – Design Submittal Requirements including all supporting documentation thereto;
 - (ii) Design Builder’s Management Systems and Plans including all supporting documentation thereto;
 - (iii) signed and sealed Construction Mitigation Plans in accordance with the Technical Requirements;
 - (iv) Tie-in or Shutdown Work Plans in accordance with Schedule 18 – Technical Requirements - Appendix 18P – Coordination Protocol;
 - (v) NCR Plans submitted in accordance with the Technical Requirements; and
 - (vi) any other documents, reports, plans, drawings, specifications, design calculations, data, certificates, samples, shop drawings, mock-ups, logs, tests, methods, schedules, catalogue cuts, manufacturer's installation instructions, guides, manuals, operations and maintenance

information, training plans, and asset data including all supporting documentation thereto, required to be submitted by Design Builder in accordance with the Design Build Agreement and required to be reviewed under this Schedule 5;

- A1.183 “**Substantial Completion**” means the point at which design and construction has been completed in accordance with the Design Build Agreement and all requirements for Substantial Completion described in Schedule 18 – Technical Requirements other than in respect of items on the Deficiency List have been satisfied;
- A1.184 “**Substantial Completion Certificate**” has the meaning as set out in Section F1.5 of the Design Build Agreement;
- A1.185 “**Substantial Completion Date**” means the date Substantial Completion is achieved as evidenced by the Substantial Completion Certificate;
- A1.186 “**Technical Requirements**” means all requirements set out in Schedule 18 – Technical, including all appendices, and including any amendments made pursuant to Section G1 of the Design Build Agreement;
- A1.187 “**Termination Date**” means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Design Build Agreement takes effect in accordance with its terms;
- A1.188 “**Termination Event**” means any event described in Section O2 of the Design Build Agreement;
- A1.189 “**Termination Payment**” means the applicable payment specified in Section P required to be made by the City to Design Builder upon termination of this Design Build Agreement;
- A1.190 “**The Employment Standards Code**” means *The Employment Standards Code, 1998* (Manitoba), as amended or replaced from time to time;
- A1.191 “**Tie-in or Shutdown Work Plan**” means the plan described in Schedule 18 – Technical Requirements - Appendix 18P – Coordination Protocol Section G;
- A1.192 “**Trade-Marks**” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol;
- A1.193 “**Training Plan**” has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.194 “**Universal Transverse Mercator**” or “**UTM**” means the coordinate system used for the Project, which is referenced to the City of Winnipeg June 90 (LBIS) system;
- A1.195 “**Unknown Utilities**” means Utility Infrastructure discovered by Design Builder on or under the Lands following the Effective Date, which is not disclosed in or readily inferable from the Project Background Information;

- A1.196 **“Utility Company”** means the owner or operator of any Utility Infrastructure;
- A1.197 **“Utility Infrastructure”** means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, lighting, data, communications, gas, oil and petroleum products, water, storm water or sewage, wireless, or other similar commodity or substance which serve the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, and all related infrastructure;
- A1.198 **“Veolia”** means Veolia Water North America (Winnipeg) Inc., who in conjunction with the City has undertaken The Winnipeg Sewage Treatment Program (WSTP) to facilitate various City wastewater treatment projects and programs;
- A1.199 **“Warranty Holdback”** has the meaning as set out in Section H5.1 of the Design Build Agreement;
- A1.200 **“Warranty Period”** has the meaning as set out in Section E17.1 of the Design Build Agreement;
- A1.201 **“Warranty Work”** has the meaning as set out in Section E17.5 of the Design Build Agreement;
- A1.202 **“Water Management Plan”** means the plan described in Schedule 18 – Technical Requirements;
- A1.203 **“Work”** and **“Works”** means the design, engineering, construction, installation, training, commissioning, testing and completion of the Infrastructure, including correction and rectification of any items on the Deficiency List, preparation of project closeout documents, operations advisory services, Warranty Work, all other work under the Permits, Licences, Approvals, and any other activities necessary to fulfill the requirements of this Design Build Agreement; and
- A1.204 **“Work Breakdown Structure”** has the meaning as set out in Schedule 18 – Technical Requirements;
- A1.205 **“Workplace Safety and Health Act and Regulations”** means the *Workplace Safety and Health Act*, 1987 (Manitoba) and the *Workplace Safety and Health Regulation*, 2006 (Manitoba), as amended or replaced from time to time;
- A1.206 **“Workplace Safety and Health Act Conviction”** or **“WSHA Conviction”** has the meaning as set out in Section O2.1(n) of the Design Build Agreement.

SECTION B INTERPRETATION

B1. Interpretation Rules

- B1.1 The Design Build Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) the tables of contents, headings, marginal notes and references to them in the Design Build Agreement are for convenience of reference only, shall not constitute a part of the Design Build Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Design Build Agreement;
- (b) except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Design Build Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Design Build Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Design Build Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous;
- (c) except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Design Build Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Design Build Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix;
- (d) except where the context requires otherwise, references in the Technical Requirements to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Technical Requirements shall be construed such that each such reference on a page of the Technical Requirements will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 18 – Technical Requirements shall be interpreted to include the applicable prefix Section number or other reference;
- (e) the Schedules to the Design Build Agreement are an integral part of the Design Build Agreement and a reference to the Design Build Agreement includes a reference to the Schedules;
- (f) all references in the Design Build Agreement to a Schedule shall be to a Schedule of the Design Build Agreement;
- (g) all capitalized terms used in a Schedule shall have the meanings given to such terms in this Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule;
- (h) the language of the Technical Requirements and other documents comprising the Design Build Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Design Builder and shall be construed and interpreted as if the words “Design Builder shall” immediately preceded the instructions, directions or obligations;

- (i) words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity;
- (j) unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders;
- (k) unless otherwise provided in the Design Build Agreement, all accounting and financial terms used in the Design Build Agreement shall be interpreted and applied in accordance with Canadian GAAP;
- (l) references to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Design Build Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned;
- (m) references to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same;
- (n) references to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute;
- (o) references to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization;
- (p) a reference in the Design Build Agreement to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time;
- (q) references to a deliberate act or omission or deliberate or negligent act or omission of any City Party shall be construed having regard to the interactive nature of the activities of the City Parties and Design Builder and further having regard to:
 - (i) acts contemplated by the Technical Requirements;

- (ii) acts or omissions in the ordinary course of the City Operations and expressly or reasonably inferred from the Technical Requirements to be taken into account by Design Builder in the performance of the Works; or
 - (iii) acts otherwise provided for in the Design Build Agreement,
- (r) the words in the Design Build Agreement shall bear their natural meaning;
- (s) each of Design Builder's and the City's respective obligations shall be construed as separate obligations owed to the other;
- (t) references containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Design Build Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation";
- (u) where "cost effective", "appropriate", "sufficient", "minimize" and related and similar terms are used, they shall be construed and interpreted in terms of whether they are cost effective, appropriate, sufficient, minimizing, etc. from the perspective of an experienced, prudent, and knowledgeable public owner of a large metropolitan wastewater treatment plant and sewer infrastructure who balances capital costs against maintenance, operations, efficiency and other non-capital costs over the life of the Infrastructure;
- (v) in construing the Design Build Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Design Build Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- (w) any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of the Design Build Agreement;
- (x) where the Design Build Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 4:30 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 4:30 p.m. on the next Business Day;

- (y) where the Design Build Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 4:30 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 4:30 p.m. on the next Business Day;
- (z) where the Design Build Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 4:30 p.m. on that day, or, if that day is not a Business Day, 4:30 p.m. on the next Business Day;
- (aa) any reference to time of day or date means the local time or date in Winnipeg, Manitoba;
- (bb) unless otherwise indicated, time periods will be strictly construed;
- (cc) whenever the terms “will” or “shall” are used in the Design Build Agreement in relation to Design Builder or the City, they shall be construed and interpreted as synonymous and to read “Design Builder shall” or “the City will” as the case may be;
- (dd) any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency;
- (ee) unless otherwise identified in the Design Build Agreement, all units of measurement in any documents submitted by Design Builder to the City will be in accordance with the SI system of units;
- (ff) standard units of measurement may be abbreviated within the Technical Requirements and will have their ordinary meaning for the context;
- (gg) terms not defined herein and used in the Design Build Agreement which have a technical meaning commonly understood by the water and wastewater construction industry in Manitoba will be construed as having that meaning unless the context otherwise requires;
- (hh) the terms “readily inferable”, “properly inferable”, “readily apparent” and “readily discoverable” as used in this Design Build Agreement, shall be interpreted by taking into consideration Design Builder’s and any Design Builder Party’s experience and the investigations, inspections and examinations of the Project Background Information and of the Lands carried out by Design Builder or by any Design Builder Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice; and
- (ii) whenever it is stated that a Party has “discretion” or “sole discretion”, it means that the Party has the sole, absolute and unfettered discretion, with no

requirement to act reasonably or provide reasons unless specifically required under the provisions of the Design Build Agreement.