



THE CITY OF WINNIPEG

**DEVELOPMENT PHASE
AGREEMENT**

RFP NO. 779-2021B

**PROGRESSIVE DESIGN BUILD
OF
NORTH END SEWAGE TREATMENT PLANT (NEWPCC) UPGRADE:
BIOSOLIDS FACILITIES**

Version 1

TABLE OF CONTENTS

	Page
SECTION A DEFINITIONS	2
SECTION B INTERPRETATION.....	2
B.1 Definitions and Interpretation	2
B.2 Schedules and Appendices to this DPA.....	2
B.3 Conflict of Terms.....	3
B.4 Relationship to Draft Design Build Agreement	5
SECTION C DEVELOPMENT PHASE AGREEMENT TERM AND STAGE GATES	5
C.1 Commencement on Effective Date and Expiry and Termination.....	5
C.2 Start-up Period Activities.....	6
C.3 Preliminary Design Period.....	7
C.4 Intermediate Design Period.....	7
C.5 Stage Gate Meetings	8
C.6 Stage Gate Reports	8
C.7 Stage Gates.....	9
C.8 DBA Agreement Finalization and Approval Period	9
SECTION D REPRESENTATIONS AND WARRANTIES	10
D.1 Development Partner Representations and Warranties	10
D.2 City Representations and Warranties.....	12
SECTION E DEVELOPMENT PHASE ACTIVITIES	13
E.1 Purpose of Development Phase.....	13
E.2 Preliminary Development Phase Plan	13
E.3 Design Build Agreement Negotiations.....	13
E.4 Notice to Proceed to Design Build Agreement Execution	15
E.5 Non Exclusive Agreement.....	17
E.6 No Fettering of Authority	17
SECTION F DEVELOPMENT PHASE GOVERNANCE.....	18
F.1 Parties to Collaborate and Cooperate	18
F.2 Dispute Resolution.....	19
F.3 Right to Designate	20
SECTION G APPOINTMENT OF REPRESENTATIVES	20
G.1 City DPA Representative	20
G.2 Development Partner DPA Representative	21
G.3 Communications to Representatives.....	22
G.4 City Advisors.....	22
SECTION H BACKGROUND INFORMATION	22

H.1	Review of DPA Background Information	22
H.2	No Warranty for DPA Background Information	23
H.3	No Claims or Liability in Respect of DPA Background Information	23
H.4	Project Background Information	24
H.5	Additional Background Information	24
SECTION I	DEVELOPMENT PHASE SERVICES	24
I.1	Performance of Development Phase Services	24
I.2	General Development Phase Services Requirements	24
I.3	Development Phase Schedule	26
SECTION J	KEY DP INDIVIDUALS AND KEY DP SUBCONTRACTORS	27
J.1	Key DP Individuals and Replacement of Other Development Partner Team Members	27
J.2	Development Partner Subcontracting	28
SECTION K	LANDS	31
K.1	Access to Lands	31
K.2	Due Diligence and Investigations	32
K.3	Other Property Rules	33
K.4	No Liens	33
SECTION L	ESTIMATES AND CHANGE ORDERS	34
L.1	Estimates	34
L.2	DPA Change Orders and Additional Development Partner Services Proposals ...	34
SECTION M	PAYMENT AND TAXES	35
M.1	DPA Contract Award, DPA Upset Limit, and DPA Reserve	35
M.2	Eligible Costs, Corporate Overhead and Profit	35
M.3	Payments to Development Partner	36
M.4	Set-Off	36
M.5	Effect of Payment	36
M.6	No Other Entitlement	36
M.7	Taxes	36
M.8	Lien Holdback	37
SECTION N	FORCE MAJEURE	37
N.1	Force Majeure	37
SECTION O	INSURANCE AND PERFORMANCE SECURITY	39
O.1	Insurance	39
O.2	Parent Guarantee	39
SECTION P	CONFIDENTIALITY AND CONFLICT OF INTEREST	39
P.1	Confidentiality	39
P.2	Conflict of Interest	39

P.3	Public Disclosure	41
P.4	Integrity Matters	41
SECTION Q	DEFAULT	41
Q.1	Development Partner Event of Default	41
Q.2	City DPA Event of Default	44
SECTION R	NON-EVENT OF DEFAULT TERMINATION	45
R.1	Termination for Convenience	45
R.2	Termination for Force Majeure Event	46
R.3	Automatic Termination and Expiry on Design Build Agreement Execution	46
R.4	No Other Rights to Terminate	46
SECTION S	EFFECTS OF TERMINATION	46
S.1	Development Partner's Obligations on Termination	46
S.2	City's Payment Obligations on Termination	47
S.3	Other Termination Rights and Obligations of the Parties	48
S.4	Survival	49
SECTION T	SUSPENSION OF DEVELOPMENT PARTNER SERVICES	49
T.1	Suspension of Development Partner Services by the City	49
SECTION U	INDEMNITIES AND CONDUCT OF CLAIMS	50
U.1	Development Partner's Indemnity	50
U.2	City's Indemnity	51
U.3	Conduct of Claims	51
SECTION V	LIMITS OF LIABILITY	51
V.1	No Liability for Indirect Losses or in Tort	51
V.2	Maximum Liability	52
SECTION W	RECORDS, INFORMATION AND AUDIT	52
W.1	Records Provisions, Information and General Audit Rights	52
SECTION X	OWNERSHIP OF PROJECT DOCUMENTS AND INTELLECTUAL	
PROPERTY	52	
SECTION Y	PROHIBITED ACTS	53
Y.1	Prohibited Acts Definition	53
Y.2	Prohibited Acts Remedies	54
Y.3	Permitted Payments	55
Y.4	Notification	55
Y.5	Replacement of Development Partner Party	55
SECTION Z	GENERAL	55

Z.1	Notices.....	55
Z.2	Assignment.....	57
Z.3	Change in Ownership	58
Z.4	Enurement.....	58
Z.5	Applicable Law and Jurisdiction	59
Z.6	Amendment and Waiver	59
Z.7	Severability	59
Z.8	Cumulative Remedies.....	59
Z.9	Additional Assurances	59
Z.10	Costs.....	59
Z.11	Counterparts	60
Z.12	Joint and Several.....	60
Z.13	Entire Agreement	60
Z.14	Currency	60
Z.15	No Agency, Joint Venture, Partnership, Lease or Loan	60

DPA SCHEDULES

Schedule No.	Description
Schedule 1	– Definitions and Interpretation
Schedule 2	– Development Phase Governance
Schedule 3	– Development Phase Scope of Work
Schedule 4	– Development Phase Schedule Requirements
Schedule 5	– Development Phase Submittal Review Process
Schedule 6	– Key DP Individuals and Key DP Subcontractors
Schedule 7	– Development of Contract Price
Schedule 8	– Development Phase Payment
Schedule 9	– Change Orders
Schedule 10	– Form of Parent Guarantee
Schedule 11	– Development Phase Insurance
Schedule 12	– Form of Assignable Subcontract Agreement
Schedule 13	– Preliminary Development Phase Plan
Schedule 14	– Draft Design Build Agreement

DEVELOPMENT PHASE AGREEMENT

THIS AGREEMENT is made and effective as of the [●] day of [●], 20[●] (the “Effective Date”)

BETWEEN:

THE CITY OF WINNIPEG

(the “City”)

AND:

[●], a [●]

(“Development Partner”)

[Note to Proponents: To be drafted based on the corporate structure of Development Partner.]

WHEREAS:

- A. The City intends to undertake the North End Sewage Treatment Plant (NEWPCC) Upgrade: Biosolids Facilities Project, which includes the design and construction of a new biosolids facility, modifications to the existing primary clarification facility, and modifications to the existing centrate treatment facility, all of which Work is to be performed while minimizing impact on the continuing operation of the existing NEWPCC in the City of Winnipeg. (the “**Project**”).
- B. The City issued a request for proposals (“**Request for Proposals**”) on [date] for the Project and Development Partner was selected as the “Preferred Proponent” under the Request for Proposals to enter into this DPA with the City.
- C. The City and Development Partner wish to enter into this DPA, which sets out the terms and conditions upon which Development Partner shall perform the Development Partner Services, which, amongst other things, includes Development Partner’s submission of the Development Phase Deliverables.
- D. Development Partner’s performance of the Development Partner Services will support the City’s assessment and determination if the City, in its sole discretion, will elect to proceed to enter into a Final Design Build Agreement with the Design Builder following the negotiation and finalization by the City and Development Partner of the form of the Draft Design Build Agreement.

- E. The intention of the Parties is to work collaboratively throughout the DPA Term to achieve the objectives of the Development Phase and successfully enter into a Final Design Build Agreement.
- F. If the City and the Design Builder enter into a Final Design Build Agreement, this DPA will automatically expire and terminate and except as set out in this DPA, all Development Partner Services, including any Early Works, will be deemed to have been completed as part of the Works under the Final Design Build Agreement.
- G. If this DPA is terminated in accordance with its terms other than as a result of its expiry and termination upon the City and the Design Builder entering into a Final Design Build Agreement, then the City may exercise its rights under the Assignable Subcontract Agreement, including to cause the completion of the DPA Design Works pursuant to the DPA Subcontracts so that the City may complete the Project or develop a project similar to the Project by way of a development model that may be different than the development model contemplated by the Draft Design Build Agreement and by persons that exclude Development Partner and some or all of the Development Partner Parties.

NOW THEREFORE in consideration of the mutual promises and agreements of the Parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

SECTION A DEFINITIONS

- A1.1 Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this DPA have the respective meanings given to them in DPA Schedule 1 – Definitions and Interpretation.

SECTION B INTERPRETATION

B.1 Definitions and Interpretation

- B1.1 This DPA shall be interpreted in accordance with DPA Schedule 1 – Definitions and Interpretation.

B.2 Schedules and Appendices to this DPA

- B2.1 Except as set out in Section B.4, this DPA is comprised of this executed DPA and the following DPA schedules, including appendices, all of which are hereby incorporated by reference into and form part of this DPA:

DPA Schedule No.	Description
Schedule 1	– Definitions and Interpretation
Schedule 2	– Development Phase Governance
Schedule 3	– Development Phase Scope of Work
Schedule 4	– Development Phase Schedule Requirements
Schedule 5	– Development Phase Submittal Review Process
Schedule 6	– Key DP Individuals and Key DP Subcontracts
Schedule 7	– Development of Contract Price
Schedule 8	– Development Phase Payment
Schedule 9	– Change Orders
Schedule 10	– Form of Parent Guarantee
Schedule 11	– Development Phase Insurance
Schedule 12	– Form of Assignable Subcontract Agreement
Schedule 13	– Preliminary Development Phase Plan
Schedule 14	– Draft Design Build Agreement

B2.2 The recitals to this DPA form part of this DPA, provided that they are intended to be read as subordinate to the other provisions of this DPA.

B2.3 The documents comprising this DPA are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section B.3 shall apply.

B.3 Conflict of Terms

B3.1 In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this DPA, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the provisions of amendments in writing to this DPA signed by the Parties shall govern and take precedence only over those specific provisions of this DPA expressly amended thereby;
- (b) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
- (c) the body of this DPA;
- (d) DPA Schedule 1 – Definitions and Interpretation;
- (e) DPA Schedule 2 – Development Phase Governance;
- (f) DPA Schedule 8 – Development Phase Payment;
- (g) DPA Schedule 3 – Development Phase Scope of Work;

- (h) DPA Schedule 11 – Development Phase Insurance;
 - (i) DPA Schedule 9 – Change Orders; and
 - (j) the other DPA Schedules in the order in which they are listed in Section B2.1.
- B3.2 For clarity, to the extent a provision of the Draft Design Build Agreement is incorporated by reference into the body of this DPA or any other DPA Schedule to this DPA, such provisions shall have the order of precedence of its location within this DPA, as set out in Section B3.1.
- B3.3 Subject to Section B3.1, if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Development Partner Services, the provision that applies to the specific part of the Development Partner Services shall govern for that specific part of the Development Partner Services.
- B3.4 During the DPA Term, Development Partner shall promptly advise the City in writing of:
- (a) any ambiguity, conflict, inconsistency between or among any of the provisions of this DPA;
 - (b) any error, found or noted in this DPA or in any of the portions of the Draft Design Build Agreement that are not included by reference in this DPA pursuant to Section B.4;
 - (c) supplementary details, instructions or directions that do not correspond with those contained in DPA; and
 - (d) any other omission in or other fault with this DPA or in any of the portions of the Draft Design Build Agreement that are not included by reference in this DPA pursuant to Section B.4 that become evident to Development Partner and should be corrected respectively in order for:
 - (i) Development Partner to properly perform the Development Partner Services in accordance with this DPA, including in accordance with Applicable Law; and
 - (ii) the Design Builder to properly perform the Works under the Final Design Build Agreement in the event that the Final Design Build Agreement were to be entered into by the City and Development Partner in accordance with this DPA.
- B3.5 If any ambiguity, conflict, or inconsistency is not readily resolved by the foregoing provisions of this Section B.3, then Development Partner, upon discovery of same, shall immediately give Notice to the City DPA Representative. The City DPA Representative shall, no later than 5 Business Days following such Notice, make a determination of which provision governs and give Notice of such determination, in writing, to Development Partner.

B3.6 The City and Development Partner shall comply with the determination of the City DPA Representative pursuant to Section B3.5 unless the City or Development Partner dispute the decision of the City DPA Representative in which event such DPA Dispute may be referred for resolution in accordance with Section F.2.

B.4 Relationship to Draft Design Build Agreement

B4.1 Except where the context otherwise requires, the Parties agree that each reference expressly set out in this DPA (other than in DPA Schedule 14 – Draft Design Build Agreement) to a specific section, paragraph, subparagraph, part or other division of the Draft Design Build Agreement (including in the Development Partner DBA Requirements) that is expressly intended to bind the Parties under this DPA is, to the extent applicable, incorporated into this DPA by such reference as if such section, paragraph, subparagraph, part or other division of the Draft Design Build Agreement was expressly set out in this DPA and shall be applicable *mutatis mutandis*, including as though, if and to the extent set out in such reference:

- (a) the “Design Build Agreement” under the Draft Design Build Agreement was this DPA;
- (b) “the City” under the Draft Design Build Agreement was the City under this DPA;
- (c) “the Design Builder” under the Draft Design Build Agreement was Development Partner under this DPA;
- (d) the applicable part of the “Works” under the Draft Design Build Agreement was an applicable part of the Development Partner Services under this DPA;
- (e) a “Change Order” under the Draft Design Build Agreement was a DPA Change Order under this DPA; and
- (f) the applicable “Project Schedule” under the Draft Design Build Agreement was the applicable Development Phase Schedule under this DPA.

B4.2 Notwithstanding anything to the contrary in this DPA, except as expressly set out in this DPA, no provision of the Draft Design Build Agreement is incorporated into this DPA and no such provision shall have any legal force or effect whatsoever, and the Draft Design Build Agreement may be revised or amended in accordance with the provisions of this DPA during the DPA Term.

SECTION C DEVELOPMENT PHASE AGREEMENT TERM AND STAGE GATES

C.1 Commencement on Effective Date and Expiry and Termination

C1.1 This DPA commences on the Effective Date and shall expire and terminate upon the earlier of (i) Design Build Agreement Execution, or (ii) the date this DPA is otherwise terminated in accordance with its terms (the “DPA Term”).

C.2 Start-up Period Activities

- C2.1 During the Start-up Period, the City and Development Partner shall undertake the following activities:
- (a) submission and review of all Submittals required during the Start-up Period set out in DPA Schedule 5 – Development Phase Submittal Review Process;
 - (b) any other activities required to be completed during the Start-up Period as described in Section B of DPA Schedule 3 – Development Phase Scope of Work;
 - (c) collaboratively develop a charter which provides an overview of the Project and forms a foundation for the collaborative relationship between the City and Development Partner and which shall have the following components:
 - (i) overview description of the Project;
 - (ii) the Project goals;
 - (iii) the Project team organization; and
 - (iv) list of Project stakeholders,(the "**DPA Charter**"); and
 - (d) delivery of the Preliminary Design Period Work Plan by Development Partner, (the "**Start-up Period Activities**").
- C2.2 Stage Gate #3 shall be 16 months from the Effective Date. The date of Stage Gate #3 is [●]. [NTD: date to be populated prior to execution]
- C2.3 The Design Build Agreement Execution Target Date is anticipated 90 days following Stage Gate #3.
- C2.4 During the Start-up Period the City and Development Partner shall collaboratively identify the following Key DPA Milestone dates to meet the Stage Gate #3 date:
- (a) Stage Gate #1; and
 - (b) Stage Gate #2.
- C2.5 No later than 5 Business Days following the Effective Date, the City and Development Partner shall attend a meeting (the "**Development Phase Start-up Meeting**") to resolve all preliminary and preparatory issues related to the Development Phase and to ensure alignment of the City and Development Partner on the following:
- (a) overview of the City's expectations and objectives for the DPA Term;
 - (b) overview of Parties' obligations during the Start-up Period;

- (c) resource and staffing issues;
- (d) the schedule of activities for the Development Phase and work plans;
- (e) scheduling and confirming attendees and date for DPA Charter development meeting;
- (f) other meetings required during the Start-up Period;
- (g) timing, function and role of Working Groups established pursuant to DPA Schedule 2 -Development Phase Governance; and
- (h) common process, governance and reporting requirements that each level of governance will follow.

C2.6 Development Partner and the City shall meet and collaborate with respect to the development of the DPA Submittals required to be submitted during the Start-up Period set out in DPA Schedule 5 – Development Phase Submittal Review Process and Development Partner shall provide drafts of such submittals at least two Business Days in advance of such meetings.

C.3 Preliminary Design Period

C3.1 During the Preliminary Design Period, the City and Development Partner shall undertake the following activities:

- (a) submission and review of all Submittals required during the Preliminary Design Period set out in DPA Schedule 5 – Development Phase Submittal Review Process;
- (b) any due diligence or investigations determined by the Parties to be necessary for the progress of the Development Partner Services;
- (c) any other activities required to be completed during the Preliminary Design Period as described in Section C of DPA Schedule 3 – Development Phase Scope of Work; and
- (d) delivery of the Preliminary Design Submittal by Development Partner,

(the “**Preliminary Design Period Activities**”).

C.4 Intermediate Design Period

C4.1 During the Intermediate Design Period, the City and Development Partner shall undertake the following activities:

- (a) submission and review of all Submittals required during the Intermediate Design Period set out in DPA Schedule 5 – Development Phase Submittal Review Process;

- (b) any other activities required to be completed during the Intermediate Design Period as described in Section D of DPA Schedule 3 – Development Phase Scope of Work; and
- (c) delivery of the Intermediate Design Submittal by Development Partner,
(the “**Intermediate Design Period Activities**”).

C.5 **Stage Gate Meetings**

- C5.1 The City and Development Partner shall conduct a series of meetings aligned with the submission of the Preliminary Design Period Work Plan, Preliminary Design Submittal, and the Intermediate Design Submittal which are intended to be progressive periods for achieving the objectives of the Development Phase (each a “**Stage Gate Meeting**”). Unless otherwise agreed, the Parties shall not progress from one Stage Gate Meeting to a subsequent Stage Gate Meeting without resolving, achieving alignment on, and finalizing the issues and deliverables required for the earlier Stage Gate Meeting.
- C5.2 Prior to each Stage Gate Meeting, all parts of the agreed deliverables for each Stage Gate Meeting must be sufficiently progressed and approved by the Leadership Team.
- C5.3 The City DPA Representative and the Development Partner DPA Representative shall be jointly responsible for organizing each of the Stage Gate Meetings and ensuring that,
 - (a) information with respect to the status of all actions from the previous Stage Gate Meeting have been documented in the action log which shall be established and managed by the Leadership Team;
 - (b) all materials required at each Stage Gate Meeting have been distributed to the Leadership Team no later than 5 Business Days prior to a Stage Gate Meeting;
 - (c) draft minutes from each Stage Gate Meeting are developed and distributed to the Leadership Team no later than two Business Days following the occurrence of a Stage Gate Meeting; and
 - (d) minutes from each Stage Gate Meeting are finalized and distributed to the Leadership Team no later than 5 Business Days following the occurrence of a Stage Gate Meeting.

C.6 **Stage Gate Reports**

- C6.1 On or before the Start-up Period End Date, Development Partner shall submit the Preliminary Design Period Work Plan to the City for approval in accordance with Section B8 of DPA Schedule 3 – Development Phase Scope of Work.
- C6.2 On or before the Preliminary Design Period End Date, Development Partner shall submit the Preliminary Design Submittal to the City for approval in accordance with Section C14 of DPA Schedule 3 – Development Phase Scope of Work.

C6.3 On or before Stage Gate #3, Development Partner shall submit the Intermediate Design Submittal to the City for approval in accordance with Section D12 of DPA Schedule 3 – Development Phase Scope of Work.

C6.4 Stage Gate Reports shall be reviewed in accordance with DPA Schedule 5 – Development Phase Submittal Review Process. The City shall provide a Submittal Endorsement to Development Partner no later than:

- (a) 20 Business Days for the Preliminary Design Period Work Plan;
- (b) 20 Business Days for the Preliminary Design Submittal; or
- (c) 30 Business Days for the Intermediate Design Submittal.

C.7 **Stage Gates**

C7.1 After review in accordance with DPA Schedule 5 – Development Phase Submittal Review Process, Stage Gate Reports with a Submittal Endorsement of:

- (a) “Work May Proceed”, the City will approve the Stage Gate Report; or
- (b) “Comments”, the City will request further documentation or supplementary information from Development Partner to support the Stage Gate Report which information shall be provided and resubmitted in accordance with Section C4.4 of DPA Schedule 5 – Development Phase Submittal Review Process; or
- (c) “Not Recommended”, the City will not approve the Stage Gate Report and will proceed to terminate this DPA in accordance with Section R1.1 of the DPA.

C7.2 If the City requests further information in accordance with Section C7.1(b), the City shall provide a Submittal Endorsement in accordance with the timelines in Section C6.4.

C.8 **DBA Agreement Finalization and Approval Period**

C8.1 If the City approves the Intermediate Design Submittal in accordance with Section C7.1(a), following notification by the City to Development Partner of its approval, the City and Development Partner shall undertake the following activities:

- (a) finalization of the Draft Design Build Agreement in preparation for contract execution;
- (b) resolution of all non-conformances on all Submittals;
- (c) conclusion of negotiations on the Contract Price and the Project Schedule; and
- (d) all required City approvals necessary to proceed to the Implementation Phase, (the “**DBA Agreement Finalization and Approval Period Activities**”).

SECTION D REPRESENTATIONS AND WARRANTIES

D.1 Development Partner Representations and Warranties

D1.1 Development Partner represents and warrants to the City that as of the Effective Date:

- (a) Development Partner is **[a corporation incorporated]** and validly existing under the laws of **[•]**, is in good standing with the **[•]** with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this DPA and to perform its obligations hereunder;

[Note to Proponents: To be revised in accordance with Development Partner's business structure and jurisdiction of formation requirements, if any. Development Partner will have a Canadian residency requirement for withholding tax purposes. If Development Partner is a joint venture, each of the joint venture entities will be jointly and severally liable under this DPA.]

- (b) Development Partner and the Development Partner Parties, collectively, have experience and are knowledgeable in the design and construction of infrastructure similar to those included in the scope of the Development Partner Services and the project of similar scope and complexity, including those projects with a development phase, and have the required ability, experience, skill and capacity to perform the Development Partner Services in a timely and professional manner as set out in this DPA;
- (c) Development Partner has the requisite power, authority and capacity to execute, deliver and perform this DPA, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this DPA to be done, executed, delivered or performed;
- (d) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Development Partner in a manner that would impair or limit its ability to perform the obligations of Development Partner under this DPA;
- (e) this DPA has been duly authorized, executed, and delivered by Development Partner and constitutes a legal, valid, and binding obligation of Development Partner, enforceable against Development Partner in accordance with its terms;
- (f) the execution, delivery, and performance by Development Partner of this DPA does not and will not violate or conflict with, or constitute a default under:
 - (i) its constating, formation or organizational documents, including any by-laws;
 - (ii) any Applicable Law; or
 - (iii) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;

- (g) no Development Partner Event of Default has occurred and is continuing;
- (h) there are no actions, suits, proceedings, or investigations pending or threatened against Development Partner or, to Development Partner's knowledge, any Development Partner Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Development Partner or any Development Partner Party or in any impairment of its ability to perform its obligations under this DPA, and Development Partner has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (i) Development Partner has:
 - (i) reviewed the DPA Background Information available as of the Effective Date as required in Section H1.1;
 - (ii) carefully reviewed the whole of this DPA, and all other documents made available to Development Partner by or on behalf of the City; and
 - (iii) concluded or determined that nothing inhibits or prevents Development Partner from completing the Development Partner Services or performing the Development Partner Services in accordance with this DPA in a good and safe manner so as to achieve and satisfy the requirements of this DPA;
- (j) Development Partner is able to meet its obligations as they generally become due;
- (k) Development Partner is registered under Subdivision D of Division V of Part IX of the *Excise Tax Act* (Canada) and its registration number is [●];
[Note to Proponents: To be populated prior to Effective Date.]
- (l) Development Partner is registered under *The Retail Sales Tax Act* (Manitoba) and its registration number is [●];
[Note to Proponents: To be populated prior to Effective Date.]
- (m) Development Partner is not a Non-Resident;
- (n) either:
 - (i) each Primary Construction Team Member is in possession of its COR Certificate in good standing as required under this DPA and has the ability to maintain such COR Certificate in good standing at all times during the performance of the Development Partner Services in accordance with its terms, provisions and conditions; or

- (ii) each Primary Construction Team Member:
 - (A) is in possession of its COR Equivalency or COR Reciprocity, as issued by the Construction Safety Association of Manitoba or by the Manitoba Heavy Construction Association's WORKSAFELY™ COR™ Program, which remains in good standing and has the ability to maintain such COR Equivalency or COR Reciprocity in good standing at all times during the performance of the Development Partner Services until such Primary Construction Team Member receives its COR Certificate; and
 - (B) has made an application to the Construction Safety Association of Manitoba or to the Manitoba Heavy Construction Association's WORKSAFELY™ COR™ Program for its COR Certificate;
- (o) the Key DP Subcontractors identified in DPA Schedule 6 – Key DP Individuals and Key DP Subcontractors have been entered into and are in full force and effect, and Development Partner has provided a true and complete copy of each Key DP Subcontracts to the City;
- (p) each initial Key DP Subcontractor has entered into an Assignable Subcontract DPA in the form set out in DPA Schedule 12 – Form of Assignable Subcontract DPA and each Key DP Subcontractor's Assignable Subcontract Agreement is in full force and effect; and
- (q) Development Partner has obtained priority for the City's security interest in each DPA Subcontractor's Assignable Subcontract Agreement over all other security interests granted by Development Partner to any other person.

D.2 City Representations and Warranties

D2.1 The City represents and warrants to Development Partner that as of the Effective Date:

- (a) the City has all requisite capacity, power, and authority to enter into and perform its obligations under this DPA;
- (b) this DPA has been duly authorized on behalf of the City, and upon execution and delivery constitutes a legal, valid, and binding obligation of the City;
- (c) the entering into of the DPA will not result in a breach or violation of *The City of Winnipeg Charter*, S.M. 2002, c.39, as amended;
- (d) the City has obtained all necessary approvals to enter into this DPA and to perform its obligations under this DPA; and
- (e) the City has, or will have, licence rights of use and access to, on and over the Lands sufficient to enable the City to grant or to cause to be granted to Development Partner the access rights contemplated in Section K.

D2.2 The City represents and warrants to Development Partner that as of the Effective Date, no City DPA Event of Default has occurred and is continuing.

SECTION E DEVELOPMENT PHASE ACTIVITIES

E.1 Purpose of Development Phase

E1.1 The Parties acknowledge and agree that the purpose of this DPA is:

- (a) for the City and Development Partner to work collaboratively to advance the Project;
- (b) for Development Partner to perform the Development Partner Services, in consideration for the City's payment to Development Partner of the amounts set out in DPA Schedule 8 – Development Phase Payment, all subject to and in accordance with this DPA; and
- (c) to allow the City to assess and determine, in its sole discretion, if it will elect to proceed to enter into the Final Design Build Agreement with the Development Partner.

E.2 Preliminary Development Phase Plan

E2.1 Development Partner shall ensure that the delivery of all Development Partner Services is in accordance with Preliminary Development Phase Plan, unless otherwise agreed by the City and as such Preliminary Development Phase Plan may be updated during the Start-up Period.

E.3 Design Build Agreement Negotiations

E3.1 Each Party acknowledges and confirms that it is satisfied with the form of the Draft Design Build Agreement to the extent that it applies to the Development Phase Scope of Work and any Early Works. The Parties shall engage in good faith negotiations with respect to the Draft Design Build Agreement with the objective of finalizing a design build agreement based on market precedent with legal terms and conditions that are substantially in the form of the Draft Design Build Agreement.

E3.2 Each of the Parties shall use commercially reasonable efforts to:

- (a) negotiate and finalize with the other Party the Draft Design Build Agreement (the “**Draft Design Build Agreement Negotiations Process**”); and
- (b) unless otherwise agreed by the Parties in writing, conclude the negotiation of the Draft Design Build Agreement Negotiations Process no later than the Design Build Agreement Execution Target Date.

E3.3 As soon as practicable following the Effective Date, the Parties agree to:

- (a) meet and collaboratively develop a schedule and target deadlines for the conduct and completion of the Draft Design Build Agreement Negotiations Process, which

will permit the completion of the process by a date as far in advance of the Design Build Agreement Execution Target Date as possible, taking into account factors that include:

- (i) the technical, commercial and financial input required to commence and complete such negotiations, including to reflect that certain Development Partner Services may be required to be completed to allow for such negotiations to commence or be completed;
 - (ii) the expected duration of such negotiations; and
 - (iii) the priority and importance to the Project and the Parties of each particular item to be negotiated; and
- (b) include such schedule and deadlines in the Development Phase Schedule and update them to reflect the progress of the Development Partner Services and the conduct of the Draft Design Build Agreement Negotiations Process.
- E3.4 Each Party agrees to act reasonably, in good faith and without any unreasonable delay in the negotiation and finalization of the Draft Design Build Agreement, and that such negotiations shall be carried out in a manner consistent with the Collaboration Principles. The Parties shall meet regularly as required to successfully complete the Draft Design Build Agreement Negotiations Process.
- E3.5 Development Partner acknowledges and agrees that during and for the purposes of completing the Draft Design Build Agreement Negotiations Process:
- (a) while Development Partner is permitted to propose revisions to and drafting for the Draft Design Build Agreement to the City, the City shall be responsible for drafting and from time to time reissuing to Development Partner revised versions of the Draft Design Build Agreement (in whole or in part) that reflect any proposed revisions to the Draft Design Build Agreement and any final revisions to the Draft Design Build Agreement approved by the Parties;
 - (b) Development Partner shall, without any unreasonable delay, submit information, documentation and proposed document drafting and revisions requested by the City from time to time that will allow the City to revise or draft the Draft Design Build Agreement pursuant to Section E3.5(a); and
 - (c) Development Partner shall, if required and without any unreasonable delay, provide written comments or sign-off on the revised Draft Design Build Agreement circulated by the City pursuant to Section E3.5(a).
- E3.6 If and when the City and Development Partner have finalized all of the Draft Design Build Agreement provisions, each Party Representative shall confirm and evidence its approval of such provisions in a Notice delivered to the other Party Representative without any unreasonable delay (each a “**Design Build Agreement Approval Notice**”), provided that the City shall not be required to provide such Notice until it has obtained all necessary approvals. Upon the delivery of the last Design Build Agreement Approval

Notice, the Draft Design Build Agreement Negotiations Process will be formally completed (“**Design Build Agreement Finalization**”).

- E3.7 Notwithstanding anything to the contrary in the DPA, subject to complying with their respective obligations in this Section E.3 and other obligations in the DPA and without limiting any obligation or liability of a Party in the DPA:
- (a) no Party shall be under any obligation or liability to the other Party under the DPA if and solely on the basis that the Parties fail to finalize any of the Draft Design Build Agreement provisions or achieve Design Build Agreement Finalization by the Design Build Agreement Execution Target Date; and
 - (b) unless otherwise agreed by the Parties in writing, if the Draft Design Build Agreement Negotiations Process completion is not achieved by the Design Build Agreement Execution Target Date then at the election of the City, in its sole discretion:
 - (i) the City shall, by way of Notice to Development Partner, direct Development Partner to complete the Development Partner Services identified by the City in such Notice in accordance with the DPA, provided that:
 - (A) such Development Partner Services may include (I) notwithstanding anything to the contrary in the DPA and that a Final Design Build Agreement will not be executed or delivered, the completion of the full design of the Infrastructure, and/or (II) the completion of the Early Works in accordance with the DPA; and
 - (B) Development Partner shall not undertake any further Development Partner Services nor shall Development Partner be compensated for any Additional Development Partner Services following the date of the Notice delivered by the City in accordance with Section E3.7(b), other than any Development Partner Services necessary to carry out any instructions by the City in such Notice; or
 - (ii) the City shall terminate the DPA pursuant to Section R1.1 of the DPA.
- E3.8 Without limiting the generality of Section E3.7, the City acknowledges that any such failure by Development Partner to finalize any of the Draft Design Build Agreement provisions or achieve Design Build Agreement Finalization by the Design Build Agreement Execution Target Date shall not be or be deemed to be a Development Partner Event of Default under the DPA, provided that it has otherwise complied with its obligations in respect of the Draft Design Build Agreement Negotiations Process.
- E.4 Notice to Proceed to Design Build Agreement Execution**
- E4.1 In the event that the City makes an election to proceed to enter into a Final Design Build Agreement with Development Partner, then the City shall direct Development Partner to

proceed to achieve Design Build Agreement Execution in accordance with this Section E.4 (a “**Notice to Proceed to Design Build Agreement Execution**”).

- E4.2 The following shall be the conditions precedent to the issuance of a Notice to Proceed to Design Build Agreement Execution:
- (a) the Draft Design Build Agreement Negotiations Process has been completed to the satisfaction of the City and Development Partner;
 - (b) final versions of all Submittals required to be submitted to the City as part of the Intermediate Design Period Activities have been finalized in accordance with the DPA Review Procedure;
 - (c) the City has taken into account and considered any other factors identified by the City or any of its stakeholders, including any Key Project Stakeholders, in its sole discretion, including any relevant budget constraints of the City and the performance of Development Partner and the Development Partner Parties under this DPA; and
 - (d) the City has obtained all required approvals.
- E4.3 Notwithstanding anything to the contrary in this DPA, Development Partner acknowledges, confirms and agrees that:
- (a) the City shall be under no obligation whatsoever, and shall not be liable under this DPA or otherwise pursuant to any Applicable Law, to Development Partner or to any Development Partner Party to deliver any Notice to Proceed to Design Build Agreement Execution to Development Partner;
 - (b) nothing in this DPA shall limit, prejudice or fetter the City’s right to terminate this DPA pursuant to Section R.1, including after the City delivers a Notice to Proceed to Design Build Agreement Execution to Development Partner; and
 - (c) the City shall not be liable for any losses, damages or claims suffered by Development Partner or any Development Partner Party arising from or connected with the termination of this DPA for any reason whatsoever, except as expressly set out in Section R.
- E4.4 Following the delivery of the Notice to Proceed to Design Build Agreement Execution:
- (a) no later than 7 days prior to the Design Build Agreement Execution Target Date, and as a condition precedent to the effectiveness of the Design Build Agreement, the Development Partner shall deliver the following to the City:
 - (i) Design Build Agreement security as described in Section C1.1(a) of the Draft Design Build Agreement and Schedule 16 – Contract Security and Labour and Material Payment Bond of the Draft Design Build Agreement;
 - (ii) safety certification as described in Section E18.1 of the Draft Design Build Agreement;

- (iii) Insurance requirements as described in Section I1.1 of the Draft Design Build Agreement and Sections D and E of Schedule 11 – Insurance Requirements of the Draft Design Build Agreement; and,
 - (iv) all documents identified in Section E of DPA Schedule 3 - Development Phase Scope of Work; and
 - (b) the City and Development Partner shall achieve Design Build Agreement Execution on or prior to the Design Build Agreement Execution Target Date, whereupon the City and the Design Builder shall execute the Final Design Build Agreement in the same form and content as the Draft Design Build Agreement, finalized in accordance with the Draft Design Build Agreement Negotiations Process, subject only to amendments agreed to by the City and Development Partner.
- E4.5 Development Partner shall provide access and shall promptly make available to the City and its advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by the City from time to time in connection with the City's due diligence investigations, including copies of any written representation, statements, assurances, commitments or agreements which Development Partner, the Development Partner Parties or any of their respective advisors have received from any municipality, governmental authority or utility relating to the Project. Development Partner shall provide to the City, in a timely fashion, final draft versions of all documents required to be delivered by Development Partner in accordance with the Final Design Build Agreement, together with such other documentation as the City may reasonably request from time to time.

E.5 Non Exclusive Agreement

- E5.1 Without limiting or prejudice to the provisions of DPA Schedule 9 – Change Orders, Development Partner acknowledges and agrees that:
 - (a) it is providing the Development Partner Services to the City on a non-exclusive basis, and that the City reserves the right to contract with other parties for the same or similar works and services as those provided by Development Partner and reserves the right to obtain or perform the same or similar works and services internally; and
 - (b) the City may, at any time and in its sole discretion, elect to deliver any part of the Project set out in the Draft Design Build Agreement either directly or by way of separate arrangements with third parties.

E.6 No Fettering of Authority

- E6.1 Development Partner acknowledges and agrees that:
 - (a) nothing in this DPA shall in any way fetter the right, authority, and discretion of the City or any City Party in fulfilling its statutory or other functions under Applicable Law, and Development Partner understands and agrees that nothing

in this DPA shall preclude the Winnipeg City Council from performing, discharging or exercising their duties, responsibilities, and powers under Applicable Law;

- (b) nothing in this DPA derogates from, interferes with, or fetters the exercise by the City's officers, employees, agents, representatives, or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives, or elected and appointed officials of the City of Winnipeg, other than as expressly set out in this DPA; and
- (c) no communication or dealing between Development Partner and any department, committee, body, officer, employee, agent, representative, or elected or appointed official of the City that is not clearly a communication with the City as a Party to this DPA will be deemed to be a communication under this DPA between Development Partner and the City as Parties to this DPA.

SECTION F DEVELOPMENT PHASE GOVERNANCE

F.1 Parties to Collaborate and Cooperate

F1.1 The Parties agree to, during the DPA Term, act cooperatively, reasonably and in good faith in the performance of their respective obligations and the exercise of their respective rights under this DPA.

F1.2 The Parties agree to, during the DPA Term, act in accordance with the following principles, whereby the Parties shall:

- (a) establish and maintain a collaborative culture and act, at all times, in a manner that is consistent with a "Best for Project" approach;
- (b) openly, honestly, and clearly communicate in a timely manner;
- (c) promote a "win together, lose together" and "one team" approach to the Project;
- (d) be empowered with accountability for decisions each Party makes during the DPA Term;
- (e) recognize safety as a pre-condition to everything done;
- (f) ensure that Development Partner operates and causes its advisors to operate on a principle of full transparency and maintain a commitment to an open book approach, including all DPA Subcontractors;
- (g) ensure competitive pricing in the development of the Contract Price with a view to demonstrating value for money for the Project;
- (h) identify and implement cost-effective design and construction techniques and value engineering opportunities for the Project;

- (i) identify and implement strategies to effectively manage Key Project Stakeholders;
- (j) build high-performing teams that will promptly and proactively take steps to minimize and resolve any potential and actual DPA Disputes that arise under this DPA at the lowest possible level;
- (k) develop business terms that allow for equitable shared risk and reward for the Parties;
- (l) assign risk appropriately to the Party best able to manage the risk;
- (m) remain vigilant of the ultimate need to reach Substantial Completion in 2030; and
- (n) consider the advice and recommendations of the other Party when making decisions or exercising any right under this DPA,

(collectively, the “**Collaboration Principles**”).

F1.3 The Parties acknowledge and agree that adherence to the Collaboration Principles shall not limit any right of a Party where in this DPA it is set out that a Party may exercise any of its rights in its sole discretion.

F1.4 No consent, approval or satisfaction of a Party or a Party Representative shall be unreasonably withheld or delayed, unless it is specifically provided in this DPA that the consent, approval or satisfaction is in the sole discretion of the applicable Party or the Party Representative.

F1.5 Notwithstanding anything to the contrary in this DPA, no Party shall be under any obligation to perform or shall be liable for any of the other Party’s obligations under this DPA.

F1.6 The Parties acknowledges that nothing in this Section F.1 requires either Party to share information or documentation that may be subject to solicitor client privilege or that is a confidential lawyer-client communication.

F.2 **Dispute Resolution**

F2.1 Each Party acknowledges the Collaboration Principles, and agrees to:

- (a) make reasonable and *bona fide* efforts to resolve any dispute or issue arising between them through amicable, full, frank, candid and without prejudice negotiations which are to be carried out in accordance with the Collaboration Principles and in accordance with the governance structure set out in DPA Schedule 2 – Development Phase Governance; and
- (b) follow and comply with the DPA Dispute resolution procedure set out in DPA Schedule 2 – Development Phase Governance (the “**DPA Dispute Resolution Procedure**”) to resolve any DPA Dispute between them that arises during or following the DPA Term.

F2.2 Notwithstanding the existence of any Unresolved Issue or DPA Dispute, the Parties will continue with the Project and the performance of their respective obligations under this DPA during the pendency of any DPA Disputes, including any arbitration proceedings. If during the pendency of any Unresolved Issue or DPA Dispute the City considers it necessary for Development Partner to proceed in respect of the matter that is unresolved or in dispute (including whether any Development Partner Services constitutes a DPA Change Order), then without prejudice to Development Partner's rights in respect of the Unresolved Issue or DPA Dispute, Development Partner shall proceed in accordance with the direction of the City, and in the event the matter in dispute is ultimately determined in favour of Development Partner, the DPA Dispute may, subject to and in accordance with DPA Schedule 9 – Change Orders, result in a DPA Change Order.

F.3 Right to Designate

F3.1 At any time and from time to time, the City may designate any branch, agency, division, department, or office of the City to carry out administrative responsibility for the rights and obligations of the City under this DPA (including review of all documentation submitted by Development Partner, a Development Partner DPA Representative, or a Development Partner Party to the City for review, approval, comment, evaluation, or otherwise as described in this DPA, engagement in discussions, consultations, and meetings with Development Partner, submission of Notices and documentation to the City, issuances of Notices, documentation, DPA Contract Change, and related matters) and Development Partner must deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, Notices, consents, approvals, waivers, and comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the City has notified Development Partner in writing that such designated person is no longer the person designated by the City hereunder and such Notice shall have effect on the later of the date of delivery of such Notice and the date specified in the written Notice. The City shall advise Development Partner in writing of any designation hereunder.

F3.2 The rights and obligations of the Parties to this DPA shall be in no way affected by reason of any such designation in accordance with this Section F.3.

SECTION G APPOINTMENT OF REPRESENTATIVES

G.1 City DPA Representative

G1.1 Subject to the limitations set out in Section G1.4, the City DPA Representative shall exercise the functions and powers identified in this DPA as functions or powers to be performed by the City DPA Representative and such other functions and powers of the City under this DPA as the City may notify Development Partner from time to time.

G1.2 The City may, from time to time by written Notice to Development Partner, change the City DPA Representative. Such change shall have effect on the later of the date of delivery of such Notice and the date specified in such notice.

- G1.3 During any period when no City DPA Representative has been appointed, or when the City DPA Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the City DPA Representative's functions under this DPA, The City shall perform or may, by Notice to Development Partner, promptly appoint an alternative City DPA Representative to perform the functions which would otherwise be performed by the City DPA Representative. Upon receipt of such Notice, Development Partner and the Development Partner DPA Representative shall be entitled to treat any act of such alternative City DPA Representative which is permitted by this DPA as being authorized by the City, and Development Partner and the Development Partner DPA Representative shall not be required to determine whether authority has in fact been given.
- G1.4 The City DPA Representative shall not, except as otherwise provided in this DPA, be entitled to modify or waive any provision of this DPA or to authorize a DPA Change Order.
- G1.5 Subject to the limitations set out in Section G1.1 and Section G1.4, unless the City otherwise provides Notice to Development Partner, Development Partner and the Development Partner DPA Representative shall be entitled to treat any act of the City DPA Representative which is authorized by this DPA as being authorized by the City, and Development Partner and the Development Partner DPA Representative shall not be required to determine whether authority has in fact been given.

G.2 Development Partner DPA Representative

- G2.1 Subject to the limitations set out in Section G2.4, the Development Partner DPA Representative shall have full authority to act on behalf of Development Partner for all purposes of this DPA.
- G2.2 Development Partner may change the Development Partner DPA Representative with the prior written consent of the City.
- G2.3 During any period when the Development Partner DPA Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Development Partner DPA Representative's functions under this DPA, Development Partner shall perform or may, by Notice to the City, promptly appoint an alternative Development Partner DPA Representative to perform the functions which would otherwise be performed by the Development Partner DPA Representative, provided that, Development Partner must seek the City's consent in accordance with Section G2.2 if such alternative Development Partner DPA Representative is in place for more than 20 Business Days. Upon receipt of such Notice, the City and the City DPA Representative shall be entitled to treat any act of such alternative Development Partner DPA Representative which is permitted by this DPA as being authorized by Development Partner, and the City and the City DPA Representative shall not be required to determine whether authority has in fact been given.
- G2.4 The Development Partner DPA Representative shall not, except as otherwise provided in this DPA, be entitled to modify or waive any provision of this DPA.

G2.5 Subject to the limitations set out in Section G2.4, unless Development Partner otherwise provides Notice to the City, the City and the City DPA Representative shall be entitled to treat any act of the Development Partner DPA Representative which is authorized by this DPA as being authorized by Development Partner, and the City and the City DPA Representative shall not be required to determine whether authority has in fact been given.

G.3 Communications to Representatives

G3.1 At the time that a Party appoints or changes the appointment of the City DPA Representative or the Development Partner DPA Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative.

G.4 City Advisors

G4.1 The Parties acknowledge and agree that the City may appoint external advisors to be accountable independently and directly to the City to validate and provide independent reports and advice with respect to the Development Partner Services.

G4.2 All costs and expenses of any advisors retained by the City pursuant to this Section G.4 shall be at the City's sole cost and expense.

G4.3 Development Partner shall fully co-operate with and assist:

- (a) the City and the City's advisors to ensure that each of them can effectively and expeditiously carry out their duties; and
- (b) any of the City's advisors, including any independent third party assessors, retained by the City to advise in respect of or to assess any or all of the Development Phase Deliverables or any Proper Invoice.

SECTION H BACKGROUND INFORMATION

H.1 Review of DPA Background Information

H1.1 Development Partner acknowledges and agrees that, as of the Effective Date, it has and shall be deemed to have:

- (a) conducted its own review, due diligence and analysis of all DPA Background Information provided to it or obtained by it prior to such date in accordance with Good Industry Practice;
- (b) satisfied itself as to the accuracy, completeness and fitness for purpose of any such DPA Background Information upon which it places reliance; and
- (c) identified and raised, prior to the Effective Date, any and all ambiguities or issues requiring clarification associated with such DPA Background Information.

H1.2 Development Partner acknowledges and agrees that, with respect to any DPA Background Information provided to it or obtained by it following the Effective Date, it shall and shall be deemed to have:

- (a) conducted its own review, due diligence and analysis of all DPA Background Information in accordance with Good Industry Practice as soon as practicable during the DPA Term and without unreasonable delay;
- (b) during and as a result of such review, due diligence and analysis, satisfied itself as to the accuracy, completeness and fitness for purpose of any such DPA Background Information upon which it places reliance; and
- (c) identified and raised, prior to placing any reliance upon the DPA Background Information, any and all ambiguities or issues requiring clarification associated with the DPA Background Information.

H.2 **No Warranty for DPA Background Information**

H2.1 None of the City or any City Party gives any warranty or undertaking of whatever nature in respect of the DPA Background Information and, specifically, none of the City or any City Party warrants that the DPA Background Information represents all of the information in its possession or control relevant or material to or in connection with the Project or the obligations of Development Partner under this DPA.

H.3 **No Claims or Liability in Respect of DPA Background Information**

H3.1 None of the City or any City Party shall be liable to Development Partner or any Development Partner Party for, and Development Partner or any Development Partner Party shall not claim for, or seek to recover from the City or any City Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise):

- (a) from the adoption, use or application of the DPA Background Information by, or on behalf of, Development Partner or any Development Partner Party;
- (b) as a result of any claim that the DPA Background Information was incorrect, inaccurate, incomplete, insufficient or unfit for purpose;
- (c) as a result of any misunderstanding or misapprehension in respect of the use of the DPA Background Information by Development Partner or any Development Partner Party; or
- (d) from any failure (whether before, on, or after the Effective Date) by the City or any City Party to:
 - (i) disclose or make available to Development Partner or any Development Partner Party any information, documents or data; or
 - (ii) review or update the DPA Background Information.

H.4 Project Background Information

H4.1 For clarity, nothing in this Section H will prejudice the rights of either Party in relation to treatment of Project Background Information under the Final Design Build Agreement as may be negotiated pursuant to the Draft Design Build Agreement Negotiations Process.

H.5 Additional Background Information

H5.1 On reasonable Notice to the Development Partner DPA Representative, the City shall make commercially reasonable efforts to provide to Development Partner any additional DPA Background Information that:

- (a) Development Partner and the Development Partner Parties reasonably require to perform the Development Partner Services; and
- (b) the City would ordinarily disclose to its contractors and consultants undertaking works and services similar to the Development Partner Services,

provided that such information is provided to Development Partner on the same basis as set out in Sections H.1, H.2 and H.3.

H5.2 The City's obligations pursuant to this Section H.5 shall apply to only information that is in the City's possession, custody, or control and shall exclude information that the City is prevented from disclosing by:

- (a) Applicable Law;
- (b) third party rights; or
- (c) the City's internal policies or guidelines.

SECTION I DEVELOPMENT PHASE SERVICES

I.1 Performance of Development Phase Services

I1.1 Except as otherwise provided in this DPA, including pursuant to Sections L2.1 and T1.1, Development Partner shall perform all work and provide all services necessary to complete the Development Partner Scope of Work in accordance with this DPA (collectively, the "**Development Partner Services**").

I.2 General Development Phase Services Requirements

I2.1 Without limiting any other obligation of Development Partner in this DPA, including the Development Partner DBA Requirements:

- (a) Development Partner shall perform and shall cause the performance of the Development Partner Services:
 - (i) at all times, fully, diligently and in a professional and competent manner;

- (ii) to be undertaken by persons qualified and skilled in their occupations and with the care and skill reasonably to be expected of persons providing a scope of works and services similar to each aspect of the Development Partner Services, and on a Project of similar size, scope, complexity, and quality to the Project;
 - (iii) in accordance with applicable standards and codes, Good Industry Practice and Applicable Law;
 - (iv) having regard to the impact on Key Project Stakeholders; and
 - (v) in accordance with the Draft Design Build Agreement, including Schedule 18 of the Draft Design Build Agreement – Technical Requirements.
 - (b) Development Partner shall:
 - (i) communicate, attend meetings and consult regularly with and provide progress reporting to the City during the performance of the Development Partner Services, including at the request of the City or as otherwise required by Development Partner to perform and complete the Development Partner Services;
 - (ii) comply with the directions of the City relating to the performance of the Development Partner Services that are consistent with this DPA, and advise the City pursuant to Section L2.3 if any such direction would comprise or require a DPA Change Order;
 - (iii) inform itself of the City’s requirements for the Project and the Development Partner Services, including by familiarising itself and keeping itself familiarised with the DPA Background Information; and
 - (iv) carefully examine any additional DPA Background Information from time to time provided to or obtained by Development Partner to the extent necessary to properly perform Development Partner’s obligations under this DPA and perform the Development Partner Services and in order to conform and comply with Good Industry Practice; and
 - (c) if any of the Development Partner Services fail to satisfy the requirements of this DPA, Development Partner shall promptly correct and rectify such failure following the earlier to occur of the date Development Partner becomes aware of such failure or of the City’s provision of Notice to Development Partner outlining such failure.
- 12.2 Development Partner shall use commercially reasonable efforts to obtain value for money for the City when performing the Development Partner Services and providing any estimate or budget, including, with respect of the procurement of any part of the Development Partner Services, at the request of the City, applying, using and comparing available relevant industry benchmarks or benchmarking data for such purposes.

Development Partner shall comply with all policies and procedures of the City in relation to all procurement activities.

- 12.3 Development Partner acknowledges and agrees that notwithstanding anything to the contrary in this DPA, no consultation, cooperation, inspection, testing, approval, comment, audit, certification, acknowledgement or direction by the City, the City DPA Representative, or any other third party pursuant to this DPA, and no consent furnished by the City pursuant to this DPA, shall relieve the Design Builder under the Final Design Build Agreement from its exclusive responsibility for ensuring that the Works and the Infrastructure comply with the requirements of the Final Design Build Agreement, or estop the City from asserting any non-compliance with any such requirements under the Final Design Build Agreement.
- 12.4 With respect to the provision, or receipt, as applicable, of the Development Partner Services and access to the premises, property and employees of the City, Development Partner and all Development Partner Parties shall comply with such applicable policies, procedures and protocols of the City as are provided to Development Partner in writing and in advance. The City may, from time to time, amend its policies, protocols and procedures or add new policies, protocols and procedures and, upon providing notice to Development Partner of such requirement, Development Partner and all Development Partner Parties shall have an obligation to comply. Development Partner shall ensure that all Development Partner Parties comply with such applicable policies, protocols and procedures.

1.3 **Development Phase Schedule**

- 13.1 Development Partner shall perform the Development Partner Services in accordance with the Development Phase Schedule, Development Partner's Preliminary Development Phase Plan and the requirements of DPA Schedule 4 – Development Phase Schedule Requirements.
- 13.2 Development Partner shall, promptly and no later than 5 Business Days after becoming aware of a matter which is likely to delay the Development Partner Services, give Notice to the City describing the circumstances and extent or likely extent of the delay.
- 13.3 The Development Phase Schedule may be amended from time to time by Development Partner (including as a result of a DPA Change Order or any Force Majeure Event) with the prior written approval of the City.
- 13.4 Where Development Partner proposes any change to a Development Phase Schedule, Development Partner shall, no later than two Business Days following the written request of the City, deliver to the City a copy of the most current version of the requested Development Phase Schedule and/or any past version of the requested Development Phase Schedule in its native software format.

SECTION J KEY DP INDIVIDUALS AND KEY DP SUBCONTRACTORS

J.1 Key DP Individuals and Replacement of Other Development Partner Team Members

- J1.1 The individuals who are critical to the performance of the Development Partner Services are identified in DPA Schedule 6 – Key DP Individuals and Key DP Subcontractors (“**Key DP Individuals**”). Development Partner shall use and shall cause the Development Partner Parties to use best efforts to ensure that all of the Key DP Individuals remain involved in the Development Partner Services and, if applicable following Design Build Agreement Execution, in the Works under the Final Design Build Agreement, and in any event in the capacity set out in DPA Schedule 6 – Key DP Individuals and Key DP Subcontractors.
- J1.2 Development Partner shall not and shall ensure that the Development Partner Parties do not, during the DPA Term, require or request any Key DP Individual to be involved in any other project on behalf of Development Partner or any Development Partner Party if, in the opinion of the City acting reasonably, such involvement would have a material adverse effect on the Development Partner Services.
- J1.3 Development Partner shall cause all Key DP Individuals to devote all such time to Development Partner Services as is reasonable, necessary and prudent.
- J1.4 If Development Partner considers it necessary to replace any Key DP Individual, Development Partner shall promptly provide the City with relevant information on the proposed replacement and shall consult with the City before finalizing the appointment of such replacement. Development Partner shall not replace any Key DP Individual without the prior written consent of the City, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced in the opinion of the City. Development Partner shall ensure that the replacement Key DP Individual is actively engaged in the delivery of Development Partner Services no later than 10 Business Days following the City’s approval of such replacement Key DP Individual.
- J1.5 If the City determines, acting reasonably, that it is in the best interests of the City that any Key DP Individual be replaced, the City shall notify Development Partner (including an explanation of the reasons for such determination). No later than 10 Business Days following receipt by Development Partner of such Notice, Development Partner shall provide the City with relevant information on the proposed replacement and shall consult with the City before finalizing the appointment of such replacement. Development Partner shall ensure that the replacement Key DP Individual is actively engaged in the delivery of Development Partner Services no later than 10 Business Days following the City’s approval of such replacement Key DP Individual.
- J1.6 Development Partner shall, and shall cause each Development Partner Party, to ensure that any replacement of a Key DP Individual pursuant to this Section J.1, possess similar or greater expertise, qualifications, experience, and ability than the Key DP Individual named in this DPA.

J1.7 In addition to the Key DP Individuals, Development Partner shall select and employ a sufficient number of suitably qualified and experienced individuals to perform and provide the Development Partner Services, as determined with reference to the requirements of the Development Partner Services to be performed by each individual or otherwise as required pursuant to this DPA.

J.2 Development Partner Subcontracting

J2.1 All subcontracting of any tier by Development Partner of the performance of the Development Partner Services during the DPA Term shall satisfy the requirements of this DPA, including this Section J.2, and be further subject to the prior written approval of the City, acting reasonably. Such approval by the City may, in the City's sole discretion, be subject to the execution and delivery of an Assignable Subcontract Agreement in the form set out in DPA Schedule 12 – Form of Assignable Subcontract Agreement together with any revisions required by the City to permit such execution and delivery.

J2.2 Set out in DPA Schedule 6 – Key DP Individuals and Key DP Subcontractors is an initial list of DPA Subcontractors that the City has approved as a key DP Subcontractor (each a "**Key DP Subcontractor**"). Subject to Section J2.1, during the DPA Term, Development Partner may add additional DPA Subcontracts, provided that where the City has determined that a DPA Subcontract is of material importance to the development of the Infrastructure shall be deemed to be added to the list of Key DP Subcontracts once the City has provided written approval of such DPA Subcontractor. Development Partner shall deliver, to the City, an executed Assignable Subcontract Agreement for each:

- (a) initial Key DP Subcontractor, no later than the Effective Date; and
- (b) additional Key DP Subcontractor added after the Effective Date, no later than 15 Business Days following written approval of such Key DP Subcontractor in accordance with Section J2.1.

If Development Partner fails to deliver an Assignable Subcontract Agreement in accordance with Section J2.2(b), the City reserves the right to withdraw its approval of the DPA Subcontractor and require Development Partner to provide a substitute subcontractor for such scope of Development Partner Services.

J2.3 The City acknowledges and agrees that, without prejudice to any of its rights in this DPA, the City has approved the Key DP Subcontracts and the Key DP Subcontractors who are party to such Key DP Subcontracts, that have been executed by the parties thereto as of the Effective Date and that are indicated in DPA Schedule 6 – Key DP Individuals and Key DP Subcontractors. Without limiting Section J2.1, Development Partner agrees to update the list of Key DP Subcontractors and provide it to the City from time to time as additional DPA Subcontractors are approved by the City and engaged by Development Partner or any DPA Subcontractor, in accordance with this DPA.

J2.4 Without limiting the generality of any conditions of approval which the City may require before approving Development Partner's or a DPA Subcontractor's engagement of a DPA Subcontractor pursuant to Section J2.1, each DPA Subcontract shall:

- (a) adopt all of the terms and conditions of this DPA to the extent applicable to those parts of the Development Partner Services to be performed by the DPA Subcontractor;
 - (b) ensure that all deliverables, information, documents, data and other intellectual property produced by the DPA Subcontractor is governed by terms and conditions that are consistent with this DPA such that the City has all of its rights in Section X preserved in the event this DPA is terminated other than in accordance with Section R.3;
 - (c) except as expressly otherwise provided in this DPA, not permit or require the payment of any break fee, termination fee, penalty or payment of any additional costs or profits in the event this DPA is terminated;
 - (d) if required by the City pursuant to Section J2.1, be assignable to the City pursuant an Assignable Subcontract Agreement, whether or not such DPA Subcontractor is a Key DP Subcontractor in the first instance;
 - (e) not include any provision that would have the effect of materially increasing any obligation or liability of the City, whether actual or potential, relative to the City's obligations or liabilities under this DPA, were the City to exercise its rights under the Assignable Subcontract Agreement;
 - (f) reserve such rights to the City as are available to the City under this DPA, including a right for the City to terminate the DPA Subcontract at any time and in its sole discretion; and
 - (g) be on such additional terms and conditions as the City approves, acting reasonably.
- J2.5 The Development Partner shall not subcontract any interest in this DPA, and shall not permit any DPA Subcontractor to subcontract any interest in its DPA Subcontract, to a party that has committed a Prohibited Act, to a Restricted Person or to any entity that was deemed ineligible to participate in the procurement process for the Project without the prior written consent of the City.
- J2.6 Unless otherwise agreed by the City, the Development Partner shall, and shall cause each DPA Subcontractor to, provide the City with the draft execution form of each DPA Subcontract that will be entered into following the Effective Date for approval by the City in accordance with Section J2.1 a minimum of 20 Business Days in advance of the proposed date of execution of the DPA Subcontract.
- J2.7 With regards to each DPA Subcontract, the Development Partner shall preserve and protect the rights of the Parties under this DPA and ensure the work performed by the DPA Subcontractor meets the requirements of this DPA.
- J2.8 The Development Partner shall not be relieved of any liability or obligation under this DPA by the engagement of any Development Partner Party, and Development Partner shall cause each Development Partner Party, to the extent such Development Partner

Party performs or is specified hereunder to perform the Development Partner Services, to comply with the obligations of Development Partner hereunder in the same manner and to the same extent as Development Partner.

- J2.9 The Development Partner shall comply with and cause the DPA Subcontractors to comply with each of their respective obligations under the DPA Subcontracts. Development Partner shall enforce and cause the enforcement of the obligations of the DPA Subcontractors under the DPA Subcontracts, including all entitlements, rights, remedies and relief in favour of Development Partner that relate to any obligations of Development Partner under this DPA.
- J2.10 The Development Partner shall not, except with the written consent of the City, acting reasonably:
- (a) terminate, or agree to or permit the termination of, all or any material part of any DPA Subcontract;
 - (b) make, or agree to or permit the making of any material amendment to any of the DPA Subcontracts, other than amendments that are the direct and reasonable consequence of a DPA Change Order, an amendment to this DPA or are otherwise agreed to in writing in advance by the City;
 - (c) permit any departure by a DPA Subcontractor from any material provision of the DPA Subcontract;
 - (d) permit the DPA Subcontractor to assign or transfer to any person any of the DPA Subcontractor's rights or obligations under any of the DPA Subcontracts;
 - (e) permit the DPA Subcontractors to subcontract any of the works or services under the DPA Subcontract except to the extent provided for under the DPA Subcontract, and in all cases, in compliance with the terms of this DPA, including Section J.2; and
 - (f) issue a change order or variation under any DPA Subcontract.
- J2.11 During the DPA Term, Development Partner shall:
- (a) no later than 15 Business Days following its receipt of a written request from the City, cause the execution and delivery to the City of a statement or certificate stating (if such is the case, or stating the manner in which such may not be the case): (i) that any particular DPA Subcontract is unmodified and in full force and effect; (ii) the date of commencement and expiry of the term of such DPA Subcontract and the dates to which all payments payable thereunder have been paid; (iii) whether or not there is any existing default by a party to such DPA Subcontract, and, if so, specifying such default; (iv) that there are no defences, counterclaims or rights of set-off in respect of the obligations thereunder of a party to such DPA Subcontract; and (v) such other matters as the City may reasonably request;

- (b) no later than two Business Days after its receipt of a notice of default from a DPA Subcontractor in respect of a DPA Subcontract, provide a copy of such notice of default to the City; and
 - (c) if it issues a notice of default to a DPA Subcontractor in respect of a DPA Subcontract, provide a copy of such notice to default to the City at the same time as such notice of default is issued to such DPA Subcontractor.
- J2.12 When requested by the City, Development Partner shall promptly provide reasonable documentary evidence to the City of compliance with Development Partner's obligations set out in this Section J.2.
- J2.13 For clarity, the City's rights under any applicable DPA Subcontract only arise if, when and to the extent that the City exercises its rights pursuant to and in accordance with the Assignable Subcontract Agreement.
- J2.14 Development Partner acknowledges that the City may require Development Partner to competitively procure DPA Subcontracts, in its sole discretion, and to comply with any other specific procurement requirements and policies prescribed by the City from time to time.

SECTION K LANDS

K.1 Access to Lands

- K1.1 Subject to Section K1.2 and Section K.2, the Development Partner and the Development Partner Parties shall not be permitted to use, access or conduct due diligence or other investigations on the Lands for the purposes of the Project without the prior written consent of the City, which may be withheld, granted or granted with conditions by the City, in its sole discretion.
- K1.2 After a DPA Change Order in respect of the construction of the Early Works has been approved by the City in accordance with DPA Schedule 3 – Development Phase Scope of Work and if required by Development Partner and the Development Partner Parties for the purpose of performing such Early Works, the City shall grant or seek to be granted to Development Partner and the Development Partner Parties non-exclusive licence rights of use and access to, on and under the portions of the Lands as set out in the approved DPA Change Order, as are required by Development Partner and the Development Partner Parties and sufficient to allow Development Partner and the Development Partner Parties to perform such Early Works on the Early Works Site, subject to and in accordance with the applicable provisions of Section D of the Draft Design Build Agreement and Draft DBA Schedule 12 – Lands, Site(s), Facility(ies), which, without limiting Section B.4, shall be applicable *mutatis mutandis* in respect of the performance of such Early Works.
- K1.3 Development Partner shall provide the City DPA Representative with reasonable prior Notice before Development Partner or any Development Partner Parties use or access any portion of the Lands for the purposes of this DPA.

K.2 Due Diligence and Investigations

K2.1 Development Partner shall, from time to time as may be required, necessary or prudent, perform or cause the performance of investigations and other technical due diligence in accordance with DPA Schedule 3 – Development Phase Scope of Work and:

- (a) as agreed by the Parties in accordance with DPA Schedule 3 – Development Phase Scope of Work in respect of the Lands;
- (b) as otherwise directed in writing by the City in respect of the Lands; or
- (c) as reasonably requested by Development Partner in writing in respect of the Lands, and approved by the City in writing, acting reasonably,

for the purposes of the proper performance of the Development Partner Services, or effectively or efficiently mitigating risks with respect to the Development Partner Services or the Project.

K2.2 The City may, in its sole discretion, perform or cause the performance of investigations and other technical due diligence in respect of the Lands or the Project reasonably requested by Development Partner or any Development Partner Party for the purposes of Development Partner's proper performance of the Development Partner Services, or effectively or efficiently mitigating risks with respect to the Development Partner Services or the Project, all in accordance with DPA Schedule 3 – Development Phase Scope of Work.

K2.3 Development Partner acknowledges and agrees that:

- (a) notwithstanding any other provision in this DPA, the City does not have any right to use, access or permit any investigations or other technical due diligence at any properties beyond the boundaries of the Lands which are City property, other than any easements and similar interests, including permissions to enter, of the City which benefit the Lands;
- (b) the City will be responsible for obtaining any necessary consents or permits to access and conduct investigations or other technical due diligence at any lands beyond the boundaries of the Lands; and
- (c) the performance of any investigations and other technical due diligence described in Section K2.1 may, in the City's sole discretion, be subject to any rules or other requirements provided by the City to Development Partner from time to time, which Development Partner agrees to comply with.

K2.4 Prior to commencement of any technical due diligence activities, the City will confirm to Development Partner whether it has the right to use, access or permit Development Partner to perform any investigations or technical due diligence on any of the properties where such activities are planned and in the event that the City or Development Partner cannot obtain such rights in a timely manner, the City and Development Partner shall adjust the planned investigations or technical due diligence activities accordingly.

K.3 Other Property Rules

K3.1 Prior to Design Build Agreement Execution, Development Partner shall not be permitted to, without the prior written consent of the City, in its sole discretion:

- (a) contact any property owner with respect to any property in connection with the Project; or
- (b) enter into any property agreement (for example, any purchase, option or lease agreement) in respect of any portion of the Lands or for any property adjacent to the Lands.

K.4 No Liens

K4.1 Development Partner shall promptly pay all proper accounts for work done or materials furnished under all DPA Subcontracts it enters into with DPA Subcontractors and shall not suffer or permit any construction lien, certificate of action or other lien, whether valid or invalid, for work, labour, services or materials ordered or supplied or claimed to have been ordered or supplied by or on behalf of a DPA Subcontractor arising from the Development Partner Services to be given, filed, registered, or preserved in respect of or against the Project, Lands or any part thereof ("**DPA Subcontractor Lien**"). Whenever any DPA Subcontractor Lien is preserved or claims therefore are filed or if notice of any DPA Subcontractor Lien is provided to the City, Development Partner shall forthwith, and in any event no longer than 40 Business Days after Development Partner has notice and/or knowledge of such DPA Subcontractor Lien, cause such DPA Subcontractor Lien, certificate of action, or notice of DPA Subcontractor Lien to be discharged or vacated by payment or by paying into court or posting security or in such other manner as is or may be required or permitted by Applicable Law or to cause such DPA Subcontractor Lien, certificate of action, or notice of DPA Subcontractor Lien to be released or withdrawn by the DPA Subcontractor Lien claimant.

K4.2 Development Partner further agrees that whenever a certificate of action is registered relating to any DPA Subcontractor Lien, Development Partner shall forthwith, and in any event no longer than 5 Business Days after Development Partner has notice and/or knowledge of the registration of such certificate of action have it vacated.

K4.3 If Development Partner fails to so discharge or vacate any such notice of DPA Subcontractor Lien, DPA Subcontractor Lien or certificate of action or to have such notice of DPA Subcontractor Lien withdrawn by the DPA Subcontractor Lien claimant, within such 10 Business Day period, the City may (but shall not be obligated to) and without prejudice to any of its other rights or remedies under this DPA or otherwise pursuant to Applicable Law, discharge or vacate the notice of DPA Subcontractor Lien, DPA Subcontractor Lien or certificate of action or to have such notice of DPA Subcontractor Lien withdrawn. Any amounts paid and any cost and expenses incurred in respect of the foregoing by or on behalf of the City (including, without limitation, all legal fees on a full indemnity basis and disbursements) shall be paid by Development Partner to the City upon demand.

SECTION L ESTIMATES AND CHANGE ORDERS

L.1 Estimates

L1.1 Notwithstanding any other provision of this DPA, the City reserves the right to direct Development Partner not to perform any Development Partner Services until such time as Development Partner provides a DPA Estimate to the City and such DPA Estimate is approved by the City in writing in accordance with DPA Schedule 9 – Change Orders.

L.2 DPA Change Orders and Additional Development Partner Services Proposals

L2.1 The Parties agree that DPA Schedule 9 – Change Orders shall apply:

- (a) in respect of DPA Change Orders; and
- (b) to any proposals made by a Party for Development Partner to perform other works or services related to the Project that were not contemplated by this DPA or the Draft Design Build Agreement as of the Effective Date and that are accepted by the City pursuant to DPA Schedule 9 – Change Orders:

(individually or collectively, as the context requires, “**Additional Development Partner Services**”).

L2.2 Notwithstanding anything to the contrary in this DPA, the Parties agree that during the DPA Term:

- (a) the City may revise and reissue in whole or in part the Draft Design Build Agreement pursuant to Section E.3, and, except as set out in Section L2.2(b), no such amendment, revision or reissuance to the Draft Design Build Agreement shall require a DPA Change Order under or an amendment to this DPA, and this DPA shall remain in full force and effect notwithstanding any such revision or reissuance; and
- (b) any proposed alteration, addition or variation to any provision of the Draft Design Build Agreement that is expressly incorporated into this DPA by reference that directly impacts the performance of the Development Partner Services (including the Development Partner DBA Requirements) or other obligations or liabilities of Development Partner under this DPA shall, subject to and in accordance with DPA Schedule 9 – Change Orders, require and be effected by a DPA Change Order.

L2.3 Development Partner shall promptly advise the City as to any circumstances or events arising pursuant to this DPA that, in its reasonable opinion, comprise or require a DPA Change Order.

L2.4 For greater certainty, Development Partner may and is encouraged to propose DPA Change Order pursuant to DPA Schedule 9 – Change Orders for value engineering, cost reduction, schedule acceleration and efficiency enhancing purposes, provided that the City shall be under no obligation whatsoever to accept any such proposals.

SECTION M PAYMENT AND TAXES

M.1 DPA Contract Award, DPA Upset Limit, and DPA Reserve

- M1.1 The contract award amount is equal to \$ [REDACTED] (the “**DPA Contract Award**”).
- M1.2 The DPA Upset Limit is defined in DPA Schedule 3 – Development Phase Scope of Work.
- M1.3 The reserve amount is the difference between the DPA Contract Award and the DPA Upset Limit (the “**DPA Reserve**”). The DPA Reserve shall only be used to Additional Development Partner Services.
- M1.4 Development Partner shall proceed with Development Partner Services only up to the DPA Upset Limit established for this DPA as set out in DPA Schedule 3 – Development Phase Scope of Work.
- M1.5 Any increase to the DPA Upset Limit may only occur by accessing the DPA Reserve through a DPA Change Order. For clarity, the Senior Executive Team will need to request from the City access to the DPA Reserve to increase the DPA Upset Limit.
- M1.6 The City shall only be responsible for increases to the DPA Upset Limit up to the DPA Contract Award. With any increase to the DPA Upset Limit, the DPA Reserve shall be reduced by an equal amount.
- M1.7 Any increase to the DPA Contract Award may only occur by way of a DPA Change Order. For clarity, accessing additional funds above the DPA Contract Award will need City Council approval which customarily requires 2 to 3 months to obtain.

M.2 Eligible Costs, Corporate Overhead and Profit

- M2.1 Development Partner represents and warrants that the amounts it will be paid under this DPA, exclusive of GST, for the performance of the Development Partner Services will each be based on a Proper Invoice prepared and as determined in accordance with DPA Schedule 8 – Development Phase Payment.
- M2.2 Development Partner acknowledges and agrees that:
- (a) Development Partner has satisfied itself as to the correctness and sufficiency of the Eligible Costs, Corporate Overhead and Profit reasonably and actually incurred in performance of the Development Partner Services
 - (b) Development Partner has based the Eligible Costs, Corporate Overhead and Profit on the data, interpretations, necessary information, examinations and satisfaction as to all relevant matters related to this DPA; and
 - (c) there shall be no other amounts payable by the City under the DPA to Development Partner other than Eligible Costs, Corporate Overhead and Profit.

M.3 Payments to Development Partner

M3.1 Subject to the provisions of this DPA and in accordance with and subject to Applicable Law respecting holdbacks, the City shall make payments to Development Partner in accordance with DPA Schedule 8 – Development Phase Payment.

M.4 Set-Off

M4.1 The City is entitled to set off against any amounts otherwise due to Development Partner pursuant to the terms of this DPA, any amounts (including any amounts payable in accordance with Section Q1.7 and Section U) that (A) are due to the City by Development Partner or the Guarantor pursuant to the terms of this DPA or (B) are being disputed in accordance with the DPA Dispute Resolution Procedure.

M4.2 Development Partner shall not be entitled to any right of set-off in relation to this DPA.

M4.3 For clarity, the City is entitled to exercise its rights in accordance with Section M4.1 immediately upon an amount becoming due or owed to the City:

- (a) by Development Partner pursuant to the terms of this DPA; or
- (b) by the Guarantor pursuant to the Parent Guarantee.

M.5 Effect of Payment

M5.1 No payment under this DPA shall be construed as an acceptance or approval of incomplete, defective or improper performance by Development Partner of any of its obligations under this DPA, nor shall it operate to relieve Development Partner from the performance of any of its obligations under this DPA which have not been performed.

M.6 No Other Entitlement

M6.1 Development Partner shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this DPA, except as specifically and expressly set out in this DPA.

M.7 Taxes

M7.1 All amounts specified in this DPA are expressly exclusive of applicable GST, but inclusive of all other taxes payable pursuant to Applicable Law. For clarity, the City shall not be required to pay any interest and/or penalties that are imposed on or assessed against Development Partner or any Development Partner Party for non-compliance with Applicable Law. If Development Partner is required by Applicable Law to collect any such GST or RST from the City, the City shall pay such GST or RST to Development Partner simultaneously with the amount to which such applicable GST or RST relates or applies.

M7.2 Unless otherwise set out in this DPA, Development Partner shall pay all applicable taxes incurred by or on Development Partner's behalf with respect to this DPA.

M7.3 If required by any Applicable Law, the City shall withhold any applicable withholding taxes from amounts due and owing to Development Partner under this DPA and shall remit it to the appropriate Governmental Authority in accordance with Applicable Law.

M.8 Lien Holdback

M8.1 In accordance with the provisions of *The Builders' Liens Act (Manitoba)*, the City will not retain holdbacks from payments to Development Partner where such payments relate only to services performed by architects or engineers.

M8.2 In accordance with the provisions of *The Builders' Liens Act (Manitoba)*, the City will retain holdbacks from payments to Development Partner where such payments relate to any improvement of land pursuant to Early Works under this DPA and as further detailed in DPA Schedule 8 – Development Phase Payment (“**Lien Holdback**”).

M8.3 The City will release the Lien Holdback as detailed in DPA Schedule 8 – Development Phase Payment.

SECTION N FORCE MAJEURE

N.1 Force Majeure

N1.1 For the purposes of this DPA, “**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 DPA, 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 DPA.

N1.2 A Force Majeure Event shall not include and the Party seeking relief shall not be entitled to relief on the grounds of a Force Majeure Event for any of the following:

- (a) late or incomplete performance of an obligation of Development Partner under this DPA, including as a result of late or incomplete performance of such obligation by a Development Partner Party under this DPA, unless any such late or incomplete performance is itself caused by a Force Majeure Event;
- (b) late or incomplete performance by the City under this DPA, unless such late or incomplete performance is itself caused by a Force Majeure Event;
- (c) economic hardship suffered by a Party or any Party’s inability to pay moneys under this DPA;

- (d) the late payment of moneys due and payable under this DPA;
 - (e) any infringement by a Party of any intellectual property right;
 - (f) any event for which a reasonable businessperson applying due diligence in the same or similar circumstance under the same or similar obligations as those contained in this DPA would have put in place contingency plans to either materially mitigate or negate the effects of such event; and
 - (g) any increase in the cost of services or supply of goods that is not directly caused by the Force Majeure Event.
- N1.3 To the extent that and for so long as either Party is wholly or materially prevented or delayed by a Force Majeure Event from performing any obligation under this DPA, that Party is relieved from any liability or consequence under this DPA arising from its inability to perform or delay in performing that obligation. A Party seeking to rely on this Section N.1 shall submit satisfactory evidence to the other Party that such whole or material failure or delay was the direct result of a Force Majeure Event and the City shall revise the Development Phase Schedule to reflect the impact of any Force Majeure Event. For greater certainty, no Force Majeure Event shall prejudice or limit Development Partner's right to payment pursuant to Section M.3.
- N1.4 If affected by a Force Majeure Event, Development Partner shall:
- (a) give Notice to the City no later than 5 Business Days of the date it becomes aware or ought reasonably to have become aware of the commencement of the Force Majeure Event. Such Notice shall give sufficient details to identify the particular event claimed to be a Force Majeure Event;
 - (b) take commercially reasonable steps to mitigate the consequences of the Force Majeure Event upon the performance of its obligations under this DPA;
 - (c) resume performance of its obligations affected by the Force Majeure Event as soon as possible and use commercially reasonable efforts to remedy its failure to perform;
 - (d) advise the City in writing on a weekly basis of its efforts to overcome and/or mitigate the Force Majeure Event; and
 - (e) give Notice to the City promptly when the Force Majeure Event has ceased, and when the performance of its affected obligations can be resumed.
- N1.5 To the extent that Development Partner does not comply with its obligations under Section N1.4, such failure shall be taken into account in determining its entitlement to relief pursuant to Section N1.3.
- N1.6 The Parties acknowledge and agree that this Section N does not apply to the COVID-19 Pandemic given it is no longer considered a pandemic by the World Health Organization and that the COVID-19 Pandemic shall not be considered a Force Majeure Event for the purposes of this DPA.

SECTION O INSURANCE AND PERFORMANCE SECURITY

O.1 Insurance

- O1.1 The Parties shall comply with the insurance provisions of DPA Schedule 11 – Development Phase Insurance, including the obligation for the City and Development Partner to each obtain and maintain, or if applicable to cause the obtainment and maintenance of, the insurance set out in DPA Schedule 11 – Development Phase Insurance.
- O1.2 Neither compliance nor failure to comply with the insurance provisions of this DPA shall relieve Development Partner or the City of their respective liabilities and obligations under this DPA.

O.2 Parent Guarantee

- O2.1 The City reserves the right to require at any point during the DPA Term that for the remainder of the DPA Term and, in respect of the provisions described in Section S.4 following the DPA Term, Development Partner shall ensure that a valid and binding Parent Guarantee in favour of the City from the Guarantor (or a party of comparable financial strength, capacity and stability, as determined by the City acting in its sole discretion) and in the form of guarantee attached as DPA Schedule 10 – Form of Parent Guarantee, is in place and enforceable by the City.
- O2.2 The Parties acknowledge and agree that any demands made and amounts paid by the Guarantor to the City under the Parent Guarantee is without prejudice to the City's right to make continuing claims against Development Partner under this DPA in relation to matters for which the Parent Guarantee is provided.
- O2.3 The costs and expenses incurred by Development Partner in establishing and maintaining the Parent Guarantee are to be treated in accordance with DPA Schedule 8 – Development Phase Payment.

SECTION P CONFIDENTIALITY AND CONFLICT OF INTEREST

P.1 Confidentiality

- P1.1 Without limiting Section B.4, the Parties agree to comply with the provisions of Sections Q2, Q3, Q4 and Q5 of the Draft Design Build Agreement, which shall be applicable *mutatis mutandis*.

P.2 Conflict of Interest

- P2.1 For the purpose of this DPA, a conflict of interest (a “**Conflict of Interest**”) includes any perceived, potential, or actual situation or circumstance where, in relation to the Project, the Development Partner or any Development Partner Parties:
- (a) in relation to the Request for Proposals,
 - (i) have other commitments, relationships or financial interests that:

- (A) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of independent judgment by any personnel of the City or its advisors; or
- (B) could or could be seen to compromise, impair or be incompatible with the effective performance of the Development Partner's obligations under the DPA;
- (ii) has contractual or other obligations to the City that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the RFP process or the Project; or
- (iii) has knowledge of confidential information (other than confidential information disclosed by the City in the normal course of the RFP process) of strategic and/or material relevance to the RFP process or to the Project that is not available to other proponents and that could or could be seen to give the proponent an unfair competitive advantage; and
- (b) in relation to the performance of its contractual obligations in a City contract including this DPA, other commitments, relationships, or financial interests of Development Partner and each Development Partner Party that:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

P2.2 The Development Partner shall:

- (a) avoid any Conflict of Interest in the performance of its obligations under this DPA;
- (b) disclose to the City without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
- (c) comply with any requirements prescribed by the City to resolve any Conflict of Interest.

P2.3 In addition to all other contractual rights or rights available at law or in equity, the City may immediately terminate the DPA upon giving Notice to Development Partner where:

- (a) Development Partner fails to disclose an actual or potential Conflict of Interest;
- (b) Development Partner fails to comply with any requirements prescribed by the City to resolve a Conflict of Interest; or
- (c) a Conflict of Interest exists which cannot be resolved.

P.3 Public Disclosure

P3.1 Development Partner shall not make, and shall not cause or permit any Development Partner Parties, to make any public announcement relating to this DPA or the Project except as approved in advance by the City. To the extent that the Development Partner or any Development Partner Party undertakes any public communication or community engagement, it shall ensure that it obtains the prior written approval of the City prior to undertaking any such activities or distributing any materials to the public.

P.4 Integrity Matters

P4.1 Development Partner represents and warrants to the City that:

- (a) none of Development Partner, a Development Partner Party or any of their respective Affiliates, any individual identified in the RFP Proposal, any Key DP Individual, any Key DP Subcontractor, or any individual currently engaged as an officer, director, executive or senior manager of Development Partner, any Development Partner Party or any of their respective Affiliates has been convicted in Canada:
 - (i) of carrying out inappropriate bidding or procurement practices or engaging in unethical behaviour in relation to a public sector procurement process or public sector contract carried out in Canada; or
 - (ii) under the Corruption of Foreign Public Officials Act, S.C. 1988, c. 34;
- (b) Development Partner and each Development Partner Party has conducted itself with integrity and propriety and did not engage in any inappropriate bidding practices or unethical behaviour in the course of the Request for Proposals including by not making any material misrepresentation or submitting any inaccurate or incomplete information in response to the Request for Proposals; and
- (c) none of Development Partner, Development Partner Party or any of their respective Affiliates, any individual identified in the RFP Proposal, any Key DP Individual, any Key DP Subcontractor, or any individual currently engaged as an officer, director, executive or senior manager of Development Partner, any Development Partner Party or any of their respective Affiliates is a Restricted Person.

P4.2 Development Partner acknowledges and agrees that its representations and warranties contained in this Section P.4 are continuing representations and warranties and shall apply and be true and correct at all times during the DPA Term.

SECTION Q DEFAULT

Q.1 Development Partner Event of Default

Q1.1 For the purposes of this DPA, a “**Development Partner Event of Default**” means any one or more of the following events or circumstances:

- (a) Development Partner is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of Development Partner's insolvency;
- (b) Development Partner wholly suspends or abandons the Development Partner Services for a period which exceeds 5 Business Days;
- (c) Development Partner fails to pay any sum or sums due to the City under this DPA, which sum or sums are not being disputed in accordance with the DPA Dispute Resolution Procedure;
- (d) Development Partner fails to comply with Section K.4;
- (e) Development Partner commits a material breach of its obligations under the Request for Proposals;
- (f) Development Partner fails to comply with Section P, including where a Conflict of Interest cannot be resolved in accordance with Section P.2;
- (g) Development Partner fails to comply with Section Z.1;
- (h) other than in respect of Section P.4, Development Partner makes any representation or warranty in this DPA that is false or misleading when made, and that has or could have at any time a material adverse effect on the performance of Development Partner Services, on the City's ability to exercise its rights under the Assignable Subcontract Agreement, or on the Project, or that may compromise (A) the City's reputation or integrity, or (B) the reputation or integrity of the City's Water and Waste Department;
- (i) Development Partner makes a representation or warranty in Section P.4 that is false or misleading when made;
- (j) Development Partner subcontracts the performance of the Development Partner Services without first obtaining the written approval of the City in accordance with Section J.2 or fails to comply with Section J2.10;
- (k) Development Partner fails to obtain any insurance required to be obtained by or on behalf of Development Partner pursuant to this DPA or fails to deliver any performance security required to be delivered by or on behalf of Development Partner pursuant to this DPA or any such insurance or any such performance security delivered by Development Partner or a Development Partner Party under this DPA being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this DPA;
- (l) Development Partner fails to comply with any determination, decision, order or award made against Development Partner in accordance with the DPA Dispute Resolution Procedure, or Development Partner fails to proceed in accordance with the written instruction of the City during the pendency of a DPA Dispute;

- (m) Development Partner fails to execute and deliver the Final Design Build Agreement and any other agreements and other documents it is required to deliver in accordance with this DPA in relation to Design Build Agreement Execution;
- (n) any repudiation of the Parent Guarantee;
- (o) Development Partner commits a material breach of its obligations under this DPA other than as set out above in this Section Q1.1; or
- (p) Development Partner fails to comply with Section Y,

which event or circumstance arose other than as a consequence of a breach by the City of its obligations under this DPA.

Q1.2 A Party shall, promptly upon becoming aware of the occurrence of a Development Partner Event of Default, give Notice to the other Party of the occurrence and details of the Development Partner Event of Default (a “**Notice of Development Partner Event of Default**”). In addition, a Party shall promptly give Notice to the other Party of any event or circumstance which is likely, with the passage of time, giving of Notice, determination of any condition, or otherwise, to constitute or give rise to a Development Partner Event of Default.

Q1.3 Subject to Section Q1.4,

- (a) upon the receipt by Development Partner or the receipt by the City of a Notice of Development Partner Event of Default provided pursuant to Section Q1.2, Development Partner shall, no later than 10 Business Days thereafter, provide a written plan to remedy such Development Partner Event of Default to the City and commence and diligently continue to remedy the Development Partner Event of Default and to mitigate any adverse effects on the City; and
- (b) if such Development Partner Event of Default has not been remedied to the reasonable satisfaction of the City no later than 10 Business Days after such Notice of Development Partner Event of Default is received (or such longer period agreed by the City in writing) (the “**Development Partner Event of Default Cure Period**”), then the City may terminate this DPA in its entirety with immediate effect by giving Notice to Development Partner.

Q1.4 If a Development Partner Event of Default described in Section Q1.1(a), Q1.1(f), Q1.1(i) or Q1.1(p) occurs, notwithstanding the delivery of a remediation plan or any remedial actions undertaken by Development Partner, the City may terminate this DPA in its entirety with immediate effect by giving Notice to Development Partner.

Q1.5 Without prejudice to any other rights of the City in this DPA or pursuant to Applicable Law, including this Section Q.1, if a Development Partner Event of Default occurs and is continuing, the City may, at any time following the delivery of Notice to Development Partner and at Development Partner’s risk and expense, undertake any of the following:

- (a) such steps as the City considers appropriate, either themselves or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Development Partner's obligations under this DPA or to remedy such Development Partner Event of Default;
- (b) following the expiry of any Development Partner Event of Default Cure Period, require the termination and replacement of any DPA Subcontractor who caused or contributed to the Development Partner Event of Default; or
- (c) direct Development Partner to suspend the performance of all or a part of the Development Partner Services pursuant to Section T1.1.

Q1.6 Upon the occurrence of a Development Partner Event of Default that Development Partner has remedied to the satisfaction of the City in accordance with this Section Q.1, such occurrence of a Development Partner Event of Default shall thereafter cease to be a Development Partner Event of Default and the City shall not be entitled to terminate this DPA for that occurrence of the Development Partner Event of Default.

Q1.7 Development Partner shall be responsible for and shall, following the delivery by the City of Notice requesting reimbursement, promptly reimburse the City for all reasonable costs (including all applicable taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by the City in exercising its rights under this Section Q.1, including any relevant increased administrative expenses. The City shall take commercially reasonable steps to mitigate such costs.

Q.2 City DPA Event of Default

Q2.1 For the purposes of this DPA, "**City DPA Event of Default**" means the City failing to pay any sum or sums due to Development Partner under this DPA, provided such sum or sums are not being disputed in accordance with the DPA Dispute Resolution Procedure or have not been set off by the City pursuant to Section M.4, and which sum or sums, either singly or in aggregate, exceed(s) \$ [REDACTED] and such failure continues for 30 days from receipt by the City of a notice of outstanding payment from or on behalf of Development Partner and arose other than as a consequence of a breach by Development Partner of its obligations under this DPA.

Q2.2 On the occurrence of a City DPA Event of Default and while the same is continuing, Development Partner may give Notice to the City of the occurrence of such City DPA Event of Default, which Notice will specify the details thereof, and, at Development Partner's option and without prejudice to its other rights and remedies under this DPA, may:

- (a) suspend performance of the Development Partner Services until such time as the City has remedied such City DPA Event of Default; or
- (b) if such City DPA Event of Default has not been remedied no later than 30 days following receipt by the City of Notice of the occurrence of such City DPA Event of Default, terminate this DPA in its entirety by Notice in writing having immediate effect.

- Q2.3 The City shall be responsible for and shall, following the delivery by Development Partner of Notice requesting reimbursement, promptly reimburse Development Partner for all reasonable costs (including all applicable taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Development Partner in exercising its rights under this Section Q.2, including any relevant increased administrative expenses. Development Partner shall take commercially reasonable steps to mitigate such costs.
- Q2.4 Development Partner shall have no right or entitlement to terminate this DPA, nor to accept any repudiation of this DPA, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this DPA.

SECTION R NON-EVENT OF DEFAULT TERMINATION

R.1 Termination for Convenience

- R1.1 Notwithstanding anything to the contrary in this DPA, the City shall, in its sole discretion, for any reason whatsoever and without cause, be entitled to terminate this DPA at any time during the DPA Term on 30 days prior Notice to Development Partner. Development Partner acknowledges that some of the circumstances that could give rise to such a termination of this DPA include the following events or circumstances:
- (a) the City not being satisfied, in its sole discretion, with the performance of the Development Partner Services or any one or more of the Development Phase Deliverables;
 - (b) the City not approving any of the Stage Gate Reports;
 - (c) the City electing not to give a Notice to Proceed to Design Build Agreement Execution to Development Partner pursuant to Section E4.3;
 - (d) the City and Development Partner failing to agree to a Contract Price or Project Schedule acceptable to the City;
 - (e) the City and Development Partner failing to achieve Design Build Agreement Finalization; and
 - (f) the City failing to obtain any approvals desired by the City in respect of the Final Design Build Agreement or necessary for the City to enter into the Final Design Build Agreement.
- R1.2 In the event of Notice being given by the City in accordance with this Section R.1, the City shall, at any time before the expiration of such Notice, be entitled to direct Development Partner to complete any unfinished specific Development Partner Services (including any unfinished Early Works), refrain from commencing, or allowing any DPA Subcontractor to commence, the Development Partner Services or any part or parts of the Development Partner Services, where such Development Partner Services have not yet been commenced.

R.2 Termination for Force Majeure Event

R2.1 If a Force Majeure Event occurs and the effects of the Force Majeure Event continue for 180 days from the date on which the affected Party gives Notice to the other Party pursuant to Section N1.4(a), either Party may, at any time thereafter, terminate this DPA by Notice to the other Party having effect a minimum of 30 days following the delivery of such Notice, provided that the effects of the Force Majeure Event renders it impossible for the affected Party to perform all or substantially all of its obligations under this DPA and continues during such minimum 30 day period.

R.3 Automatic Termination and Expiry on Design Build Agreement Execution

R3.1 Subject to any earlier termination in accordance with Section Q or Section R, this DPA shall expire and terminate automatically on execution of the Design Build Agreement by the City and the Design Builder.

R.4 No Other Rights to Terminate

R4.1 Except as set out in Sections Q1.3(b) and Q2.2(b) and this Section R, no Party shall have a right or entitlement to terminate this DPA, nor to accept any repudiation of this DPA, and shall not exercise, nor purport to exercise, any such right or entitlement.

SECTION S EFFECTS OF TERMINATION

S.1 Development Partner's Obligations on Termination

S1.1 Upon the termination of this DPA other than as a result of its expiry pursuant to Section R.3, for a reasonable period both before and after such termination, Development Partner shall, in addition to its other obligations under this DPA and at Applicable Law:

- (a) at the request of the City, provide the City with any completed or partially completed Development Partner Services in the formats requested by the City, including all design and other technical drawings and data, reports, working drafts and all other information directly related to the Development Partner Services or the Project;
- (b) provide the City with a report detailing: (A) the current state of the provision of the Development Partner Services at the date of termination; and (B) any other information requested by the City pertaining to the provision of Development Partner Services or the Project and performance by Development Partner under this DPA;
- (c) execute such documentation as may be required by the City to give effect to the termination of this DPA;
- (d) cooperate with the City and any City Parties, provide information to the City and any City Parties, and comply with all reasonable instructions provided by the City or any City Party to Development Partner (including instructions for Development Partner and the Development Partner Parties to complete any unfinished specific Development Partner Services) in order to provide for an orderly, efficient and

safe transition of Development Partner's role in and works and services with respect to the Project to the City and so that the City may complete the Project or develop a project similar to the Project by way of a contract model that may be different than the contract model contemplated by the Draft Design Build Agreement and by persons that exclude Development Partner and some or all of the Development Partner Parties; and

- (e) without limiting any of the foregoing provisions of this Section S.1 or any other provision of this DPA or Assignable Subcontract Agreement, comply with (A) any obligation of Development Partner set out in Section O6 of the Draft Design Build Agreement that the City, in its sole discretion, instructs Development Partner to comply with or be responsible for in writing, which provisions of the Draft Design Build Agreement shall, without limiting Section B.4, be applicable *mutatis mutandis*, and (B) all other reasonable instructions provided by the City to Development Partner related thereto.

S1.2 Notwithstanding any other provision of this DPA and without prejudice to the City's rights under this DPA and otherwise at law, Development Partner acknowledges and agrees that, notwithstanding termination of this DPA, other than in accordance with Section R3, Development Partner shall remain liable to the City for all Direct Losses arising from the City's reasonable use (in accordance with Good Industry Practice) of all Development Phase Deliverables to the extent of any error or omission therein resulting from Development Partner or any Development Partner Party's failure to prepare the Development Phase Deliverables in accordance with this DPA and Good Industry Practice, including where the City engages a party that is not Development Partner or a Development Partner Party to perform design services for the Project. The City acknowledges that Development Phase Deliverables provided by Development Partner pursuant to this DPA may not be complete nor finalized, may not be fully detailed and may not be ready for construction, and the City's "reasonable use" of any of Development Phase Deliverables shall be interpreted accordingly.

S.2 City's Payment Obligations on Termination

- S2.1 Subject to Section M.4, on termination of this DPA pursuant to Sections R1.1, R2.1 or Q2.2(b), the City shall only be responsible for the payment to Development Partner of the following amounts:
- (a) amounts payable under this DPA in accordance with Section M.3 and DPA Schedule 8 – Development Phase Payment for the performance of the Development Partner Services for up to and including the effective date of the termination of this DPA;
 - (b) the Demobilization Costs;
 - (c) the Subcontractor Losses;
 - (d) the Employee Termination Payments;

- (e) any other amount expressly due and payable to Development Partner pursuant to Sections Q2.3 and U1.1; and
 - (f) any other amounts expressly due and payable to Development Partner in accordance with the terms of this DPA up to and including the effective date of the termination of this DPA.
- S2.2 Subject to Section M.4, on termination of this DPA pursuant to Section Q1.3(b), the City shall only be responsible for the payment to Development Partner of the following amounts:
- (a) amounts payable under this DPA in accordance with Section M.3 and DPA Schedule 8 – Development Phase Payment for the performance of the Development Partner Services for up to and including the effective date of the termination of this DPA;
 - (b) the Demobilization Costs;
 - (c) any other amount expressly due and payable to Development Partner pursuant to Sections Q2.3 and U1.1; and
 - (d) any other amounts expressly due and payable to Development Partner in accordance with the terms of this DPA up to and including the effective date of the termination of this DPA.
- S2.3 On termination of this DPA in accordance with Section R.3, the City shall only be responsible for the payment to Development Partner of the following amounts:
- (a) amounts payable under this DPA in accordance with Section M.3 and DPA Schedule 8 – Development Phase Payment for the performance of the Development Partner Services for up to and including the effective date of the termination of this DPA;
 - (b) any other amount expressly due and payable to Development Partner pursuant to Sections Q2.3 and U1.1; and
 - (c) any other amounts expressly due and payable to Development Partner in accordance with the terms of this DPA up to and including the effective date of the termination of this DPA.
- S.3 Other Termination Rights and Obligations of the Parties**
- S3.1 On completion of Development Partner’s obligations pursuant to this Section S, this DPA shall terminate and, except as provided in Section S.4, all rights and obligations of the City and Development Partner under this DPA shall cease and be of no further force and effect.
- S3.2 Notwithstanding any breach of this DPA by a Party, the other Party may elect to continue to treat this DPA as being in full force and effect and to enforce its rights under this DPA without prejudice to any other rights which such other Party may have in relation to such

breach. The failure of either Party to exercise any right under this DPA, including any right to terminate this DPA and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

- S3.3 Subject to any exercise by the City of its rights to perform, or to seek, pursuant to this DPA, a third party to perform, the obligations of Development Partner, the Parties shall continue to perform their obligations under this DPA, notwithstanding the giving of any Notice of default or Notice of termination, until the termination of this DPA becomes effective.
- S3.4 Development Partner shall make provision in all DPA Subcontracts to which it is a party (including requiring the relevant Development Partner Parties to make such provision) to ensure that the City shall be in a position to exercise its rights, and Development Partner shall be in a position to perform its obligations, under this Section S.

S.4 **Survival**

- S4.1 The termination of this DPA shall not relieve a Party of any liabilities of a Party to the other Party under this DPA arising prior to the effective date of the termination of this DPA or of any of a Party's obligations pursuant to this Section S.
- S4.2 Without limiting the generality of Section S4.1, the termination of this DPA shall be without prejudice to, and shall not affect:
- (a) any representations, warranties and indemnities under this DPA; and
 - (b) Sections B, C.1, D, F.2, F.3, H, M, O.2, P, Q1.7, Q2.3, S, U, V, W, X, Z.1, Z.1, Z.4, Z.12, Z5.1, Z.7, Z.4, Z.4, Z6.1, Z8.1, DPA Schedule 1 – Definitions and Interpretation, and any other provisions of this DPA which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this DPA, including pursuant to Section R.3.

- S4.3 For clarity, any termination of this DPA shall be without prejudice to, and shall not affect, the Parent Guarantee, which shall survive the termination of this DPA, including pursuant to Section R.3.

SECTION T SUSPENSION OF DEVELOPMENT PARTNER SERVICES

T.1 Suspension of Development Partner Services by the City

- T1.1 Without prejudice to or limiting Development Partner's right to payment pursuant to Section M.3 and DPA Schedule 8 – Development Phase Payment, the City may, at any time, direct Development Partner in writing to suspend all or any part of the Development Partner Services for such period of time as the City may determine to be appropriate for the convenience of the City. This right of the City to suspend the Development Partner Services shall not give rise to any duty on the part of the City to

exercise this right for the benefit of Development Partner or any Development Partner Party.

SECTION U INDEMNITIES AND CONDUCT OF CLAIMS

U.1 Development Partner's Indemnity

U1.1 Subject to Section V, Development Partner shall indemnify and hold harmless the City Indemnified Parties against all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:

- (a) the negligence, other tortious conduct or willful misconduct of Development Partner, any Development Partner Party or their respective directors, officers, employees or agents in relation to the Development Partner Services;
- (b) any loss or damage of a third party arising from the Development Partner Services, including any infringement by Development Partner or any Development Partner Party of any intellectual property rights of third parties, death, personal injury and any physical loss or damage to property or assets of any third party and any claim that the Assigned Intellectual Property, and Intellectual Property licensed to the City hereunder or their use by or on behalf of the City infringes the Intellectual Property of any third party, except to the extent that any such infringement is caused by the City;
- (c) any physical loss or damage to all or any part of the Lands, the Infrastructure, or to any equipment, assets or other property related thereto which is the responsibility of Development Partner pursuant to this DPA;
- (d) the performance by Development Partner of this DPA not in accordance with or in breach of the requirements of any Permits, Licences and Approvals, Applicable Law or the requirements of Governmental Authorities, or the failure of Development Partner to obtain all necessary Permits, Licences and Approvals required for the Project;
- (e) any claims arising under or in relation to Environmental Damage or Degradation for which the Development Partner is responsible pursuant to this DPA; and
- (f) as provided for in Section Q.1,

except, in each case, to the extent caused, or contributed to, by the breach of this DPA by the City or by the negligence or willful misconduct of the City or a City Indemnified Party.

U1.2 Subject to Section V but without limiting Section U1.1(c), the Development Partner shall indemnify and hold harmless the City Indemnified Parties against all legal consequences, including all legal costs and expenses and any fines or penalties imposed by a Governmental Authority, incurred by the City in connection with the non-compliance with Applicable Law or any Permits, Licences and Approvals by Development Partner and any Development Partner Party, except, in each case, to the

extent caused, or contributed to, by the breach of this DPA by the City or any negligence or wilful misconduct of the City.

U.2 City's Indemnity

U2.1 Subject to Section V, the City shall indemnify and hold harmless the Development Partner and its directors, officers and employees against all Direct Losses arising from:

- (a) failure on the part of the City to pay any amount or amounts due to the Development Partner under this DPA (except to the extent that such amount or amounts are disputed in good faith through the DPA Dispute Resolution Procedure) and where the City does not remedy such failure within 30 Calendar Days of the Development Partner providing the City with notice to do so;
- (b) the negligence or wilful misconduct of the City in relation to the subject matter of this DPA; and
- (c) a failure by the City to comply with Applicable Law;

except to the extent that such damages, losses and costs are caused or contributed to, by breach of this DPA by the Development Partner or by any negligence or wilful misconduct of the Development Partner or any Development Partner Party. Further there shall be excluded from the indemnity given by the City, any liability for the occurrence of risks against which the Development Partner is required to insure under this DPA to the extent of insurance proceeds received or that should have been received but for a failure by the Development Partner to comply with its obligations to properly insure or report a claim upon discovery under this DPA.

U.3 Conduct of Claims

U3.1 Without limiting Section B.4, the Parties agree to comply with the provisions of Section N5 of the Draft Design Build Agreement, which shall be applicable *mutatis mutandis* and applied in respect of the provisions of Section U1.1.

SECTION V LIMITS OF LIABILITY

V.1 No Liability for Indirect Losses or in Tort

V1.1 Without prejudice to the Parties' rights in respect of payments provided for in this DPA, the indemnities under this DPA shall not apply and there shall be no right to claim damages for breach of this DPA, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is an Indirect Loss.

V1.2 Subject to the indemnities provided herein, neither the City nor any City Party shall be liable in tort to Development Partner or any Development Partner Party, and neither Development Partner nor any Development Partner Party shall be liable in tort to the City or any City Party in respect of any negligent act or omission of any such person relating to or in connection with this DPA and no such person shall bring such a claim.

- V1.3 Nothing in this DPA shall prevent or restrict the right of the City to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- V1.4 Notwithstanding any other provision of this DPA, and except to the extent recovered under any of the insurances or performance security required pursuant to this DPA, neither Party shall be entitled to recover compensation or make a claim under this DPA, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this DPA, or otherwise.

V.2 Maximum Liability

- V2.1 The maximum aggregate liability of each Party in respect of all claims under Section U shall not exceed \$ [REDACTED]. This limit shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or insurance policies maintained pursuant to this DPA. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- V2.2 Nothing in this Section V.2 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this DPA.

SECTION W RECORDS, INFORMATION AND AUDIT

W.1 Records Provisions, Information and General Audit Rights

- W1.1 Without limiting Section B.4 and in addition to any other provisions in respect of audit or records set out in DPA Schedule 8 – Development Phase Payment or otherwise in this DPA, the Parties agree to comply with the provisions of Section M of the Draft Design Build Agreement, which shall be applicable *mutatis mutandis*.

SECTION X OWNERSHIP OF PROJECT DOCUMENTS AND INTELLECTUAL PROPERTY

- X1.1 Ownership of the Development Phase Deliverables and all documentation and information prepared for or comprising the Development Phase Deliverables and any other document or information prepared for the purposes of the Development Partner Services or the Project pursuant to this DPA, including, for clarity, all design documents and conditions surveys (collectively, the “**Development Phase Information**”), immediately vests in the City upon its creation and Development Partner shall not:
- (a) use any part of the Development Phase Information without the City’s prior written consent; or
 - (b) disclose any part of the Development Phase Information without the City’s prior written consent.
- X1.2 Without limiting Section B.4, the provisions of Section Q9 of the Draft Design Build Agreement shall apply *mutatis mutandis* to all Development Phase Deliverables and Development Phase Information.

SECTION Y PROHIBITED ACTS

Y.1 Prohibited Acts Definition

Y1.1 The term “**Prohibited Act**” means:

- (a) offering, giving, or agreeing to give to the City, any member of the City of Winnipeg Council, any officer or employee of the City or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift, gratuity in the form of entertainment or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this DPA or any other agreement with the City or any public body in connection with the Project; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this DPA or any other agreement with the City or any public body in connection with the Project,

provided that this Section Y1.1(a) shall not apply to Development Partner or any Development Partner Party (or anyone employed by or acting on their behalf) providing consideration to the City or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Development Partner under this DPA or any other agreement with the City, or any public body in connection with the Project;

- (b) entering into this DPA or any other agreement with the City or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Development Partner, or on its behalf or to its knowledge, the City or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the City, provided that this Section Y1.1(b) shall not apply to a fee or commission paid by Development Partner or any Development Partner Party (or anyone employed by or acting on their behalf) to the City or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Development Partner under this DPA or any other agreement with the City or any public body in connection with the Project without contravening the intent of this Section Z2.2.
- (c) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this DPA or any other agreement with the City or any public body in connection with the Project, including Development Partner, one of its Affiliates, or an individual engaged as an officer, director, executive, or senior manager of Development Partner or of one of its Affiliates being convicted in Canada under the *Corruption of Foreign Public Officials Act (Canada)*; or

- (d) defrauding or attempting to defraud or conspiring to defraud the City or any other public body.

Y.2 Prohibited Acts Remedies

Y2.1 If Development Partner or any Development Partner Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then the City shall be entitled to act in accordance with the following:

- (a) if the Prohibited Act is committed by the Development Partner or by an employee acting under the direction of a director or officer of the Development Partner, then the City may give written Notice to the Development Partner and Section Q.1 shall apply;
- (b) if the Prohibited Act is committed by an employee of the Development Partner acting independently of a direction of a director or officer of the Development Partner, then the City may give written Notice to the Development Partner and Section Q.1 shall apply, unless, within 30 days after receipt of such Notice, the Development Partner terminates the employee's employment and ensures that the relevant part of the Development Partner Services shall be performed by another person;
- (c) if a Prohibited Act is committed by a Development Partner Party or by an employee of that Development Partner Party not acting independently of a direction of a director or officer of that Development Partner Party, then the City may give written Notice to the Development Partner and Section Q.1 shall apply, unless, within 30 days after receipt of such Notice, the Development Partner terminates the relevant DPA Subcontract and ensures that the relevant part of the Development Partner Services shall be performed by another person;
- (d) if the Prohibited Act is committed by an employee of a Development Partner Party acting independently of a direction of a director or officer of that Development Partner Party, then the City may give Notice to the Development Partner and Section Q.1 shall apply, unless, within 30 days after receipt of such Notice, the Development Partner causes the termination of the employee's employment and ensures that the relevant part of the Development Partner Service shall be performed by another person; and
- (e) if the Prohibited Act is committed on behalf of the Development Partner or a Development Partner Party by a person not specified in Sections Y2.1(a) to Y2.1(d), then the City may give Notice to the Development Partner and Section Q.1 shall apply, unless, within 30 days after receipt of such Notice, Development Partner causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Development Partner Services shall be performed by another person.

Y2.2 Any Notice of termination under this Section Y.2 shall specify:

- (a) the nature of the Prohibited Act;

- (b) the identity of the person whom the City believes has committed the Prohibited Act; and
- (c) the date of termination in accordance with the applicable provisions of this DPA.

Y2.3 Without prejudice to its other rights or remedies under this Section Y.2, the City shall be entitled to recover from Development Partner any Direct Loss sustained in consequence of any breach of this Section Y and Development Partner and any implicated Development Partner Party may be subject to debarment in accordance with the City's Materials Management Policy available at <http://clkapps.winnipeg.ca/DMIS/councilpolicy.asp?id=materialsmanagement>

Y.3 Permitted Payments

Y3.1 Nothing contained in this Section Y shall prevent Development Partner or any other person from paying any proper commission, fee, or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

Y.4 Notification

Y4.1 Development Partner shall provide Notice to the City of the occurrence and details of any Prohibited Act promptly on Development Partner becoming aware of its occurrence.

Y.5 Replacement of Development Partner Party

Y5.1 Where Development Partner is required to replace any Development Partner Party pursuant to this Section Y, the party replacing such Development Partner Party shall from the time of the replacement be deemed to be a Development Partner Party and the provisions of this DPA shall be construed accordingly.

SECTION Z GENERAL

Z.1 Notices

Z1.1 Notices to Parties

- (a) Any notice, consent, approval or other communication (each a "**Notice**") under any provision of this DPA must be in writing to be effective, and is effective when delivered by any means, including registered mail, email or by hand, (in each case, with a copy always by electronic transmission in accordance with Draft DBA Schedule 13 – Document Management System), to the following respective addresses:

If to the City:

The City of Winnipeg
Water and Waste Department
1199 Pacific Avenue
Winnipeg, Manitoba R3E 3S8

Attn.: Lana Obach, P. Eng., MASc, PMP,
Senior Project Engineer

Email: lobach@winnipeg.ca

With a copy to:

The City of Winnipeg
Water and Waste Department
1199 Pacific Avenue
Winnipeg, Manitoba R3E 3S8

Attn.: Tim Shanks, M. Eng., P.Eng
Director

Email: tshanks@winnipeg.ca

If to Development Partner:

[Note to Proponents – to be populated after Step 2 has been completed]

Attn.: [●]

Email.: [●]

- (b) Any communication delivered in accordance with Section Z1.1 shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or, if emailed, at the time and date received by the recipient, provided that such day in either event is a Business Day and the communication is so delivered or e-mailed before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

Z1.2 Authority to Give Notices

- (a) The Parties designate for the time being the following individuals as having authority to communicate to the other any notice, approval, consent, waiver or other communication under this DPA:

If to the City:

The City of Winnipeg
Water and Waste Department
1199 Pacific Avenue
Winnipeg, Manitoba R3E 3S8

Attn.: Lana Obach, P. Eng., MASc, PMP,
Senior Project Engineer

Email: lobach@winnipeg.ca

If to Development Partner:

[Note to Proponents – to be populated after Step 2 has been completed]

Attn.: [●]

Email.: [●]

- (b) In the absence of any further designation or limitation communicated with reference to this Section Z1.2, each Party may assume that any notice, approval, consent, waiver or other communication under this DPA given by the above individual has been duly authorized and is binding upon the other Party.

Z.2 Assignment

Z2.1 Assignment by the Development Partner

- (a) The Development Partner may not, without the prior consent of the City, which consent shall not be unreasonably withheld, assign this DPA or any right or benefit under this DPA. For greater certainty, the City will not withhold or delay its consent where the Development Partner has satisfied the City, acting reasonably, that:
- (i) the proposed transferee is of good reputation and has suitable technical, commercial and financial resources; and

- (ii) the proposed transferee is not involved in a business or activity incompatible with or inappropriate in relation to the Project or the business relationship between the City and the Development Partner.

Z2.2 Assignment by the City

- (a) The City may assign and transfer all of its rights and obligations under this DPA to an assignee with suitable technical, commercial and financial resources at any time without the consent of the Development Partner.

Z.3 **Change in Ownership**

Z3.1 Development Partner shall provide the City with Notice of any material change in its ownership (direct or indirect). If such change materially adversely impacts any of the following factors:

- (a) the financial standing and technical, commercial and financial resources (as determined by the City) of Development Partner or the person acquiring an interest in Development Partner;
- (b) whether the proposed owner is involved in a business or activity incompatible with or inappropriate in relation to the Works or the business relationship between the City and Development Partner; or
- (c) whether the change in ownership compromises the integrity or reputation of the City or the Project.

Z3.2 For the purposes of this Section Z.3:

- (a) the issuance by Development Partner of non-voting preferred shares or any similar transaction entered into for tax-planning purposes that does not involve voting shares in Development Partner;
- (b) internal reorganizations, which do not have the effect of changing the ultimate ownership of Development Partner; or
- (c) the initial public offering or the issuance of or trading of publicly traded securities of an entity that directly or indirectly holds an interest in Development Partner,

shall not be considered to be a material change in the ownership of Development Partner.

Z.4 **Enurement**

Z4.1 This DPA and any other agreement entered into in connection with this DPA to which both the City and the Development Partner are parties shall enure to the benefit of, and be binding on, the City and the Development Partner and their respective successors and permitted transferees and assigns.

Z.5 Applicable Law and Jurisdiction

Z5.1 This DPA shall be governed by the laws in force in the Province of Manitoba, including the federal laws of Canada applicable therein. Manitoba courts shall have exclusive jurisdiction over all matters arising in relation to this DPA, and each Party accepts the jurisdiction of Manitoba courts.

Z.6 Amendment and Waiver

Z6.1 Except as provided for in DPA Schedule 9 – Change Orders, no amendment of this DPA is effective unless made in writing and signed by a duly authorized representative of each of the City and the Development Partner. No waiver of any provision of this DPA is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by either of the Parties with respect to the performance of any obligation under this DPA is capable of giving rise to an estoppel unless the representation is made in writing.

Z.7 Severability

Z7.1 Each provision of this DPA shall be valid and enforceable to the fullest extent permitted by law. If any provision of this DPA is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this DPA. If any such provision of this DPA is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this DPA as near as possible to its original intent and effect.

Z.8 Cumulative Remedies

Z8.1 Except as otherwise set forth in this DPA, the rights, powers and remedies of each Party set forth in this DPA are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this DPA.

Z.9 Additional Assurances

Z9.1 The City and the Development Partner each agree to from time to time do all such acts and provide such further assurances and instruments as may reasonably be required in order to carry out the provisions of this DPA according to their spirit and intent; but this Section Z.9 shall not in any event be construed as obligating the City to amend or enact any by-law or regulation.

Z.10 Costs

Z10.1 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this DPA.

Z.11 Counterparts

Z11.1 This DPA may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by fax, electronic mail or other electronic transmission shall constitute good delivery.

Z.12 Joint and Several

Z12.1 Where two or more persons execute this DPA as Development Partner, the liability under this DPA of such persons executing this DPA shall be joint and several.

Z12.2 The Parties have therefore signed this DPA, by their respective duly authorized officers, on the respective dates shown below.

Z.13 Entire Agreement

Z13.1 This DPA is the entire agreement between the City and the Development Partner regarding the subject matter of this DPA, and supersedes any previous agreements, discussions, negotiations and understandings. There are no agreements, representations, warranties, terms, conditions or commitments regarding the subject matter of this DPA except as expressed in this DPA.

Z.14 Currency

Z14.1 In this DPA, all references to dollar amounts are in Canadian currency.

Z.15 No Agency, Joint Venture, Partnership, Lease or Loan

Z15.1 This DPA is not intended to and does not:

- (a) constitute either Party as the agent of the other for any purpose, or otherwise create any relationship of agency;
- (b) constitute or create any joint venture;
- (c) constitute or create any partnership;
- (d) constitute the relationship of landlord and tenant; or
- (e) constitute the relationship of lender and borrower,

and neither Party shall allege or assert for any purpose that this DPA constitutes or creates a relationship of agency, joint venture, partnership, landlord and tenant, or lender and borrower.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

THE CITY OF WINNIPEG

Per: _____
Name: Michael A. Jack
Title: Chief Administrative Officer

I have authority to bind The City of Winnipeg

Reviewed as to Business terms:

Certified as to Contract Details:

Name: Cynthia Wiebe, P.Eng, CAMP
Manager Engineering Services
Water and Waste Department

Name: Tim Shanks, M.Eng., P.Eng
Director Water and Waste Department

Legally Reviewed and Certified as to Form:

Name: Lisa R. Rowswell, BA, LLB
Sr. Solicitor (Team Lead – Procurement)
for Director of Legal Services and City
Solicitor

[DEVELOPMENT PARTNER]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.