

**SCHEDULE 10**

**FORM OF PARENT GUARANTEE**

**THIS PARENTAL GUARANTEE** is made as of the [•] day of [•], 20[•]

BETWEEN:

**THE CITY OF WINNIPEG**

(the “City”)

AND:

[•], a corporation incorporated under the laws of [Manitoba]

(the “Guarantor”)

**WHEREAS:**

- A. The City and [the Development Partner], a corporation formed under the laws of [the Province of [•]] (“Development Partner”) have entered into a development phase agreement dated as of the [•] day of [•], 20[•] (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented, or replaced, from time to time, is hereinafter called the “Development Phase Agreement”).
- B. As an inducement to the City to enter the Development Phase Agreement with the Development Partner, the Guarantor has agreed, subject to the terms of this Parent Guarantee, to absolutely, unconditionally, and irrevocably guarantee to the City, as a direct obligation, the full and prompt performance and observance by the Development Partner of each and every covenant, agreement, undertaking, and obligation of the Development Partner contained in the Development Phase Agreement with respect to the Development Partner Services (as such term is defined in the Development Phase Agreement), and in furtherance thereof has agreed to enter into this Parent Guarantee.

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and agreements of the parties hereinafter contained 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 AND INTERPRETATION**

**A1. Definitions**

- A1.1 Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Development Phase Agreement.
- A1.2 Unless otherwise expressly provided herein, this Parent Guarantee shall be interpreted in accordance with DPA Schedule 1 – Definitions and Interpretation of the Development Phase Agreement.

- A1.3 For the purpose of this Parent Guarantee, the term “**Guaranteed Obligations**” has the meaning given in Section B1.1.
- A1.4 For the purpose of this Parent Guarantee, the term “**Notice**” has the meaning given in Section D.
- A1.5 For the purpose of this Parent Guarantee, the term “**Direct or Indirect Power or Control**” means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (a) ownership, beneficial or otherwise, of greater than five percent of any of the shares, units or equity interests of a person;
  - (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual’s ownership, beneficial or otherwise, is equal to or exceeds five percent of the voting securities, units or equity interests of such person; or
  - (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.

A2. **Survival**

- A2.1 This Parent Guarantee shall survive the termination or other expiry of the Development Phase Agreement.

**SECTION B GUARANTEE**

B1. **Parent Guarantee**

- B1.1 Subject to the terms of this Parent Guarantee, the Guarantor does hereby absolutely, unconditionally, and irrevocably guarantee to the City, as a direct obligation, the full and prompt performance and observance by the Development Partner of each and every covenant, agreement, undertaking, and obligation of the Development Partner contained in the Development Phase Agreement with respect to the Development Partner Services (collectively, the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings, and obligations of the Development Partner under the Development Phase Agreement which are not expressly defined in this Section B1.1.
- B1.2 Notwithstanding any other provision of this Parent Guarantee, the Guarantor’s undertakings and obligations are derivative of and not in excess of the Development Partner’s obligations under the Development Phase Agreement and the Guarantor retains all rights, claims, defences, and limitations of liability possessed by the Development Partner under the terms of the Development Phase Agreement or arising

from the Parties' performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to the Development Partner, including, for greater certainty, that the alleged non-performance or non-observance by the Development Partner of the Guaranteed Obligations arises out of or is a result of a City DPA Event of Default as set out in Section Q.2 of the Development Phase Agreement.

**B2. General Provisions Relating to the Parent Guarantee**

- B2.1 Each and every default in performance or observance of any of the Guaranteed Obligations by the Development Partner shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.
- B2.2 The Parent Guarantee herein provided for shall be a continuing, absolute, and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Development Phase Agreement and the Guarantor shall have fully and satisfactorily discharged all of its obligations under this Parent Guarantee.
- B2.3 The liability of the Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no Notice to the Guarantor shall be required in respect of):
- (a) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit, or bond) for or in respect of any of the Guaranteed Obligations;
  - (b) any amalgamation, merger, or consolidation of the Development Partner or the Guarantor or any sale, lease, or transfer of any of the assets of the Development Partner or the Guarantor;
  - (c) any change in Direct or Indirect Power or Control of the Development Partner or the Guarantor;
  - (d) the termination or other expiry of the Development Phase Agreement;
  - (e) any Force Majeure Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
  - (f) any change in the financial condition of the Development Partner or the Guarantor;
  - (g) any Development Partner Event of Default, or any resulting release, stay, or discharge of any Guaranteed Obligation;

- (h) any lack or limitation of power, incapacity, or disability on the part of the Development Partner or any other irregularity, defect, or informality on the part of the Development Partner with respect to the Guaranteed Obligations;
  - (i) any provision of any laws, statutes, rules, or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, Guarantor in respect of the Guaranteed Obligations or this Parent Guarantee;
  - (j) the assignment by the City in accordance with the provisions of Section Z2.2 of the Development Phase Agreement; or
  - (k) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against the Guarantor.
- B2.4 The obligations and liabilities of the Guarantor hereunder shall not be impaired, diminished, abated, or otherwise affected by the commencement by or against the Development Partner or the Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension, or other similar laws.
- B2.5 The City shall not be bound to exhaust its recourse against the Development Partner or others or any securities or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the Guarantor and the Guarantor renounces all benefits of discussion and division.
- B2.6 It is the intent and purpose hereof that the Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties, and other secondary parties at law or in equity. Without limiting the generality of the foregoing, the Guarantor hereby waives notice of acceptance of this Parent Guarantee and of the non-performance by the Development Partner, diligence, presentment, protest, dishonour, demand for performance from the City and notice of non-performance or failure to perform on the part of the Development Partner, and all other notices whatsoever. The Parent Guarantee hereunder is a guarantee of performance and compliance. In order to hold the Guarantor liable hereunder, there shall be no obligation on the part of the City at any time to demand or resort for performance to the Development Partner, its properties or assets, or to any security, property, or other rights or remedies whatsoever, nor shall there be any requirement that the Development Partner be joined as a party to any proceeding for the enforcement of any provision of this Parent Guarantee and the City shall have the right to enforce the provisions of this Parent Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against the Development Partner are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, the Development Partner shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such

default, the Parent Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.

- B2.7 Without prejudice to and without releasing, discharging, limiting, or otherwise affecting in whole or in part the obligations and liabilities of the Guarantor under this Parent Guarantee and without in any way requiring the consent of or giving Notice to the Guarantor, the City may grant time, renewals, extensions, indulgences, releases, and discharges to, and accept compositions from, or otherwise deal with the Development Partner and/or the Guarantor or others, including any other guarantor, as the City may see fit and the City may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on, or otherwise deal with security and guarantees in such manner as the City may see fit.
- B2.8 Neither an action or proceeding brought under this Parent Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Parent Guarantee. The Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Parent Guarantee, the obligations of the Guarantor to the City do not merge with or end the Guarantor's obligations hereunder.
- B2.9 The liability of the Guarantor under this Parent Guarantee shall arise forthwith after demand has been made in writing on the Guarantor.
- B2.10 The Guarantor agrees to pay to the City any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis) incurred by it in connection with enforcing any of its rights hereunder.

## SECTION C REPRESENTATIONS AND WARRANTIES

### C1. Guarantor Representations and Warranties

- C1.1 The Guarantor represents and warrants to the City that as of the date of this Parent Guarantee:
- (a) the Guarantor is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with the **[Ministry of [•]]** with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Parent Guarantee and to perform its obligations hereunder and thereunder;
- [Note to Proponents: To be updated to reflect the Guarantor's jurisdiction of organization.]***
- (b) the Guarantor has the requisite power, authority, and capacity to execute and deliver and perform this Parent Guarantee, and to do all acts and things, and execute, deliver, and perform all other agreements, instruments, undertakings,

and documents as are required by this Parent Guarantee to be done, executed, delivered, or performed;

- (c) no steps or proceedings have been taken or are pending to supersede, repeal, or amend its constating documents, articles or by-laws, or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Parent Guarantee and such documents and agreements are in full force and effect as of the date hereof;
- (d) this Parent Guarantee (when executed and delivered), has been duly authorized, executed, and delivered by the Guarantor and constitutes a legal, valid, and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, subject only to:
  - (i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance, and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (ii) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (e) the authorization, execution, delivery, and performance by the Guarantor of this Parent Guarantee does not violate or conflict with, or constitute a default under:
  - (i) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on the Guarantor;
  - (ii) any Applicable Law; or
  - (iii) any covenant, contract, instrument, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (f) the Development Partner is **[an indirect wholly-owned subsidiary]** of the Guarantor;

***[Note to Proponents: To be updated to reflect the Development Partner's final structure.]***

- (g) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against the Guarantor, 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 the Guarantor or in any impairment of its ability to perform its obligations under this Parent Guarantee, and the Guarantor 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 would result in any such material adverse effect or impairment; and

- (h) the Guarantor is able to meet its obligations as they generally become due.

## SECTION D NOTICES

### D1. Notices to Parties

- (a) Any notice, consent, approval or other communication (each a “**Notice**”) under any provision of this Agreement 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 by email), 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](mailto: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](mailto:tshanks@winnipeg.ca)

If to the Guarantor:

[•]

Attn.: [•]

Email.: [•]

- (b) Any communication delivered in accordance with Section D.1(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.

## **SECTION E GENERAL**

### **E1. Amendments**

- (a) No amendment of this Parent Guarantee is effective unless made in writing and signed by a duly authorized representative of each of the City and the Guarantor.

### **E2. Waiver**

- E2.1 No waiver of any provision of this Parent Guarantee 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 Parent Guarantee is capable of giving rise to an estoppel unless the representation is made in writing.

### **E3. Entire Agreement**

- E3.1 This Agreement is the entire agreement between the City and the Guarantor regarding the subject matter of this Parent Guarantee, 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 Agreement except as expressed in this Parent Guarantee.

### **E4. Severability**

- E4.1 Each provision of this Parent Guarantee shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Parent Guarantee 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 Parent Guarantee. If any such provision of this Parent Guarantee 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 Parent Guarantee as near as possible to its original intent and effect.

### **E5. Enurement**

- E5.1 This Parent Guarantee and any other agreement entered into in connection with this Agreement to which both the City and the Guarantor are parties shall enure to the



benefit of, and be binding on, the City and the Guarantor and their respective successors and permitted transferees and assigns.

**E6. Governing Law and Jurisdiction**

E6.1 This Parent Guarantee 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 Parent Guarantee, and each Party accepts the jurisdiction of Manitoba courts.

**E7. The City Designate**

E7.1 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 Parent Guarantee and the Guarantor may 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, 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 the Guarantor 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 the Guarantor in writing of any designation hereunder. The rights and obligations of the parties to this Parent Guarantee shall be in no way affected by reason of any such designation. The Guarantor acknowledges the right of the City to delegate administrative responsibilities hereunder as set forth in this Section E7.1.

**E8. Cumulative Remedies**

E8.1 Except as otherwise set forth in this Parent Guarantee, the rights, powers and remedies of each Party set forth in this Parent Guarantee 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 Parent Guarantee.

**E9. Additional Assurances**

E9.1 The City and the Guarantor 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 Parent Guarantee according to their spirit and intent; but this Section E.9 shall not in any event be construed as obligating the City to amend or enact any by-law or regulation.

**E10. Costs**

E10.1 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 Parent Guarantee.

**E11. Language of Agreement**

E11.1 Each of the parties acknowledges having requested and being satisfied that this Parent Guarantee and related documents be drawn in English.

E11.2 For greater certainty, all correspondence, Notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff, and all other written, printed, or electronically readable matter required in accordance with, or for purposes envisaged by, this Parent Guarantee shall be in English.

**E12. Proof of Authority**

E12.1 The City and the Guarantor each reserve the right to require any person executing this Parent Guarantee on behalf of the other party to provide proof, in a form acceptable to the City or the Guarantor, as applicable, that they have the requisite authority to execute this Parent Guarantee on behalf of and to bind the City or the Guarantor, as applicable.

**E13. Counterparts**

E13.1 This Parent Guarantee 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.

**E14. Joint and Several**

E14.1 Where two or more persons execute this Parent Guarantee as Guarantor, the liability under this Parent Guarantee of such persons executing this Agreement shall be joint and several.

E14.2 The Parties have therefore signed this Parent Guarantee, by their respective duly authorized officers, on the respective dates shown below.

***[SIGNATURE PAGES IMMEDIATELY FOLLOW]***

**IN WITNESS WHEREOF** the parties have executed this Parent Guarantee as of the date first above written.

**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

**[GUARANTOR]**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation