

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

SECTION A DEFINITIONS

A1. Defined Terms

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

- A1.1 **“Actual Relevant Insurance Cost”** means the aggregate of (i) the annual insurance premiums reasonably incurred by Project Co to maintain (or cause to be maintained) the Relevant Insurance during the Insurance Review Period, but excluding taxes and all broker's fees and commissions;
- A1.2 **“Applicable Law”** means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Manitoba,
- in each case, in force in the Province of Manitoba, or otherwise binding on Project Co, any Project Co Party, the City or any City Parties;
- A1.3 **“Assigned Intellectual Property”** means all Intellectual Property owned, created, developed or acquired by Project Co or any Project Co Party relating to or in connection with the Design and Construction, the OMR Services or Project Co's Proposal, or any aspects thereof, other than Project Co Intellectual Property, and includes Project Co's Designs and all other plans, drawings and designs created by Project Co or any Project Co Party in relation to the Design and Construction, the OMR Services or Project Co's Proposal;
- A1.4 **“Associated Liabilities”** has the meaning set out in Section K17.2(b) of the Project Agreement;
- A1.5 **“Authority Requirement”** means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority;
- A1.6 **“Availability Failure”** has the meaning given in Schedule 14 – Payment Mechanism;
- A1.7 **“Base Relevant Insurance Cost”** means \$ [REDACTED] for the first Insurance Review Period and, thereafter, means the aggregate of the annual insurance premiums which were projected (as set out in the Financial Model) to be incurred by Project Co to maintain (or cause to be maintained) the Relevant Insurance during the Insurance Review Period, which amounts exclude taxes and all broker's fees and commissions;

- A1.8 **“Baseline Specified Utility Costs”** has the meaning given in Section F17.3 of the Project Agreement;
- A1.9 **“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in Winnipeg, Manitoba;
- A1.10 **“Capital Payment”** has the meaning given in Schedule 14 – Payment Mechanism;
- A1.11 **“Cash Allowance Account”** means Account No. [REDACTED] at TD Canada Trust; 18(1)(c)(i)(ii)(iii)
- A1.12 **“Cash Allowance Amount”** means \$ [REDACTED];
- A1.13 **“Cash Allowance Items”** has the meaning given in Section E12.1 of the Project Agreement;
- A1.14 **“Centralized Traffic Control System”** has the meaning given in Schedule 18 – Technical Requirements;
- A1.15 **“Change in Law”** means the coming into effect or repeal (without re-enactment or consolidation) in Manitoba of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Manitoba, in each case after March 24, 2016;
- A1.16 **“Change Order”** has the meaning given in Schedule 17 – Change Orders;
- A1.17 **“Change Order Confirmation”** has the meaning given in Schedule 17 – Change Orders;
- A1.18 **“Change Order Directive”** has the meaning given in Schedule 17 – Change Orders;
- A1.19 **“City”** means the City of Winnipeg as continued under *The City of Winnipeg Charter*, S.M. 2002.c. 39, and subsequent amendments thereto;
- A1.20 **“City Indemnified Parties”** means the City, its affiliates, directors, officers, employees, officials, independent contractors, agents, subcontractors, successors and assigns, and for clarity includes all City Parties;
- A1.21 **“City Intellectual Property”** means:
- (a) Assigned Intellectual Property;
 - (b) the Station Look and Feel;
 - (c) Intellectual Property that is owned, created, developed or acquired by the City or a City Party: (i) prior to the Project Term; (ii) during the Project Term but outside of the Project; or (iii) during the Project Term and as part of the Design and Construction or the OMR Services, and which is used by the City, or required to be used by Project Co or a Project Co Party, in the performance of their respective obligations in respect of the Project or under the Project Agreement; and

- (d) any modifications, enhancements or improvements to (a) to (c) above,
- and where any Station Look and Feel includes Intellectual Property that falls within the definition of Project Co Intellectual Property, such Intellectual Property shall be deemed to be City Intellectual Property (and not Project Co Intellectual Property);
- A1.22 **“City Operations”** means the City’s use of the New Infrastructure, the Existing Infrastructure, the Lands and the Stage 1 Lands which includes the City’s operation of the Southwest Rapid Transitway;
- A1.23 **“City Party”** means the City and its respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the City Operations or the City Work, but excluding Project Co, any Project Co Party and Infrastructure Users, and the **“City Parties”** shall be construed accordingly;
- A1.24 **“City Representative”** means the person designated as such by the City on or prior to the date of the Project Agreement and any permitted replacement;
- A1.25 **“City Work”** has the meaning given in Section F11.1 of the Project Agreement;
- A1.26 **“Claim Notice”** has the meaning given in Section R5.1 of the Project Agreement;
- A1.27 **“Commercial Close”** means the execution and delivery of this Project Agreement by the Parties;
- A1.28 **“Commercial Close Target Date”** means June 21, 2016;
- A1.29 **“Commissioning Plan”** has the meaning given in Schedule 18 – Technical Requirements;
- A1.30 **“Communications Plan”** has the meaning given in Schedule 24 – Communications Plan;
- A1.31 **“Confidential Information”** has the meaning given in Section U2.1 of the Project Agreement;
- A1.32 **“Construction Contract”** means the construction contract between Project Co and the Construction Contractor dated on or about the date of Financial Close;
- A1.33 **“Construction Contract Performance Security”** has the meaning given in Section D4.1 of the Project Agreement;
- A1.34 **“Construction Contractor”** means PCL Constructors Canada Inc., a corporation existing under the laws of the Province of Alberta;
- A1.35 **“Construction Contractor’s Direct Agreement”** means the direct agreement between the City, Project Co, the Construction Contractor and the Construction Guarantor in the form set out in Schedule 9-1 – Construction Contractor’s Direct Agreement;

- A1.36 “**Construction Guarantor**” means PCL Construction Group Inc., a corporation existing under the laws of the Province of Alberta;
- A1.37 “**Construction Management Plan**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.38 “**Construction Period**” means the period from Commercial Close to Final Completion;
- A1.39 “**Construction Period Lands**” has the meaning given in Schedule 12 – Lands and Identified Encumbrances;
- A1.40 “**Construction Period Termination**” has the meaning given in Schedule 15 – Termination Payments;
- A1.41 “**Contaminated Wye Area**” has the meaning given in Section E4.6 of the Project Agreement;
- A1.42 “**Contaminated Wye Area Work**” has the meaning given in Section E4.6 of the Project Agreement;
- A1.43 “**Contract Month**” has the meaning given in Schedule 14 – Payment Mechanism;
- A1.44 “**Contract Year**” has the meaning given in Schedule 14 – Payment Mechanism;
- A1.45 “**COR Certificate**” means a valid Manitoba Certificate of Recognition and Letter of Good Standing (or Manitoba equivalency) as issued under the Certificate of Recognition (COR) Program administered by the Construction Safety Association of Manitoba or by the Manitoba Heavy Construction Association’s WORKSAFELY™ COR™ Program;
- A1.46 “**Court**” means a court of law of competent jurisdiction;
- A1.47 “**Deduction**” has the meaning given in Schedule 14 – Payment Mechanism;
- A1.48 “**Deduction Thresholds**” has the meaning given in Schedule 14 – Payment Mechanism;
- A1.49 “**Deficiencies Holdback**” has the meaning given in Section G4.2 of the Project Agreement;
- A1.50 “**Deficiencies Workplan and Schedule**” has the meaning given in Section G4.1 of the Project Agreement;
- A1.51 “**Deficiency List**” has the meaning given in Section G3.1 of the Project Agreement;
- A1.52 “**Design and Construction**” means the design, engineering, construction, installation, testing and completion of the New Infrastructure, including rectification of any items on the Deficiency List, and any other activities required to enable or facilitate the commencement of the OMR Services;
- A1.53 “**Design and Construction Committee**” has the meaning given in Section V1.1 of the Project Agreement;

- A1.54 **“Designated Change in Law”** means the following and no other changes in any Applicable Law:
- (a) a change directed specifically at roads whose design, construction, financing, operation, maintenance and rehabilitation are procured by a contract similar to this Project Agreement in relation to other similar roads;
 - (b) a change directed specifically at Project Co in relation to other persons;
 - (c) a change directed specifically at the Project, the New Infrastructure or public-private arrangements of the nature of this Project in relation other similar projects procured on a different basis; and
 - (d) a change directed specifically at persons undertaking projects for the design, construction, financing, operation, maintenance and rehabilitation that are procured by a contract similar to this Project Agreement in relation to other similar persons undertaking similar projects procured on a different basis;
- A1.55 **“Designated Project Co Employee”** has the meaning given in Schedule 22 – Security Clearance Requirements;
- A1.56 **“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;
- A1.57 **“Discount Rate”** means ██████;
- A1.58 **“Dispute”** has the meaning given in Schedule 7 – Dispute Resolution Procedure;
- A1.59 **“Dispute Resolution Procedure”** means the procedure set out in Schedule 7 – Dispute Resolution Procedure;
- A1.60 **“Early Access Commencement Date”** means the date on which the Stadium Access Works are completed in accordance with Section F16;
- A1.61 **“Early Access Deadline”** means June 1, 2017, as such date may be adjusted in accordance with Sections M6, N1 or O2 of the Project Agreement or Schedule 17 – Change Orders;
- A1.62 **“Early Access Event”** has the meaning given in Section E11.2 of the Project Agreement;
- A1.63 **“Early Access Letter of Credit”** has the meaning given in Section E11.5 of the Project Agreement;
- A1.64 **“Early Access Site”** means that portion of the Lands on which Project Co will construct the Stadium Access Works, as described in Schedule 12 – Lands and Identified Encumbrances;

- A1.65 “**Eligible Insurer**” means an insurer licensed to transact business in Manitoba and who has a current rating of at least A- X from A. M. Best’s or A- from Standard and Poors or an insurer that is an agency or crown corporation of the Province of Manitoba;
- A1.66 “**Environmental Damage or Degradation**” means the presence of contamination in water, soil or air, in violation of Applicable Law (including Applicable Laws enacted after the time at which the Hazardous Substance causing the contamination is first present), caused by any Hazardous Substance, and includes death or injury to plants, animals or human beings resulting in whole or in part from such contamination;
- A1.67 “**Environmental Management System**” or “EMS” has the meaning given in Schedule 18 – Technical Requirements;
- A1.68 “**Equity**” means the aggregate (without double counting) of all subscribed share capital, shareholder loans and other contributed capital of Project Co, excluding, for greater certainty, any amounts advanced to Project Co under the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or more than ■■■ % of the coupon payable to the Lenders;
- A1.69 “**Escalation Factor**” has the meaning given in Schedule 14 – Payment Mechanism;
- A1.70 “**Event Access Period**” has the meaning given in Section E11.3 of the Project Agreement;
- A1.71 “**Exempt Availability Failure**” has the meaning given in Schedule 14 – Payment Mechanism;
- A1.72 “**Existing Infrastructure**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.73 “**Expiry Date**” means the 30^h anniversary of the original Scheduled Substantial Completion Date, without taking into account any extension to such date pursuant to Section N1 or Section N2 of the Project Agreement;
- A1.74 “**Final Completion**” means the completion of the Design and Construction in accordance with this Project Agreement, including the completion of all items on the Deficiency List;
- A1.75 “**Final Completion Certificate**” has the meaning given in Section G3.4 of the Project Agreement;
- A1.76 “**Final Completion Date**” means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, including the completion of all items on the Deficiency List;
- A1.77 “**Financial Close**” means the first date that funding is available under the Lending Agreements;

- A1.78 “**Financial Close Letter of Credit**” has the meaning given in Section B2.1 of the Project Agreement;
- A1.79 “**Financial Close Target Date**” means June 24, 2016;
- A1.80 “**Financial Model**” means the computer spreadsheet model for the Project incorporating statements of Project Co’s cash flows including all expenditure, revenues, financing and taxation of the Design and Construction and OMR Services together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model;
- A1.81 “**FIPPA**” means the *The Freedom of Information and Protection of Privacy Act, 1997* (Manitoba), as amended or replaced from time to time;
- A1.82 “**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 Project Agreement, other than any obligation to pay any money, and provided such event does not occur by reason of:
- (a) the negligence of the Party relying on the Force Majeure Event (or those for whom such Party is responsible pursuant to Applicable Law); or
 - (b) any act or omission of the Party relying on the Force Majeure Event (or those for whom such Party is responsible pursuant to Applicable Law) that is in breach of the provisions of this Project Agreement;
- A1.83 “**Force Majeure Termination**” has the meaning given in Schedule 15 – Termination Payments;
- A1.84 “**Four Lane Weeks**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.85 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
- A1.86 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the City, any aspect of the performance of the Project Agreement or the operation of the New Infrastructure or the City Operations, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction;

- A1.87 “**GST**” means the value added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada);
- A1.88 “**Handback Requirements**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.89 “**Handback Workplan**” has the meaning given in Schedule 19 – Handback Procedure;
- A1.90 “**Hazardous Substance**” means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission that is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material or hazardous substance that is or becomes regulated by or under any Applicable Law or that is or becomes classified as hazardous or toxic by or under any Applicable Law;
- A1.91 “**Heritage Find**” means property of archaeological, paleontological or heritage significance or historical resources located in, under or on the Lands including discovery of human remains;
- A1.92 “**Identified Encumbrances**” means all encumbrances and interests that are registered as of Commercial Close against any of the titles listed in Schedule 12 – Lands and Identified Encumbrances, including, for clarity, the encumbrances set out in Schedule 12 – Lands and Identified Encumbrances, and all unregistered rights of way, easements and other similar interests that have been disclosed in writing, and duly identified as such, to Project Co prior to Commercial Close and excluding, for clarity, all encumbrances and titles registered against the Stage 1 Lands;
- A1.93 “**IGF Event Day**” is defined in Schedule 18 – Technical Requirements;
- A1.94 “**Incurable Default**” means a Project Co Default that is by its nature or by reason of prevailing circumstances incapable of being cured in all material respects, but does not include any Project Co Default that is a failure to carry out a particular obligation by a particular date or within a particular period where it is possible to subsequently perform that obligation, albeit not by or within the relevant date or period;
- A1.95 “**Indemnifiable Taxes**” has the meaning set out in Section K17.2(a) of the Project Agreement;
- A1.96 “**Indemnified Party**” has the meaning given in Section R5.1 of the Project Agreement;
- A1.97 “**Indemnifying Party**” has the meaning given in Section R5.1 of the Project Agreement;
- A1.98 “**Indemnity Claim**” has the meaning given in Section R5.1 of the Project Agreement;
- A1.99 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement;
- A1.100 “**Independent Certifier Agreement**” means the contract entered into between the City, Project Co, and the Independent Certifier in substantially the form attached as Schedule 10 – Independent Certifier Agreement;

A1.101 “**Indirect Losses**” has the meaning given in Section R3.2 of the Project Agreement;

A1.102 “**Infrastructure User**” means any member of the public, any City Party and any other person that is lawfully on or about the New Infrastructure or is otherwise lawfully making use of the New Infrastructure for any purpose;

A1.103 “**Insurance Adjustment**” has the meaning given in Section M5.2 of the Project Agreement;

A1.104 “**Insurance Cost Differential**” means an amount, based on the Joint Insurance Cost Report, equal to $(ARIC - BRIC) \pm PIC$ where:

ARIC is the Actual Relevant Insurance Cost;

BRIC is the Base Relevant Insurance Cost; and

PIC is any Project Insurance Change.

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase in the ARIC relative to the BRIC, the Project Insurance Change shall have a negative value and, in the event that there is a net decrease in the ARIC relative to the BRIC, the Project Insurance Change shall have a positive value;

A1.105 “**Insurance Review Date**” means each anniversary of the Relevant Insurance Inception Date, except where such date lies beyond the end of the Project Term, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance and prior to the Expiry Date;

A1.106 “**Insurance Review Period**” means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on the first anniversary of the Relevant Insurance Inception Date, except where the end of such period lies beyond the end of the Project Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Project Term;

A1.107 “**Insurance Trust Agreement**” means the contract entered into between the City, Project Co and the an account trustee in substantially the form attached as Schedule 20 – Insurance Trust Agreement;

A1.108 “**Intellectual Property**” means all intellectual and industrial property, including without limitation: (i) trade-marks; (ii) patents; (iii) copyrights; (iv) inventions, whether or not patentable, whether or not reduced to practice or whether or not yet made the subject of a pending patent application or applications; (v) ideas and conceptions of potentially patentable subject matter, including, without limitation, any patent disclosures, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications; (vi) trade secrets and confidential, technical or business information (including ideas, formulas, compositions, designs, inventions, and conceptions of inventions whether patentable or unpatentable and whether or not reduced to practice); (vii) whether or not confidential, technology (including know-how and show-how), manufacturing and production processes and techniques,

methodologies, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, marketing and business data, pricing and cost information, business and marketing plans; (viii) copies and tangible embodiments of all the foregoing, in whatever form or medium; (ix) all rights to obtain and rights to apply for any of the foregoing and all rights therein provided by multinational treaties or conventions; (x) all rights under any agreements or instruments with respect to items in (i) to (ix) above; and (xi) all rights to sue and recover and retain damages and costs and attorneys' fees for present and past infringement or other violation of any of the intellectual property rights hereinabove set out;

A1.109 "**Irrecoverable Tax**" has the meaning given in Section K14.2 of the Project Agreement;

A1.110 "**Joint Insurance Cost Report**" has the meaning given in Section M5.1 of the Project Agreement;

A1.111 "**Key Individuals**" means those persons listed as key individuals in Schedule 6 – Subcontractors and Key Individuals;

A1.112 "**Kiss and Ride**" has the meaning given in Schedule 18 – Technical Requirements;

A1.113 "**Lands**" means the Construction Period Lands and the OMR Period Lands;

A1.114 "**Lane Closures**" has the meaning given in Schedule 18 – Technical Requirements;

A1.115 "**Lenders**" means all or any of the persons acting at all times at arm's length to Project Co and each Project Co Party who provide Project Financing under the Lending Agreements, and, where the context so permits, prospective financiers or lenders, and for greater clarity, excludes any affiliate of Project Co or a Project Co Party;

A1.116 "**Lenders' Agent**" has the meaning given in Schedule 8 – Lenders' Direct Agreement;

A1.117 "**Lenders' Direct Agreement**" means the direct agreement to be entered into between the City, the Lenders' Agent and Project Co in the form set out in Schedule 8 – Lenders' Direct Agreement;

A1.118 "**Lending Agreement**" means any or all of the agreements or instruments to be entered into by Project Co or any of its affiliates relating to the Project Financing;

A1.119 "**Longstop Date**" has the meaning given in Section S2.1(g) of the Project Agreement;

A1.120 "**Lot 16 Drain**" has the meaning given in Schedule 18 – Technical Requirements;

A1.121 "**Maintenance-Exempt Work**" means the portion of the New Infrastructure set out in Schedule 18 – Technical Requirements that will be turned over to the City at Substantial Completion;

A1.122 "**Major Maintenance and Rehabilitation Payment**" or "**MMR Payment**" has the meaning given in Schedule 14 – Payment Mechanism;

A1.123 **"Make Good"** and derivatives thereof, means repairing or restoring the Maintenance-Exempt Work as required in Schedule 18 – Technical Requirements or any existing components of the Maintenance-Exempt Work disturbed due to the Design and Construction, including any warranty work, to at least the condition existing prior to the disturbance;

A1.124 **"Manitoba Hydro Non-Performance Notice"** has the meaning given in Section F22.1 of the Project Agreement;

A1.125 **"Manitoba Hydro Transmission Line Relocation"** has the meaning given in Schedule 18 – Technical Requirements;

A1.126 **"Material Adverse Effect"** occurs when a Project Co Default, taken together with any other Project Co Defaults of a similar nature:

- (a) creates a material risk to public security and safety or to the environment;
- (b) creates a material risk of significant liability to third parties on the part of the City;
or
- (c) demonstrates a persistent inability or unwillingness on the part of Project Co to adhere to its obligations under this Project Agreement;

and includes any material breach by Project Co of:

- (d) its insurance obligations under Section M of the Project Agreement;
- (e) its reporting obligations under Section Q1 of the Project Agreement (provided, to the extent the City knows Project Co is in breach of such reporting obligations, the City shall give Project Co notice of such breach); or
- (f) its obligations under Section Q2 of the Project Agreement;

A1.127 **"Mobilization"** means the first occurrence on the Construction Period Lands of any preparatory works and operations initiated by Project Co, including those necessary to secure the Construction Period Lands, to install signage, for the movement and staging of personnel, equipment, supplies and incidentals on the Construction Period Lands, for the establishment of all offices, buildings and other facilities necessary for work on the Project and commencing construction activities on the Construction Period Lands;

A1.128 **"Monitoring Notice"** has the meaning given in Section L5.1 of the Project Agreement;

A1.129 **"Monthly Payment"** has the meaning given in Schedule 14 – Payment Mechanism;

A1.130 **"Monthly Previously Paid GST Amount"** means a monthly GST amount to be:

- (a) the amount of the Section K13.2 payment amortized on a straight line basis over the Monthly Payments due over the remainder of the OMR Period following the payment of the Section K13.2 payment, subject to an alternative basis on which to amortize the remaining unapplied Section K13.2 payment as provided for by

Applicable Law, in which case the City shall determine the Monthly Previously Paid GST Amount in accordance with such Applicable Law, provided that the City may, at any time, proceed to obtain an advance ruling under the Excise Tax Act (Canada) (or rely upon an existing advance ruling under the Excise Tax Act (Canada)) in respect of some other basis for amortizing the remaining unapplied Section K13.2 payment over the Monthly Payments due over the remainder of the OMR Period and, in such event, the remaining unapplied Section K13.2 payment may be amortized over the Monthly Payments in a manner provided for in the advance ruling;

- (b) communicated by the City to Project Co in writing at the same time that the City pays Project Co the Section K13.2 payment; and
- (c) credited to the City in each invoice for a Monthly Payment sent by Project Co to the City following the payment of the Section K13.2 payment;
- (d) and, for greater certainty, the aggregate of all Monthly Previously Paid GST Amounts shall be the Section K13.2 payment;

A1.131 **“New Infrastructure”** means:

- (a) the components of the new infrastructure set out in Section C2 of Schedule 18 – Technical Requirements;
- (b) the Stadium Access Works; and
- (c) the Related Infrastructure;

A1.132 **“Non-Conformance”** has the meaning given in Schedule 14 – Payment Mechanism;

A1.133 **“Notice of Default”** means a notice from the City to Project Co specifying a Project Co Default;

A1.134 **“Notice of Failure to Achieve Substantial Completion”** has the meaning given in Section G2.2 of the Project Agreement;

A1.135 **“O&M Payment”** has the meaning given in Schedule 14 – Payment Mechanism;

A1.136 **“OMR Committee”** has the meaning given in Section V2.1 of the Project Agreement;

A1.137 **“OMR Contract”** means a contract between Project Co and the OMR Provider;

A1.138 **“OMR Infrastructure”** means the portion of the New Infrastructure and the Stage 1 Infrastructure that Project Co shall be responsible for during the OMR Period which, for clarity, does not include the Maintenance-Exempt Work, the pump station, the land drainage sewer from the lift station to the river and the geothermal maintenance building at Jubilee Station on the Stage 1 Lands;

A1.139 **“OMR Payment”** means the O&M Payment and the Major Maintenance and Rehabilitation Payment;

- A1.140 “**OMR Period**” means the period commencing on Substantial Completion and ending on the Termination Date;
- A1.141 “**OMR Period Lands**” has the meaning given in Schedule 12 – Lands and Identified Encumbrances;
- A1.142 “**OMR Plan**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.143 “**OMR Provider**” means a third party subcontractor performing all or substantially all of the OMR Services;
- A1.144 “**OMR Provider’s Direct Agreement**” means a direct agreement between the City, Project Co, the OMR Provider and the OMR Guarantor, if applicable, in the form set out in Schedule 9-2 – OMR Provider’s Direct Agreement;
- A1.145 “**OMR Requirements**” means City’s requirements for all aspects of the operation of the New Infrastructure, all as set out in Schedule 18 – Technical Requirements and any amendments made by the City in accordance with Section I1 of the Project Agreement;
- A1.146 “**OMR Services**” means the operations, maintenance and rehabilitation services to be delivered by Project Co in accordance with Schedule 18 – Technical Requirements;
- A1.147 “**Park and Ride**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.148 “**Party**” means either the City or Project Co, and “**Parties**” means collectively the City and Project Co;
- A1.149 “**Payment Adjustment**” has the meaning given in Section K3.1(a) of the Project Agreement;
- A1.150 “**Payment Adjustment Report**” has the meaning given in Section K5.8(b) of the Project Agreement;
- A1.151 “**PCL**” has the meaning given in Section P1.1(c) of the Project Agreement;
- A1.152 “**Performance Monitoring Report**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.153 “**Performance Security**” has the meaning given in Section D3.1 of the Project Agreement;
- A1.154 “**Permits, Licenses and Approvals**” means all permissions, consents, approvals, certificates, permits, licenses, agreements and authorizations to be obtained by Project Co in accordance with this Project Agreement and as required by Applicable Law;
- A1.155 “**Plenary**” has the meaning given in Section P1.1(b) of the Project Agreement;
- A1.156 “**Prime**” means the rate of interest from time to time declared by the Royal Bank of Canada (or its successor, in the event of a merger or amalgamation) as its prime rate for Canadian dollar commercial loans in Canada;

A1.157 **“Project”** has the meaning given in the Recitals;

A1.158 **“Project Agreement”** has the meaning given in the Recitals;

A1.159 **“Project Background Information”** means any and all drawings, reports, studies, data, documents or other information given or made available to Project Co or any Project Co Party by the City or any City Party, or which was obtained by Project Co or any Project Co Party from or through any other sources prior to the Technical Submission Deadline relating to the Project;

A1.160 **“Project Co”** has the meaning given in the Recitals;

A1.161 **“Project Co Default”** means any breach by Project Co of any provision of this Project Agreement, including the material inaccuracy, when made, of any representation given by Project Co in Section P1 of the Project Agreement;

A1.162 **“Project Co Intellectual Property”** means Intellectual Property that is owned, created, developed or acquired by Project Co or any Project Co Party: (a) prior to the Project Term; or (b) during the Project Term but outside of the Design and Construction and the OMR Services;

A1.163 **“Project Co Party”** means:

- (a) the Construction Contractor;
- (b) the OMR Provider, if applicable;
- (c) any person engaged by Project Co, the Construction Contractor, and/or the OMR Provider, if applicable, from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Design and Construction and OMR Services (or any of them), including any agents of Project Co; and
- (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors;

and **“Project Co Parties”** shall be construed accordingly;

A1.164 **“Project Co Proposal Extracts”** means the documents attached as Schedule 3 – Project Co Proposal Extracts;

A1.165 **“Project Co Representative”** means the person designated as such by Project Co on or prior to the date of the Project Agreement and any permitted replacement;

A1.166 **“Project Co Schedule Remediation Plan”** has the meaning given in Section F9.2(b) of the Project Agreement;

A1.167 **“Project Co’s Design”** means Project Co’s design drawings and design reports for the New Infrastructure, and includes any amendments made in accordance with Section F4 of the Project Agreement;

A1.168 **“Project Co’s Design and Construction Schedule”** means Project Co’s schedule for design and construction of the Project, set out in Schedule 2, and including any amendments made from time to time in accordance with the Project Agreement;

A1.169 **“Project Co’s Management Systems and Plans”** means all of Project Co’s systems and plans presented in Project Co’s Proposal and set out in Schedule 4, and including any amendments made from time to time in accordance with Section F4 of the Project Agreement;

A1.170 **“Project Co’s Proposal”** means the proposal submitted by Project Co in response to the RFP;

A1.171 **“Project Financing”** means financing (of whatever nature) arranged by or on behalf of Project Co sufficient to carry out and complete the Project, but not in any event exceeding the amount of Project Financing indicated in or by Project Co’s Proposal or Refinancing Financial Model in the case of any Qualifying Refinancing;

A1.172 **“Project Insurance Change”** means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

- (a) other than in respect of claims or re-ratings arising out of acts or omissions of the City, a City Party or an Infrastructure User, the claims history or re-rating of Project Co or any Project Co Party;
- (b) the effect of any change in deductible unless:
 - (i) such change is attributable to circumstances generally prevailing in the worldwide insurance market;
 - (ii) the deductible, further to such change, is either greater than or equal to the maximum deductibles set out in Schedule 11 – Insurance Requirements; and
 - (iii) in respect of the Relevant Insurance, such change is not attributable to claims made as the result of acts or omissions of Project Co or any Project Co Party; and
- (c) any other issue or factor other than circumstances generally prevailing in the worldwide insurance market;

A1.173 **“Project Term”** means the period commencing on Commercial Close and expiring at midnight on the Termination Date;

A1.174 **“Public Art”** has the meaning given in Schedule 23 – Public Art;

A1.175 **“Public Art Cash Allowance”** has the meaning given in Schedule 23 – Public Art;

A1.176 **“Qualifying Refinancing”** has the meaning given in Schedule 21 – Refinancing;

A1.177 **“Quality Failure”** has the meaning given in Schedule 14 – Payment Mechanism;

A1.178 **“Quality Management System”** or **“QMS”** has the meaning given in Schedule 18 – Technical Requirements;

A1.179 **“Rail Work”** has the meaning given in Schedule 18 – Technical Requirements;

A1.180 **“Recoverable Tax”** has the meaning indicated in Section K14.3 of the Project Agreement;

A1.181 **“Rectification”** has the meaning given in Schedule 14 – Payment Mechanism;

A1.182 **“Redemption Payment”** has the meaning given in Schedule 15 – Termination Payments;

A1.183 **“Refinancing Financial Model”** has the meaning given in Schedule 21 – Refinancing;

A1.184 **“Related Infrastructure”** means, in relation to the New Infrastructure, the following infrastructure that Project Co will design, build and maintain:

- (a) all site services, utilities, roadways and appurtenances to support the New Infrastructure as specified in Schedule 18 - Technical Requirements;
- (b) all supporting systems, infrastructure and improvements; and
- (c) all other works, improvements, and demolitions to occur on the Lands,

in each case required to meet Schedule 18 - Technical Requirements and excluding the Maintenance-Exempt Work;

A1.185 **“Relevant Insurance”** means all policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with Sections D1.1(a), (b) and (c) of Schedule 11 – Insurance Requirements;

A1.186 **“Relevant Insurance Inception Date”** means the date on which the Relevant Insurance is first providing active insurance cover to Project Co and the City, respectively, being a date no earlier than the Substantial Completion Date;

A1.187 **“Relief Event”** has the meaning given in Section O1.1 of the Project Agreement;

A1.188 **“Relief Event Notice”** has the meaning given in Section O4.1 of the Project Agreement;

A1.189 **“Remedial Action”** has the meaning given in Section S1.2 of the Project Agreement;

A1.190 **“RFP”** or **“Request for Proposals”** means the request for proposals issued on July 17, 2015 by the City in respect of the Project;

A1.191 **“Risk Management Plan”** has the meaning given in Schedule 18 – Technical Requirements;

A1.192 **“Rolling Average Utility Rates”** has the meaning given in Section H5.1 of the Project Agreement;

- A1.193 “**RST**” means the retail sales tax imposed pursuant to *The Retail Sales Tax Act*, 1987 (Manitoba);
- A1.194 “**Safety Plan**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.195 “**Scheduled Substantial Completion Date**” means October 1, 2019, as such date may be adjusted in accordance with Sections M6, N1 or O2 of the Project Agreement or Schedule 17 – Change Orders;
- A1.196 “**SECOR Certificate**” means valid Manitoba Small Employer Certificate of Recognition and Letter of Good Standing (or Manitoba equivalency) as issued under the Small Employer Certificate of Recognition Program (SECOR™) administered by the Construction Safety Association of Manitoba or by the Manitoba Heavy Construction Association’s WORKSAFELY™ COR™ Program;
- A1.197 “**Service Failure**” has the meaning given in Schedule 14 – Payment Mechanism;
- A1.198 “**Southwest Transitway (Stage 2)**” means the high-speed roadway for buses, physically separated from the regular street system, that will extend from Pembina and Jubilee south to the University of Manitoba;
- A1.199 “**Specified Utility Costs**” has the meaning given in Section F17.2 of the Project Agreement;
- A1.200 “**Specified Utility Work**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.201 “**Stadium Access Works**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.202 “**Stage 1 Infrastructure**” has the meaning given in Schedule 18 – Technical Requirements;
- A1.203 “**Stage 1 Lands**” has the meaning given in Schedule 12 – Lands and Identified Encumbrances;
- A1.204 “**Station Look and Feel**” means any work product, including any Intellectual Property therein (including work product created, developed or acquired by Project Co, any Project Co Party, the City or any City Party) in respect of any aspect of the architecture or look and feel of the stations, including all designs, design details, drawings, specifications, prototypes, documentation, works and all instruments of architectural service that relate to the design identity, look and feel of any aspect of the architectural and landscape design in respect of the stations including landscape and urban design elements, furniture, fit and finish, stops, shelters or any other aspect of the stations;
- A1.205 “**Submittals**” has the meaning given in Schedule 5 – Review Procedure;
- A1.206 “**Substantial Completion**” means the point at which Design and Construction has been completed in accordance with the Project Agreement and all requirements for

Substantial Completion described in Schedule 18 – Technical Requirements other than in respect of items on the Deficiency List, have been satisfied;

A1.207 “**Substantial Completion Certificate**” has the meaning given in Section G2.1 of the Project Agreement;

A1.208 “**Substantial Completion Date**” has the meaning give in Section G2.1 of the Project Agreement;

A1.209 “**Substantial Completion Payment**” means [REDACTED];

A1.210 “**Substantial Completion Payment Date**” has the meaning give in Section K1.1 of the Project Agreement;

A1.211 “**Technical Requirements**” means all requirements set out in Schedule 18, including the OMR Requirements and including any amendments made pursuant to Section I1 of the Project Agreement;

A1.212 “**Termination Date**” means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms;

A1.213 “**Termination Event**” means any event described in Section S2 of the Project Agreement;

A1.214 “**Termination for Convenience**” has the meaning given in Schedule 15 – Termination Payments;

A1.215 “**Termination Payment**” means the applicable payment specified in Schedule 15 – Termination Payments required to be made by the City to Project Co upon termination of this Project Agreement;

A1.216 “**The Employment Standards Code**” means *The Employment Standards Code*, 1998 (Manitoba), as amended or replaced from time to time;

A1.217 “**Traffic Management Plan**” has the meaning given in Schedule 18 – Technical Requirements;

A1.218 “**Transitway**” has the meaning given in Schedule 18 – Technical Requirements;

A1.219 “**Unknown Utilities**” means Utility Infrastructure discovered by Project Co on or under the Lands following Commercial Close, which is not disclosed in or readily inferable from the Project Background Information;

A1.220 “**Utility Agreement**” means any agreement entered into by Project Co with a Utility Company in connection with the Utility Work or the Specified Utility Work, as amended, supplemented or replaced from time to time;

A1.221 “**Utility Company**” means the owner or operator of any Utility Infrastructure;

- A1.222 **“Utility Infrastructure”** means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, lighting, data, communications, gas, oil and petroleum products, water, storm water or sewage, wireless, or other similar commodity or substance which serve the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, and all related infrastructure;
- A1.223 **“Utility Work”** has the meaning given in Schedule 18 – Technical Requirements;
- A1.224 **“Warning Notice”** has the meaning given in Section L4.1 of the Project Agreement;
- A1.225 **“Warranty Period”** has the meaning given in Section F15.1 of the Project Agreement;
- A1.226 **“Winnipeg CPI”** has the meaning given in Section H5.1 of the Project Agreement; and
- A1.227 **“Workplace Safety and Health Act and Regulations”** means the *Workplace Safety and Health Act*, 1987 (Manitoba) and the *Workplace Safety and Health Regulation*, 2006 (Manitoba), as amended or replaced from time to time.

SECTION B INTERPRETATION

B1. Interpretation Rules

- B1.1 The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- (a) The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
 - (b) Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
 - (c) Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
 - (d) Except where the context requires otherwise, references in the Technical Requirements to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Technical Requirements shall be construed such that each such reference on a page of the Technical Requirements will be

read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 18 – Technical Requirements shall be interpreted to include the applicable prefix Section number or other reference.

- (e) The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- (f) All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- (g) All capitalized terms used in a Schedule shall have the meanings given to such terms in this Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- (h) The language of the Technical Requirements and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words “Project Co shall” immediately preceded the instructions, directions or obligations.
- (i) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (j) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (k) Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- (l) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (m) References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.

- (n) References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- (o) References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- (p) A reference in the Project Agreement to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- (q) References to a deliberate act or omission or deliberate or negligent act or omission of any City Party shall be construed having regard to the interactive nature of the activities of the City Parties and Project Co and further having regard to:
 - (i) acts contemplated by the Technical Requirements;
 - (ii) acts or omissions in the ordinary course of the City Operations and expressly or reasonably inferred from the Technical Requirements to be taken into account by Project Co in the performance of the OMR Services; or
 - (iii) acts otherwise provided for in the Project Agreement.
- (r) The words in the Project Agreement shall bear their natural meaning.
- (s) Each of Project Co's and the City's respective obligations shall be construed as separate obligations owed to the other.
- (t) References containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (u) In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of

the Project Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (v) Where the Project Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 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.
- (w) Where the Project Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 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.
- (x) Where the Project Agreement 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.
- (y) Any reference to time of day or date means the local time or date in Winnipeg, Manitoba.
- (z) Unless otherwise indicated, time periods will be strictly construed.
- (aa) Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or the City, they shall be construed and interpreted as synonymous and to read “Project Co shall” or “the City shall” as the case may be.
- (bb) 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.
- (cc) Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to the City shall be in accordance with the SI system of units.
- (dd) Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the road construction industry in Manitoba will be construed as having that meaning unless the context otherwise requires.
- (ee) The terms “readily inferable”, “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Project Background Information and of the Lands carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard

investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.