

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

SECTION A DEFINITIONS

A1. Definitions.

In the DPA, unless the context otherwise requires:

- A1.1 **"Additional Development Partner Services"** has the meaning given in Section L2.1 of the DPA.
- A1.2 **"Affiliate"** has the meaning given in *The Corporations Act*, CCSM c. C225, Part 1, as may be amended from time to time.
- A1.3 **"Applicable Law"** has the meaning given in the Draft Design Build Agreement.
- A1.4 **"Assignable Subcontract Agreement"** means the agreement to be entered into among the City, the Development Partner, and DPA Subcontractors determined in accordance with the terms of the DPA in the form set out in DPA Schedule 12 – Form of Assignable Subcontract Agreement.
- A1.5 **"Assigned Intellectual Property"** has the meaning given in the Draft Design Build Agreement.
- A1.6 **"Best for Project"** means an approach, determination, decision, method, solution, interpretation, outcome, or resolution that is consistent with the objectives of the City for the Project.
- A1.7 **"Business Day"** has the meaning given in the Draft Design Build Agreement.
- A1.8 **"City"** has the meaning given in the recitals to the DPA.
- A1.9 **"City DPA Event of Default"** has the meaning given in Section Q2.1 of the DPA.
- A1.10 **"City DPA Representative"** means Lana Obach, P. Eng., MASc, PMP., Project Engineer, or such other person designated by the City as such in a Notice delivered to the Development Partner from time to time in accordance with the DPA, with details of that role included in G1 of the DPA.
- A1.11 **"City Indemnified Parties"** has the meaning given in the Draft Design Build Agreement.
- A1.12 **"City Operations"** has the meaning given in the Draft Design Build Agreement.
- A1.13 **"City Party"** means any of the City and its respective agents, contractors and subcontractors of any tier and its or their commissioners, directors, officers and employees, and other persons engaged by any of the foregoing in respect of the City

Operations, but excluding the Development Partner and any Development Partner Party, and the "**City Parties**" shall be construed accordingly.

- A1.14 "**Collaboration Principles**" has the meaning given in Section F1.2 of the DPA.
- A1.15 "**Confidential Information**" has the meaning given in the Draft Design Build Agreement.
- A1.16 "**Conflict of Interest**" has the meaning given in Section P2.1 of the DPA.
- A1.17 "**Construction Team**" means, collectively, the Primary Construction Team and any DPA Subcontractor where, pursuant to the applicable DPA Subcontract, the majority of the work and services to be performed thereunder constitute DPA Construction Works; and a "**Construction Team Member**" means any member thereof.
- A1.18 "**Contract Price**" has the meaning given in the Draft Design Build Agreement.
- A1.19 "**Contract Price Report**" has the meaning given in DPA Schedule 7 – Development of Contract Price.
- A1.20 "**COR Certificate**" has the meaning given in the Draft Design Build Agreement.
- A1.21 "**COR Equivalency**" means a valid Manitoba COR™ Equivalency Certificate issued by the Construction Safety Association of Manitoba.
- A1.22 "**COR Reciprocity**" means a valid Letter of Reciprocity indicating that the recipient is in the process of obtaining a COR Certificate or COR Equivalency issued by the Construction Safety Association of Manitoba.
- A1.23 "**Corporate Overhead**" has the meaning given in DPA Schedule 8 – Development Phase Payment.
- A1.24 "**COVID-19 Pandemic**" has the meaning given in the Draft Design Build Agreement.
- A1.25 "**DBA Agreement Finalization and Approval Period**" means the portion of the Intermediate Design Period from the approval of the Intermediate Design Submittal to the date of execution of the Design Build Agreement.
- A1.26 "**DBA Agreement Finalization and Approval Period Activities**" has the meaning given in Section C8.1 of the DPA.
- A1.27 "**Decision Log**" has the meaning given in DPA Schedule 3 – Development Phase Scope of Work – Appendix 3B Working Groups.
- A1.28 "**Demobilization Costs**" means the reasonable costs properly incurred by the Development Partner and the DPA Subcontractors (subsequent to receipt of Notice of termination) in winding down and the orderly demobilization of the performance of the Development Partner Services, provided that the Development Partner and the DPA Subcontractors have taken commercially reasonable steps to mitigate such costs and expressly excluding:

- (a) Subcontractor Losses;
 - (b) Employee Termination Payments;
 - (c) loss of overhead or profit of the Development Partner or any DPA Subcontractor and any other Indirect Losses;
 - (d) breakage fees, penalties or similar amounts; and
 - (e) consultant and legal fees and disbursements.
- A1.29 **"Design Build Agreement Approval Notice"** has the meaning given in Section E3.6 of the DPA.
- A1.30 **"Design Build Agreement Execution"** means the date of the execution and delivery of the Final Design Build Agreement.
- A1.31 **"Design Build Agreement Execution Target Date"** means the date identified by the City to the Development Partner as the "Design Build Agreement Execution Target Date" in accordance with Section C2.2 of the DPA, as such date may be adjusted by agreement of the Parties.
- A1.32 **"Design Build Agreement Finalization"** has the meaning given in Section E3.6 of the DPA.
- A1.33 **"Design Builder"** means the Development Partner, in the event that, subject to and in accordance with the DPA, the Development Partner and the City enter into the Final Design Build Agreement on Design Build Agreement Execution.
- A1.34 **"Design Team"** means, collectively, the Primary Design Team and any DPA Subcontractor, where, pursuant to the applicable DPA Subcontract, the majority of the work and services to be performed thereunder constitute DPA Design Works; and a **"Design Team Member"** means any member thereof.
- A1.35 **"Development Partner"** has the meaning given in the recitals to the DPA.
- A1.36 **"Development Partner DPA Representative"** means [●] [Note to Proponents: To be completed prior to Effective Date], or such other person designated by the Development Partner as such in a Notice delivered to the City from time to time in accordance with the DPA, with detail of that role included in G2 of the DPA.
- A1.37 **"Development Partner Event of Default"** has the meaning given in Section Q1.1 of the DPA.
- A1.38 **"Development Partner Event of Default Cure Period"** has the meaning given in Section Q1.3(b) of the DPA.
- A1.39 **"Development Partner Parties"** means:
- (a) [●]; [Note to Proponents: To be completed prior to Effective Date.]

- (b) any person engaged by the Development Partner, from time to time, as may be permitted by the DPA to procure or manage the provision of the Development Partner Services (or any of them); and
- (c) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,

and **“Development Partner Parties”** shall be construed accordingly.

- A1.40 **“Development Partner Scope of Work”** has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.41 **“Development Partner Services”** has the meaning given in Section I1.1 of the DPA.
- A1.42 **“Development Partner DBA Requirements”** means the requirements for the performance of the Development Partner Services set out in DPA Schedule 3 – Development Phase Scope of Work.
- A1.43 **“Development Phase”** means the phase of the Project comprising the activities undertaken by the City and the Development Partner in the DPA.
- A1.44 **“Development Phase Agreement”** or **“DPA”** means this development phase agreement and all schedules, appendices and exhibits attached to the Development Phase Agreement.
- A1.45 **“Development Phase Deliverables”** means the Submittals listed in Section D of DPA Schedule 5 – Review Process.
- A1.46 **“Development Phase Schedule”** has the meaning given in DPA Schedule 4 – Development Phase Schedule Requirements.
- A1.47 **“Development Phase Information”** has the meaning given in Section X1.1 of the DPA.
- A1.48 **“Development Phase Start-up Meeting”** has the meaning given in Section C2.5 of the DPA.
- A1.49 **“Direct Losses”** means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- A1.50 **“DPA Background Information”** means any and all drawings, reports, studies, plans, data, documents, or other information, given or made available to the Development Partner or any Development Partner Party by the City or any City Party, or which was obtained from or through any other sources, prior to the Effective Date or, in accordance with the DPA, following the Effective Date.

- A1.51 “**DPA Change Order**” has the meaning given in DPA Schedule 9 – DPA Change Orders.
- A1.52 “**DPA Charter**” has the meaning set out in Section C2.1(c) of the DPA.
- A1.53 “**DPA Construction Works**” means all Development Partner Scope of Work other than DPA Design Works.
- A1.54 “**DPA Contract Award**” has the meaning set out in Section M1.1 of the DPA.
- A1.55 “**DPA Design Works**” means the design of the Infrastructure performed by the Design Team in accordance with the DPA, including validation of the City Preliminary Design Information, and which may, for greater certainty, in accordance with the DPA, include the completion of such design in the event that the DPA is terminated other than in accordance with Section R.3 of the DPA.
- A1.56 “**DPA Dispute**” means all disagreements, disputes or controversies arising during or following the DPA Term in relation to or arising out of the interpretation, enforceability, performance, breach, or validity of the DPA or any provision of the DPA, the rights or obligations of the Parties under the DPA, or the exercise or failure to exercise a discretion or power given to a Party under the DPA.
- A1.57 “**DPA Dispute Resolution Procedure**” has the meaning given in Section F2.1(b) of the DPA.
- A1.58 “**DPA Estimate**” has the meaning given in DPA Schedule 9 – DPA Change Orders.
- A1.59 “**DPA Reserve**” has the meaning set out in Section M1.3 of the DPA.
- A1.60 “**DPA Subcontract**” means the contracts entered into by or between the Development Partner and any DPA Subcontractor or between any DPA Subcontractor at any tier, including the Design Team and any other DPA Subcontractor at any tier in relation to any aspect of the Development Partner Services or the Project.
- A1.61 “**DPA Subcontractor**” means any subcontractor of the Development Partner engaged by or through the Development Partner to perform any of the Development Partner Services, including any DPA Supplier, the Design Team or other consultant, and any subcontractor of any other subcontractor at any tier.
- A1.62 “**DPA Subcontractor Lien**” has the meaning given in Section K4.1 of the DPA.
- A1.63 “**DPA Supplier**” means a person who supplies to the Development Partner, or to any DPA Subcontractor any equipment, materials, supplies or services as part of, or for, the Development Partner Services.
- A1.64 “**DPA Term**” has the meaning given in Section C1.1 of the DPA.
- A1.65 “**DPA Upset Limit**” has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.

- A1.66 **“DPA Variance”** means a change to a Working Group Budget, Start-up Period Budget, Preliminary Design Period Budget, Intermediate Design Period Budget, allocation of a Period Budget Contingency, membership of a Working Group, provided such changes do not result in a change to the DPA Upset Limit.
- A1.67 **“Draft Design Build Agreement”** or **“Draft DBA”** means a draft of the design build agreement in respect of the Project between the City and the Design Builder attached as Schedule 14 – Draft Design Build Agreement to the DPA, as may be revised pursuant to the terms and conditions of the DPA.
- A1.68 **“Draft Design Build Agreement Negotiations Process”** has the meaning given in Section E3.2(a) of the DPA.
- A1.69 **“Early Works”** has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.70 **“Early Works Site”** means that portion or part of the Lands where Early Works are to be performed.
- A1.71 **“Effective Date”** has the meaning given in the recitals to the DPA.
- A1.72 **“Employee Termination Payments”** means termination payments which are required under Applicable Law to be made to employees of the Development Partner or any DPA Subcontractor as a direct result of terminating the DPA (provided that the Development Partner or the relevant DPA Subcontractor shall take commercially reasonable steps to mitigate its loss) and excluding:
- (a) contracts of employment or other agreements or arrangements entered into by the Development Partner or the relevant DPA Subcontractor to the extent that such contracts of employment, agreements, or arrangements were not entered into in connection with the Project;
 - (b) contracts of employment or other agreements or arrangements entered into with Affiliated DPA Subcontractors, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into on commercial arm’s length terms;
 - (c) Subcontractor Losses;
 - (d) loss of overhead or profit of the Development Partner or any DPA Subcontractor and any other Indirect Losses;
 - (e) breakage fees, penalties or similar amounts; and
 - (f) consultant and legal fees and disbursements other than actual legal fees of employees of the Development Partner or a DPA Subcontractor.
- A1.73 **“Eligible Costs”** has the meaning given in DPA Schedule 8 – Development Phase Payment.

- A1.74 “**Environmental Damage or Degradation**” has the meaning given in the Draft Design Build Agreement.
- A1.75 “**Existing Infrastructure**” has the meaning given in the Draft Design Build Agreement.
- A1.76 “**Final Completion**” has the meaning given in the Draft Design Build Agreement.
- A1.77 “**Final Design Build Agreement**” means the Draft Design Build Agreement as finalized between the City and the Development Partner pursuant to the Draft Design Build Agreement Negotiations Process.
- A1.78 “**Force Majeure Event**” has the meaning given in Section N1.1 of the DPA.
- A1.79 “**Good Industry Practice**” has the meaning given in the Draft Design Build Agreement.
- A1.80 “**Governmental Authority**” has the meaning given in the Draft Design Build Agreement.
- A1.81 “**GST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- A1.82 “**Guarantor**” means [●]. ***[Note to Proponents: To be populated prior to Effective Date.]***
- A1.83 “**Indirect Loss**” or “**Indirect Losses**” means any loss of either Party that is:
- (a) for punitive, exemplary or aggravated damages;
 - (b) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
 - (c) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party.
- A1.84 “**Infrastructure**” has the meaning given in the Draft Design Build Agreement.
- A1.85 “**Intellectual Property**” has the meaning given in the Draft Design Build Agreement.
- A1.86 “**Intellectual Property Rights**” has the meaning given in the Draft Design Build Agreement.
- A1.87 “**Intermediate Cost Estimate**” has the meaning in Schedule 3 – Development Phase Scope of Work
- A1.88 “**Intermediate Design Period**” means the period from the approval of the Preliminary Design Submittal and Intermediate Design Period Work Plan to Stage Gate #3. ***[Note to Proponents: This is anticipated to be a [three month] period.]***

- A1.89 **"Intermediate Design Period Activities"** has the meaning given in Section C4.1 of the DPA.
- A1.90 **"Intermediate Design Period Budget"** has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.91 **"Intermediate Design Submittal"** has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.92 **"Intermediate Design Period Work Plan"** has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.93 **"Key DP Individuals"** has the meaning given in Section J1.1 of the DPA.
- A1.94 **"Key DP Subcontract"** means the contracts entered into by or between the Development Partner and any Key DP Subcontractor in relation to any aspect of the Development Partner Services or the Project.
- A1.95 **"Key DP Subcontractor"** has the meaning given in Section J2.2 of the DPA.
- A1.96 **"Key DPA Milestones"** has the meaning given in DPA Schedule 4 – Development Phase Schedule Requirements.
- A1.97 **"Key Project Stakeholders"** means *[NTD: there are currently no key third party stakeholders but the City will add any that develop or delete this reference before execution]*.
- A1.98 **"Lands"** has the meaning given in Schedule 12 of the Draft Design Build Agreement.
- A1.99 **"Leadership Team"** has the meaning given in DPA Schedule 2 – Development Phase Governance.
- A1.100 **"Lien Holdback"** has the meaning as set out in Section M8.2 of the DPA.
- A1.101 **"Non-Resident"** means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- A1.102 **"Notice"** has the meaning given in Section Z.1 of the DPA.
- A1.103 **"Notice of Development Partner Event of Default"** has the meaning given in Section Q1.2 of the DPA.
- A1.104 **"Notice of DPA Dispute"** has the meaning given in DPA Schedule 2 – Development Phase Governance.
- A1.105 **"Notice to Proceed to Design Build Agreement Execution"** has the meaning given in Section E4.1 of the DPA.
- A1.106 **"Parent Guarantee"** means the parental guarantee given by the Guarantor to the City in the form set out in DPA Schedule 10 – Form of Parent Guarantee.

- A1.107 **“Party”** means either the City or the Development Partner, and **“Parties”** means both the City and the Development Partner.
- A1.108 **“Party Representative”** means the City DPA Representative or the Development Partner DPA Representative, as the context requires.
- A1.109 **“Permits, Licences and Approvals”** has the meaning given in the Draft Design Build Agreement.
- A1.110 **“Preferred Proponent”** has the meaning given in the Request for Proposals.
- A1.111 **“Preliminary Cost Estimate”** has the meaning in Schedule 3 – Development Phase Scope of Work;
- A1.112 **“Preliminary Design Period”** means the period from the approval of the Preliminary Design Period Work Plan to the Preliminary Design Period End Date. ***[Note to Proponents: This is anticipated to be a [three month] period.]***
- A1.113 **“Preliminary Design Period Activities”** has the meaning given in Section C3.1 of the DPA.
- A1.114 **“Preliminary Design Period Budget”** has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.115 **“Preliminary Design Period End Date”** means the date identified by the City to the Development Partner as Stage Gate #2 in accordance with Section C2.4 of the DPA, as such date may be adjusted by agreement of the Parties.
- A1.116 **“Preliminary Design Submittal”** has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.117 **“Preliminary Design Period Work Plan”** has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.118 **“Preliminary Development Phase Plan”** means the Development Partner’s preliminary plan for the execution of the Development Partner Services, as such plan may be amended from time to time, in accordance with this DPA.
- A1.119 **“Primary Construction Team”** means, collectively, the following persons:
- (a) [•];
 - (b) [•]; and
 - (c) [•],
- and any replacement or substitute thereof as may be permitted by the DPA; and **“Primary Construction Team Member”** means any one of them.

[Note to Proponents: The Primary Construction Team will be a list of each Proponent Team Member which has been identified as a member of the Primary Construction Team performing in its Step 2 Submission. A Proponent Team Member can be both a Primary Design Team Member and a Primary Construction Team Member if the company will have individuals performing design work and construction work.]

A1.120 “Primary Design Team” means, collectively, the following persons:

- (a) [•];
- (b) [•]; and
- (c) [•],

and any replacement or substitute thereof as may be permitted by the DPA; and
“Primary Design Team Member” means any one of them.

[Note to Proponents: The Primary Design Team will include each Proponent Team Member which has identified as a member of the Primary Design Team in its Step 2 Submission. A Proponent Team Member can be both a Primary Design Team Member and a Primary Construction Team Member if the company will have individuals performing design work and construction work.]

A1.121 “Primary Team” has the meaning given in DPA Schedule 8 – Development Phase Payment.

A1.122 “Profit” has the meaning given in DPA Schedule 8 – Development Phase Payment.

A1.123 “Prohibited Act” has the meaning given in Section Y1.1 of the DPA.

A1.124 “Project” has the meaning given in the recitals to the DPA.

A1.125 “Project Background Information” has the meaning given in the Draft Design Build Agreement.

A1.126 “Project Data” has the meaning given in the Draft Design Build Agreement.

A1.127 “Request for Proposals” or “RFP” has the meaning given in the recitals to the DPA.

A1.128 “Resource Unit Rates” has the meaning given in DPA Schedule 7 – Development of Contract Price.

A1.129 “Restricted Person” has the meaning given in the Draft Design Build Agreement.

A1.130 “Scheduled Substantial Completion Date” has the meaning given in the Draft Design Build Agreement.

A1.131 “Schedule of Prices” has the meaning given in the Draft Design Build Agreement.

- A1.132 "Senior Executive Team" has the meaning given in DPA Schedule 2 – Development Phase Governance.
- A1.133 "Senior Executive Team Meeting" has the meaning given in DPA Schedule 2 – Development Phase Governance.
- A1.134 "Stage Gate #1" has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.135 "Stage Gate #2" has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.136 "Stage Gate #3" has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.137 "Stage Gate Meeting" has the meaning given in Section C5.1 of the DPA.
- A1.138 "Stage Gate Reports" means, collectively, the Preliminary Design Period Work Plan, the Preliminary Design Submittal and the Intermediate Design Submittal and "Stage Gate Report" means any one of them.
- A1.139 "Start-up Period Activities" has the meaning given in Section C2.1 of the DPA.
- A1.140 "Start-up Period" means the period from the Effective Date to the Start-up Period End Date. *[Note to Proponents: This is anticipated to be a [three] month period.]*
- A1.141 "Start-up Period Budget" has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.142 "Start-up Period End Date" means the date identified by the City to the Development Partner as Stage Gate #1 in accordance with Section C2.4 of the DPA, as such date may be adjusted by agreement of the Parties.
- A1.143 "Step 1 Submission" means the submission submitted by the Development Partner during the Step 1 process that preceded the Development Phase.
- A1.144 "Step 2 Submission" means the submission submitted by the Development Partner during the Step 2 process that preceded the Development Phase.
- A1.145 "Subcontractor Losses" means, subject to the Development Partner's obligations under the DPA to limit any compensation to DPA Subcontractors, the amount reasonably and properly payable by the Development Partner to a DPA Subcontractor under the terms of the relevant DPA Subcontract as a direct result of the termination of the DPA, provided that such amount shall be reduced to the extent that the Development Partner or the DPA Subcontractors fail to take commercially reasonable steps to mitigate such amount, and excluding:
- (a) any loss of overhead or profit of such DPA Subcontractor relating to any period or costs after the date of termination of this DPA;

- (b) agreements or arrangements entered into by the Development Partner or the DPA Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties' obligations in relation to the Project;
- (c) agreements or arrangements entered into by the Development Partner or the DPA Subcontractors with Affiliated DPA Subcontractors, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into on commercial arm's length terms;
- (d) Employee Termination Payments;
- (e) loss of overhead or profit of the Development Partner or any DPA Subcontractor and any other Indirect Losses;
- (f) breakage fees, penalties or similar amounts; and
- (g) consultant and legal fees and disbursements other than actual legal fees of a DPA Subcontractor.

A1.146 **"Submittals"** means:

- (a) means all Submittals that are requested to fulfil the Development Partner Scope of Work including:
 - (i) the information requirements set out in Schedule 3 – Development Phase Scope of Work including all supporting documentation thereto;
 - (ii) Management Plans for both the Development Phase and Implementation Phase including all supporting documentation thereto;
 - (iii) any other documents, reports, plans, drawings, specifications, design calculations, data, models, certificates, samples, shop drawings, mock-ups, logs, tests, methods, schedules, catalogue cuts, manufacturer's installation instructions, guides, manuals, operations and maintenance information, training plans, and asset data including all supporting documentation thereto, required to be submitted by Development Partner in accordance with the DPA and required to be reviewed under DPA Schedule 5 – Development Phase Submittal Review Process;

A1.147 **"Substantial Completion"** has the meaning given in the Draft Design Build Agreement.

A1.148 **"Technical Requirements"** has the meaning given in the Draft Design Build Agreement.

A1.149 **"The Builders' Liens Act (Manitoba)"** means *The Builders' Liens Act of Manitoba* as enacted by SM 1987-88. c.9.

- A1.150 “**Unresolved Issue**” has the meaning given in DPA Schedule 2 – Development Phase Governance.
- A1.151 “**Updated Contract Price**” has the meaning given in DPA Schedule 7 – Development of Contract Price.
- A1.152 “**Work Breakdown Structure**” or “**WBS**” has the meaning given in DPA Schedule 8 – Development Phase Payment.
- A1.153 “**Working Group Estimate**” has the meaning given in DPA Schedule 7 – Development of Contract Price.
- A1.154 “**Working Group IDP Budget**” has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.155 “**Working Group PDP Budget**” has the meaning given in DPA Schedule 3 – Development Phase Scope of Work.
- A1.156 “**Working Group Process Report**” has the meaning given in DPA Schedule 2 - Development Phase Governance.
- A1.157 “**Working Group**” or “**Working Groups**” has the meaning given in DPA Schedule 2 - Development Phase Governance.
- A1.158 “**Working Group Technical Requirements**” has the meaning given in Schedule 3 - Development Phase Scope of Work.
- A1.159 “**Works**” has the meaning given in the Draft Design Build Agreement.

SECTION B INTERPRETATION

- B1. This DPA shall be interpreted according to the following provisions, unless the context requires a different meaning:**
- B1.1 The tables of contents, headings, marginal notes, and references to them in this DPA are for convenience of reference only, shall not constitute a part of this DPA, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this DPA.
- B1.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of this DPA) references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of this DPA are references to such Sections, Articles, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of this DPA and the terms “Section”, “Article”, and “Clause” are used interchangeably and are synonymous.
- B1.3 Except where the context requires otherwise, references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of this DPA followed by a number are references to the whole of the Section, Article, Clause,

Paragraph, Subparagraphs, Schedule, or other division of this DPA as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.

- B1.4 The Schedules to this DPA are an integral part of this DPA and a reference to this DPA includes a reference to the Schedules.
- B1.5 All references in this DPA to a Schedule shall be to a Schedule of this DPA.
- B1.6 All capitalized terms used in a Schedule shall have the meanings given to such terms in DPA Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- B1.7 The language of the Schedules is in many cases written in the imperative for brevity. Unless explicitly indicated otherwise, clauses containing instructions, directions, or obligations are directed to the Development Partner and shall be construed and interpreted as if the words “Development Partner shall” immediately preceded the instructions, directions or obligations.
- B1.8 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators, or other legal representatives of a person in such capacity.
- B1.9 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine, and neuter genders include all other genders.
- B1.10 Unless otherwise provided in this DPA, all accounting and financial terms used in this DPA shall be interpreted and applied in accordance with GAAP.
- B1.11 References to any standard, principle, agreement, or document include (subject to all relevant approvals and any other provisions of this DPA concerning amendments) a reference to that standard, principle, agreement, or document as amended, supplemented, restated, substituted, replaced, novated, or assigned.
- B1.12 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating, or amending the same.
- B1.13 References to a statute shall include all regulations, by-laws, ordinances, and orders made under or pursuant to the statute.

- B1.14 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- B1.15 A reference in this DPA to any right, power, obligation, or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation, or responsibility at the relevant time.
- B1.16 References to a deliberate act or omission or deliberate or negligent act or omission of any City Party shall be construed having regard to the interactive nature of the activities of the City Party and the Development Partner and further having regard to acts otherwise provided for in this DPA.
- B1.17 The words in this DPA shall bear their natural meaning.
- B1.18 Each of the Development Partner's and the City's respective obligations shall be construed as separate obligations owed to the other.
- B1.19 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this DPA taken as a whole; and
 - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- B1.20 In construing this DPA, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of this DPA and, accordingly, general words introduced or followed by the word "other" or "including" or "such as" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- B1.21 Where this DPA states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- B1.22 Where this DPA states that an obligation shall be performed "no later than" or "by" a prescribed number of days before a stipulated date or event or "by" a date which is a

prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- B1.23 Where this DPA states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- B1.24 Any reference to time of day or date means the local time or date in Winnipeg, Manitoba. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day measured from midnight to midnight.
- B1.25 Unless otherwise indicated, time periods will be strictly construed.
- B1.26 Whenever the terms “will” or “shall” are used in this DPA in relation to the Development Partner or the City they shall be construed and interpreted as synonymous and to read “Development Partner shall” or “the City shall” as the case may be.
- B1.27 Any reference to currency is to Canadian currency and any amount advanced, paid, or calculated is to be advanced, paid, or calculated in Canadian currency.
- B1.28 Unless otherwise identified in this DPA, all units of measurement in any documents submitted by the Development Partner to the City shall be in accordance with the SI system of units.
- B1.29 Terms not defined herein and used in this DPA which have a technical meaning commonly understood by the construction industry will be construed as having that meaning unless the context otherwise requires.
- B1.30 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

$$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_n}{\text{CPI}_o}$$

- B1.31 Where a requirement to notify or provide Notice to the City or the City DPA Representative does not include a timeframe for delivery of such notification or Notice, the Development Partner shall provide such notification or Notice as soon as possible and in any event no later than five Business Days after the circumstances triggering the requirement to notify or provide Notice begin. Any such notification or Notice shall be provided in accordance with Section Z.1 of the DPA.