

SCHEDULE 9

DPA CHANGE ORDERS

SECTION A GENERAL

A1. Capitalized Terms

A1.1 Capitalized terms used in this Schedule 9 have the meanings set out in the Development Partner Agreement, unless otherwise expressed in this Schedule 9.

A2. Definitions

A2.1 In this Schedule 9, the following terms have the following meanings:

- (a) **“DPA Change Order”** has the meaning in B1 of this Schedule 9.
- (b) **“DPA Change Order Confirmation”** means a Confirmation (as described in Draft DBA Schedule 5 – Review Procedure) provided by the City of the following:
 - (i) the DPA Estimate, and, if applicable, of any adjustments to the Development Partner Scope of Work or Development Phase Schedule; or
 - (ii) the DPA Change Order Enquiry, if the proposed DPA Change Order is not expected to result in a change to the Development Partner Scope of Work or Development Phase Schedule, or Stage Gate 3;
- (c) **“DPA Change Order Directive”** means a written instruction and description of a proposed DPA Change Order, designated as a “DPA Change Order Directive” (submitted as described in Schedule 13 - Document Management System - Appendix A – Document Numbering Standard) and signed by the City, directing Development Partner to immediately proceed with the work associated and which will be subsequently formalized with a DPA Change Order;
- (d) **“DPA Change Order Enquiry”** means a written notice and description of a proposed DPA Change Order (submitted as described in Schedule 13 Document Management System - Appendix A – Document Numbering Standard) including where applicable the method of procurement for the DPA Change Order.
- (e) **“DPA Estimate”** means a detailed breakdown, estimate and other information attributable to a DPA Change Order prepared by Development Partner (submitted as described in Schedule 13 Document Management System - Appendix A – Document Numbering Standard) in accordance with and meeting the requirements of Section C3.4 of this Schedule 9 ;

- (f) **“Own Forces Work”** has the meaning given in Section E1.1(a) of this Schedule 9;
- (g) **“Subcontractor Work”** has the meaning given in Section E1.1(b) of this Schedule 9;
- (h) **“Third Party Input”** has the meaning given in Section C3.2 of this Schedule 9;
- (i) **“Time Impact Analysis”** has the meaning indicated in Section C5 of this Schedule 9;

SECTION B GENERAL PROVISIONS

B1. DPA Change Order

- B1.1 A DPA Change Order means a written confirmation of a variation, addition, reduction, substitution, modification, deletion, removal or other change to the whole or any part of the Work or the DPA.
- B1.2 Subject to the provisions of this Schedule 9 and without invalidating the DPA, the City may from time to time propose or require Development Partner to carry out and implement a DPA Change Order. Development Partner shall not be entitled to any payment, compensation or extension of time for a DPA Change Order except in accordance with the DPA and this Schedule 9. A DPA Change Order shall not be regarded as confirming an extension to Stage Gate 3 unless expressly stipulated. If the Parties cannot agree on whether a matter is a DPA Change Order, then the issue shall be determined as an Unresolved Issue in accordance with DPA Schedule 2 – Development Phase Governance.

B2. Valuation and Payments for Reductions or Avoided Costs

- B2.1 If a DPA Change Order involves any reduction in the Work and results in net savings in costs to Development Partner for completing the Project, then the value of all such savings shall be reflected in adjustments to the payments to the extent as determined by the Parties, acting reasonably.
- B2.2 Development Partner shall not be entitled to claim for any losses, costs or damages for fixed overhead, Corporate Overhead, or Profit due to the reduction, deletion or removal of any part of the Project, except to the extent that any of such amounts would have been, or will be incurred by Development Partner, including irrevocable commitments such as third-party break fees or penalties, and included in payments payable by the City after the date on which any part of the Project is reduced, deleted or removed.

SECTION C DPA CHANGE ORDER ENQUIRY PROCESS

C1. Initiating a DPA Change Order Enquiry

C1.1 If the City proposes or requires a DPA Change Order as set out in this Schedule 9, it will deliver to Development Partner a DPA Change Order Enquiry.

C2. DPA Change Order Enquiry Requirements

C2.1 For a proposed DPA Change Order that is expected to result in a change to the Development Partner Scope of Work, the Development Phase Schedule, or Stage Gate 3, the DPA Change Order Enquiry will:

- (a) describe the proposed DPA Change Order with sufficient detail to enable Development Partner to prepare a DPA Estimate; and
- (b) detail DPA section additions or deletions.

C2.2 For a proposed DPA Change Order that is not expected to result in a change to the Development Partner Scope of Work, the Development Phase Schedule, or Stage Gate 3, the DPA Change Order Enquiry will:

- (a) detail DPA section additions or deletions;
- (b) indicate to Development Partner in the DPA Change Order Enquiry that the proposed DPA Change Order that is not expected to result in a change to the Development Partner Scope of Work, the Development Phase Schedule, or Stage Gate 3;
- (c) indicate to Development Partner that a DPA Estimate is not required to be delivered to the City; and
- (d) indicate that the process will now proceed to the DPA Change Order Confirmation process in Section E2 of this Schedule 9.

C2.3 If the City would be required by Applicable Law to require Development Partner to seek invitational tenders or to competitively tender any contract in relation to the proposed DPA Change Order, then the City may include in the DPA Change Order Enquiry the requirement that Development Partner must seek and evaluate invitational tenders or quotations, or seek and evaluate competitive tenders, in relation to the DPA Change Order. For certainty, the Development Partner's DPA Estimate may include, *inter alia*, changes due to impacts on Stage Gate 3, the Development Phase Schedule and changes in the Development Partner Scope of Work resulting from the aforesaid requirement to seek invitational tenders or competitively tender any contract in relation to the proposed DPA Change Order.

C3. Development Partner's Delivery of DPA Estimate

C3.1 As soon as practicable and in any event not more than 15 Business Days after receipt of a DPA Change Order Enquiry, or such longer period as the Parties acting

reasonably mutually agree, Development Partner shall deliver to the City an DPA Estimate prepared in accordance with and meeting the requirements of Section C4 of this Schedule 9.

- C3.2 If Development Partner is of the reasonable opinion that the accuracy of the DPA Estimate will benefit from certain third party design work or third party detailed cost estimating (excluding design work or detailed cost estimating done by the subcontractors listed in Schedule 6 – Subcontractors and Key Individuals) (the **“Third Party Input”**), Development Partner may propose to the City that the Third Party Input be arranged by Development Partner at the City’s expense.
- C3.3 If the City gives its written agreement to such proposal, which written agreement may be expressly subject to any terms and conditions that the City deems appropriate, then such Third Party Input expenses shall be paid by the City whether or not the DPA Change Order Enquiry is ultimately withdrawn, or deemed to have been withdrawn, by the City. In deciding to give its written agreement, the City shall give consideration to the reasonableness of the Third Party Input expenses and the reasonableness of the assurances given by Development Partner that the sum of the DPA Estimate with the Third Party Input plus the Third Party Input expenses may be materially less than an DPA Estimate without the Third Party Input.
- C3.4 If the City has issued a DPA Change Order Enquiry and the City and Development Partner have not been able to reach agreement on the DPA Estimate and, if applicable, an adjustment to the Development Phase Schedule or Development Partner Scope of Work, then then the issue shall be determined as an Unresolved Issue in accordance with DPA Schedule 2 - Development Phase Governance.

C4. DPA Estimate Requirements

- C4.1 The DPA Estimate shall include such of the following information as is applicable, sufficient to demonstrate to the City’s reasonable satisfaction:
- (a) the steps Development Partner will take to implement the DPA Change Order, in such detail as is reasonable and appropriate in all the circumstances, including a description of the required changes to the Project Management Plan as a result of the impact to the Lands, environment, safety, stakeholders, risk, quality, etc.;
 - (b) any impact on Stage Gate 3 and any impact on the Development Phase Schedule by submitting a written Time Impact Analysis as set out in Section C5;
 - (c) estimate of all Eligible Costs, including detailed breakdown sufficient to enable the City to review and assess the Eligible Costs in accordance with Schedule 8 – Development Phase Payment;
 - (d) the Corporate Overhead and Profit attributable to the DPA Change Order;
 - (e) any subcontractors required in addition to or in substitution for those listed in Schedule 6 – Subcontractors and Key Individuals;

- (f) any permits that are required to be obtained or amended attributable to the DPA Change Order, and the DPA Estimated time for obtaining or amending same; and
- (g) any other impact of the DPA Change Order on the DPA,

in each case, together with such supporting information and justification as is reasonably required.

C4.2 In preparing an DPA Estimate, Development Partner shall include sufficient information to demonstrate that:

- (a) Development Partner has used commercially reasonable efforts, including the use of invitational tenders or competitive tenders if appropriate or required, to oblige its subcontractors to minimize any increase in costs and to maximize any reduction in costs;
- (b) the full amount of any and all expenditures that have been reduced or avoided have been taken into account and applied in total to reduce the amount of all DPA Change Order costs;
- (c) Development Partner has mitigated or will mitigate the impact of the DPA Change Order, including on the Development Phase Schedule for completion of the Project;
- (d) Development Partner will perform all work associated with a DPA Change Order in accordance with the scheduling requirements with respect to Development Partner's access to the Lands described in Schedule 18 – Technical Requirements, if applicable; and
- (e) Development Partner is in compliance with all Applicable Law with respect to invitational tenders, quotations or competitive tenders.

C4.3 Development Partner shall use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the DPA Change Order and shall use commercially reasonable efforts to comply with prevailing Good Industry Practice in relation to any such procurement to a standard no less than Development Partner would apply if all costs incurred were to its own account.

C4.4 As soon as practicable, and in any event not more than 15 Business Days after the City receives an DPA Estimate, including any consequential changes to the DPA Estimate resulting from a modification, Development Partner and the City shall discuss and seek to agree on the DPA Estimate and, if applicable, an adjustment to Development Partner Scope of Work and/or the Development Phase Schedule.

C4.5 The City may modify a DPA Change Order Enquiry in writing, at any time prior to the agreement between the Parties in which case Development Partner shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification or such longer period as the Parties acting reasonably mutually agree,

notify the City in writing of any consequential changes to the DPA Estimate and, if applicable, to an adjustment to Development Partner Scope of Work and/or the Development Phase Schedule.

C5. Time Impact Analysis

- C5.1 When changes or delays are anticipated as a result of a DPA Change Order, Development Partner shall submit a written time impact analysis (“Time Impact Analysis”) to the City with the DPA Estimate illustrating the influence of the DPA Change Order on Stage Gate 3 and the Development Phase Schedule.
- C5.2 The Time Impact Analysis shall include a fragment network analysis (fragnet), demonstrating how Development Partner proposes to perform the DPA Change Order including:
- (i) a listing of activities required to execute the DPA Change Order including any required tendering process;
 - (ii) how the Development Partner proposes to incorporate the DPA Change Order into the critical path network; and
 - (iii) an analysis demonstrating the time impact based on the following:
 - (i) the date that Development Partner was authorized to proceed with the DPA Change Order or anticipates the issuance of authorization;
 - (ii) the status of design and construction at that point in time, specifically relating to the critical path; and
 - (iii) the event time computation of all affected activities based on the latest updated copy of the Development Phase Schedule or as adjusted by mutual agreement.
- C5.3 Time extensions will be granted only to the extent that the Time Impact Analysis can demonstrate that the DPA Change Order affects the critical path, either by extending activities on the critical path or changing the activities that become part of the critical path, such that Stage Gate 3 is delayed.
- C5.4 In cases where Development Partner does not submit a Time Impact Analysis with an DPA Estimate, it is mutually agreed that the potential DPA Change Order has no time impact on Stage Gate 3 and no time extension will be granted.
- C5.5 Failure to provide a Time Impact Analysis with an DPA Estimate will disallow Development Partner from claiming compensation from the City for delays to Stage Gate 3 from the DPA Change Order.
- C5.6 Upon mutual agreement by both Parties, fragnets illustrating the influence of DPA Change Orders shall be incorporated into updates of the Development Phase Schedule.

- C5.7 When an event that results in a DPA Change Order occurs, the Development Partner shall submit a written time impact analysis to the City illustrating the influence of the event on Stage Gate 3 and the Development Phase Schedule within 10 days of the event.

SECTION D DPA CHANGE ORDER DIRECTIVE PROCESS

D1. Initiating a DPA Change Order Directive

- D1.1 At any time and from time to time (including whether or not the City has made a DPA Change Order Enquiry, or Development Partner fails to provide an DPA Estimate, or an DPA Estimate is not promptly agreed upon by the Parties, or there is a Dispute), if the City wishes to proceed immediately with a DPA Change Order the City shall issue a DPA Change Order Directive to proceed immediately with the work associated with the DPA Change Order.

- D1.2 The DPA Change Order Directive will:

- (a) describe the proposed DPA Change Order with sufficient detail to enable Development Partner to prepare an DPA Estimate; and
- (b) detail DPA section additions or deletions;

- D1.3 If the City would be required by Applicable Law to require Development Partner to seek invitational tenders or to competitively tender any contract in relation to the proposed DPA Change Order, then the City may include in the DPA Change Order Directive the requirement that Development Partner must seek and evaluate invitational tenders or quotations, or seek and evaluate competitive tenders, in relation to the DPA Change Order. For certainty, the Development Partner's DPA Estimate may include, *inter alia*, changes due to impacts on Stage Gate 3, the Development Phase Schedule and changes in the Development Partner Scope of Work resulting from the aforesaid requirement to seek invitational tenders or competitively tender any contract in relation to the proposed DPA Change Order.

D2. Proceeding with Work

- D2.1 Development Partner will proceed to immediately implement the work associated with the DPA Change Order including the appropriate method of procurement, if applicable, upon receipt of the DPA Change Order Directive.

D3. Development Partner's Delivery of DPA Estimate

- D3.1 If Development Partner has not previously done so, Development Partner shall:
- (a) as soon as practicable and in any event not more than 15 Business Days after the issuance of the DPA Change Order Directive, or such longer period as the Parties acting reasonably mutually agree, provide an DPA Estimate to the City prepared in accordance with and meeting the requirements of Section C4 of this Schedule 9; and

- (b) as soon as practicable, and in any event not more than 15 Business Days after the City receives an DPA Estimate or such longer period as the Parties acting reasonably mutually agree, Development Partner and the City shall discuss and seek to agree on the DPA Estimate and, if applicable, an adjustment to the Development Phase Schedule.

D3.2 If the City has issued a DPA Change Order Directive and the City and Development Partner have not been able to reach agreement on the DPA Estimate and, if applicable, an adjustment to the Development Partner Scope of Work or Development Phase Schedule, then adjustments to the DPA Estimate and the Development Phase Schedule, the Parties shall resolve the disagreement in accordance with the process set out in Schedule 2 Development Phase Governance, having regard to the manner in which value and payment are determined in Sections E1.1(a) and E1.1(b) of this Schedule 9.

SECTION E VALUATION OF DPA CHANGE ORDER

- E1.1 The work attributable to the DPA Change Order shall be valued and payment to Development Partner shall be determined as follows:
- (a) for the work associated with the DPA Change Order that was not part of a competitive tender, including design work that was required for the competitive tender, that portion of the work associated the DPA Change Order (the “**Own Forces Work**”) shall be valued as the Eligible Costs plus:
 - (i) Corporate Overhead as per Section C1.1(a) or (c) of DPA Schedule 8 – Development Phase Payment; and
 - (ii) Profit as per Section C1.2(a) or (c) of DPA Schedule 8 – Development Phase Payment; or
 - (b) if the City has required Development Partner to seek and evaluate competitive tenders for the work associated with the DPA Change Order, then for the work associated with the DPA Change Order that is to be performed by a subcontractor of Development Partner not identified in Schedule 6 – Subcontractors and Key Individuals (the “**Subcontractor Work**”) pursuant to a contract between Development Partner and such subcontractor arising from the awarding of the competitive tender, that portion of the DPA Change Order corresponding to the Subcontractor Work shall be valued as the Eligible Costs plus:
 - (i) Corporate Overhead as per Section C1.1(b) or (d) of DPA Schedule 8 – Development Phase Payment; and
 - (ii) Profit as per Section C1.2(b) or (d) of DPA Schedule 8 – Development Phase Payment.

E2. DPA CHANGE ORDER CONFIRMATION

E2.1 As soon as practicable, and in any event not more than 10 Business Days (unless an extension is agreed to by Development Partner, acting reasonably):

- (a) after the date of receipt by the City of the DPA Estimate, and, if applicable, an adjustment to the Development Partner Scope of Work or Development Phase Schedule; or
- (b) after the date the City delivers to Development Partner a DPA Change Order Enquiry with details as per Section C2.2,

the City shall either provide a DPA Change Order Confirmation; or withdraw the DPA Change Order Enquiry or DPA Change Order Directive by written notice to Development Partner.

E2.2 If the City does not provide a DPA Change Order Confirmation within the time frames set out in Section E2.1 then the DPA Change Order Enquiry or DPA Change Order Directive shall be deemed to have been withdrawn.

E2.3 If a DPA Change Order Directive is withdrawn, Development Partner shall be compensated for all Work, irrevocable commitments and other reasonable costs made under the DPA Change Order Directive. The amount will be invoiced by Development Partner with sufficient justification of such costs and will be paid by the City.

E2.4 If the City has required Development Partner to seek and evaluate invitational tenders or to seek and evaluate competitive tenders in relation to the DPA Change Order and the City either withdraws or is deemed to have withdrawn the DPA Change Order Enquiry, the actual costs necessarily and properly incurred by Development Partner directly attributable to the invitational or competitive tendering process, including any design cost, as the Parties agree, will be invoiced by Development Partner with sufficient justification of such costs and will be paid by the City.

SECTION F ISSUANCE OF DPA CHANGE ORDER

F1. DPA Change Order

F1.1 As soon as practicable after the City has provided the DPA Change Order Confirmation, the Parties shall execute the DPA Change Order.

F1.2 Development Partner shall as soon as practicable thereafter, take all actions necessary to implement the executed DPA Change Order.

F1.3 A DPA Change Order Confirmation is not a DPA Change Order. For clarity, a DPA Change Order is the only document that amends the DPA.