

SCHEDULE 8

LENDERS’ DIRECT AGREEMENT

made the 21st day of June, 2016

BETWEEN:

THE CITY OF WINNIPEG

(the “City”)

AND:

BNY TRUST COMPANY OF CANADA,

a trust company incorporated under the laws of Canada,
acting as agent for and on behalf of the Lenders
(the “Lenders’ Agent”)

AND:

PLENARY ROADS [REDACTED]

[REDACTED]

PLENARY ROADS [REDACTED]

[REDACTED]

and

PCL [REDACTED]

[REDACTED],

(“Project Co”)

WHEREAS:

- A. The City and Project Co have entered into an agreement on the 21st day of June, 2016 to design, build, finance, operate and maintain the New Infrastructure as set out in the agreement, as such agreement may be amended, supplemented or replaced from time to time in accordance with the terms thereof (collectively, the “**Project Agreement**”).
- B. Pursuant to the Project Agreement, the City and Project Co have agreed to enter into this agreement with the Lenders’ Agent (the “**Agreement**”).

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 INTERPRETATION

A1. Capitalized Terms

A1.1 Capitalized terms used in this Agreement have the meanings set out in the Project Agreement, unless expressed in this Agreement.

A2. Definitions

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

- (a) **"Affiliate"** has the meaning given to "affiliate" in *The Corporations Act* (Manitoba);
- (b) **"Agreement"** means this agreement, as amended or supplemented from time to time;
- (c) **"Confidential Information"** has the meaning given in Section C3.1 of this Agreement;
- (d) **"Default Notice"** means a notice given and delivered by the City to the Lenders' Agent in accordance with this Agreement;
 - (i) upon a Project Co Default under the Project Agreement; or
 - (ii) upon the occurrence, or the reasonably anticipated occurrence, of a Termination Event under Sections S2.1(d), (e), (f), (h), (i), (j) or (l) of the Project Agreement;
- (e) **"New Project Agreement"** has the meaning given in Section B12.1 of this Agreement;
- (f) **"Notice Period"** means the period starting on the date of delivery of a Default Notice pursuant to Section C1 of this Agreement and ending 90 days later;
- (g) **"Representative"** means the representative named by the Lenders' Agent in a Step-In Notice given by the Lenders' Agent to the City pursuant to Section B9.1 or a notice under Section B12 of this Agreement requiring the City to enter into a New Project Agreement, which representative may be:
 - (i) the Lenders' Agent or any of its Affiliates;
 - (ii) (in the case of a Step-In Notice only) a receiver or receiver and manager of Project Co appointed under an agreement between Project Co and the Lenders' Agent or appointed by a court on application by the Lenders' Agent;

- (iii) a person directly or indirectly owned or controlled by the Lenders’ Agent;
or
 - (iv) any other person selected by the Lenders’ Agent and approved by the City acting reasonably;
- (h) **“Step-In Date”** means the date on which the Lenders’ Agent gives the City a Step-In Notice;
- (i) **“Step-In Notice”** means the notice given by the Lenders’ Agent to the City pursuant to Section B9.1 of this Agreement stating that the Lenders’ Agent is exercising the step-in rights under this Agreement and identifying the Representative;
- (j) **“Step-In Period”** means the period from the Step-In Date up to and including the earlier of:
 - (i) the Step-Out Date;
 - (ii) the date that a transfer to a Suitable Substitute Contractor becomes effective pursuant to Section B8 of this Agreement;
 - (iii) the date of any notice from the City to the Lenders’ Agent and Project Co under Section B12 of this Agreement;
 - (iv) if the Step-In Date occurs prior to Substantial Completion, the later of (A) the Longstop Date, or (B) the first anniversary of the Step-In Date; or
 - (v) the expiry of the Project Term;
- (k) **“Step-Out Date”** means the date that is 20 Business Days after the date of a Step-Out Notice;
- (l) **“Step-Out Notice”** means a notice from the Lenders’ Agent or the Representative to the City pursuant to Section B10 of this Agreement; and
- (m) **“Suitable Substitute Contractor”** means a person approved by the City (such approval not to be unreasonably withheld or delayed) to replace Project Co under the Project Agreement.

A3. Order of Precedence

A3.1 In the event of any conflict or inconsistency between the provisions in the body of this Agreement and the provisions of the Project Agreement, provisions in the body of this Agreement shall govern.

SECTION B GENERAL

B1. Consent to Security

B1.1 The City hereby:

- (a) acknowledges and agrees that Section X3 of the Project Agreement does not restrict any grant by Project Co of a security interest in the rights and interests of Project Co in, to and under the Project Agreement or any documents, instruments or letters of credit contemplated in or arising out of the Project Agreement or to the perfection of such security interests;
- (b) acknowledges and agrees that no consent of the City is required for the granting by Project Co of any security to the Lenders or the Lenders' Agent or, subject to the restrictions on assignment in Section X3 of the Project Agreement and to Sections B1.1(c), B14 and B15 of this Agreement, the enforcement of any such security by the Lenders or the Lenders' Agent; and
- (c) acknowledges and agrees that any enforcement by the Lenders' Agent of a security interest in the Equity of Project Co granted in favour of the Lenders' Agent as part of its security pursuant to the Lending Agreements shall not constitute a material change in ownership of Project Co for the purposes of Section X5 of the Project Agreement or a Project Co Default under the Project Agreement.

B2. Payment to Lenders' Agent

B2.1 The Substantial Completion Payment, any Monthly Payment, any Termination Payment, and all other sums that become payable by the City to Project Co under the Project Agreement shall be paid only:

- (a) subsequent to the delivery by the City of a Default Notice or the delivery by the Lenders' Agent to the City of a notice stating that an event of default has occurred and is continuing under Project Co's financing arrangements with the Lenders, or during the Step-In Period, to the Lenders' Agent, in which case any such payment to the Lenders' Agent shall be deemed payment to Project Co under the Project Agreement; or
- (b) subject to Section B2.1(a), to any account or accounts of Project Co at any time jointly designated by Project Co and the Lenders' Agent and in the absence of such designation, to Project Co;
- (c) in either case, for the purpose of calculating a Termination Payment under Sections B6 or B7 of Schedule 15 – Termination Payments, all payments to such account or accounts or to Project Co that were required by the terms of the relevant Project Financing to have been applied towards repayment of the Project Financing shall be deemed to have been so applied.

B3. No Guarantee

B3.1 Nothing in this Agreement shall in any way constitute a guarantee by the City of the Project Financing.

B4. City's Step-in Rights

B4.1 The rights of the Lenders' Agent hereunder shall be subject to, and shall not derogate from or interfere with, the City's step-in rights under Section S1 of the Project

Agreement, provided the City delivers written notice to the Lenders' Agent of the exercise by the City of such step-in rights concurrently with the notice thereof delivered by the City to Project Co. At any time during which the City is exercising its step-in rights under Section S1 of the Project Agreement, the Lenders' Agent may put forward a remedial plan for consideration by the City, and in that event the City shall give consideration, acting reasonably, to such remedial plan. The Lenders' Agent shall not, by reason only of putting forward such remedial plan, be deemed to have assumed any obligation or liability of Project Co.

B5. Amendment of Project Agreement

B5.1 The City and Project Co agree with the Lenders' Agent not to:

- (a) materially amend or waive any provision of the Project Agreement in any way (i) potentially material to the rights of the Lenders' Agent hereunder or under any agreement between the Lenders' Agent and/or Lenders and Project Co; or (ii) that will have the effect of increasing any liability of Project Co under the Project Agreement;
- (b) subject to the terms of this Agreement, terminate the Project Agreement other than in accordance with its terms; or
- (c) pursue any Change Orders that singularly or in the aggregate involve an alteration in the scope of the Project of such magnitude that it could reasonably be expected to materially impact the Project Financing or Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or otherwise materially and adversely alter the risk profile of the Project (including, without limitation, increased exposure to Payment Adjustments);

except with the prior consent of the Lenders' Agent, acting reasonably.

B5.2 The Lenders' Agent agrees that it will use reasonable commercial efforts to expeditiously conclude its review of a proposed amendment or waiver under this Section B5. Provided that the City or Project Co have delivered sufficient detail concerning a proposed amendment or waiver, having regard to the factors described in this Section B5, the Parties agree that 45 days from receipt by the Lenders' Agent of a request under this Section B5 (together with sufficient details as referenced above) to conclude its review represents a commercially reasonable review period.

B6. Lenders' Agent's Right to Notice and Information

B6.1 The City agrees with the Lenders' Agent to provide to the Lenders' Agent, concurrently with providing them to Project Co, a copy of:

- (a) each calculation of any payment submitted to Project Co under Schedule 14 – Payment Mechanism;
- (b) any notice of a Payment Adjustment provided to Project Co under Schedule 14 – Payment Mechanism;

- (c) any Notice of Default given to Project Co under the Project Agreement (and information relating to the Project Co Default, in reasonable detail), or any notice under Section S2.1(e), S4 or S6 of the Project Agreement;
- (d) any notice of set-off given to Project Co under Section K11 of the Project Agreement;
- (e) any notice of Force Majeure Event given to Project Co under Section N3 of the Project Agreement;
- (f) any notice of the City’s step-in rights given to Project Co under Section S1 of the Project Agreement;
- (g) any notice of Termination Payment given to Project Co under Schedule 15 – Termination Payments; and
- (h) in respect of a Dispute, any notice the City provides to Project Co to commence arbitration under Section B4 of Schedule 7 - Dispute Resolution Procedure;

In addition, the City will provide reasonable cooperation to the Lenders’ Agent in furnishing information reasonably requested by the Lenders’ Agent in relation to any remedial plan being considered by the Lenders’ Agent or, in the event of termination of the Project Agreement, in relation to the process under Sections B1, B2, B3 or B4 of Schedule 15 – Termination Payments.

B7. Lenders’ Agent’s Right to Cure

B7.1 The Lenders’ Agent has the right but not the obligation to cure or cause to be cured any Project Co Default under the Project Agreement, and performance by the Lenders’ Agent, the Lenders or any person authorized by the Lenders’ Agent for that purpose by notice to the City of any obligation of Project Co under the Project Agreement shall constitute due performance of that obligation. The Lenders’ Agent shall not, by reason only of the performance by the Lenders’ Agent, the Lenders or any person authorized by it of any obligation of Project Co, be deemed to have assumed any obligation or liability of Project Co.

B8. Lenders’ Agent May Assume Responsibility

B8.1 As between the Lenders’ Agent and the City, the Lenders’ Agent may at any time, except to the extent that its right to do so is restricted by a communication to the City made jointly by the Lenders’ Agent and Project Co, by notice to the City assume direct responsibility for carrying out all of the obligations of Project Co under the Project Agreement (and upon notice of such assumption, be entitled to all benefits and rights of Project Co thereunder). In that event, the Lenders’ Agent or the Lenders may (either concurrently with or subsequent to such assumption) assign all rights and obligations under the Project Agreement to a Suitable Substitute Contractor, but only if:

- (a) the Suitable Substitute Contractor assumes all obligations of Project Co under the Project Agreement, by an assumption agreement among Project Co, the City and the Suitable Substitute Contractor, in a form prepared by the Suitable

Substitute Contractor or the Lenders’ Agent and acceptable to the City, acting reasonably;

- (b) all external expenses reasonably incurred by the City in reviewing the assumption agreement contemplated by Section B8.1(a) of this Agreement and in carrying out reasonable due diligence in relation to Section B8.1(a) of this Agreement are paid by the proposed Suitable Substitute Contractor or the Lenders’ Agent; and
- (c) all Project Co Defaults under the Project Agreement having been cured or, in the case of Incurable Defaults, mitigated as contemplated by Section S2.1(l)(iii) of the Project Agreement or, in either case, the Lenders’ Agent having made arrangements satisfactory to the City, acting reasonably, for the Suitable Substitute Contractor to use diligent efforts to effect such cure or such mitigation,

and if such conditions are met, the Lenders’ Agent shall not, following such assignment, have any liability or obligation to the City under or in relation to the Project Agreement.

B8.2 In assessing whether or not to exercise its rights under Section B8.1 of this Agreement, the Lenders’ Agent shall have regard in the first instance to information it obtains from Project Co, provided that:

- (a) if the Lenders’ Agent, despite its prudent and commercially reasonable measures to obtain from Project Co pertinent information relative to the Project Agreement, is unable to obtain such information or reasonably concludes that such information may be unreliable, the Lenders’ Agent may request the City to:
 - (i) confirm information provided by Project Co; or
 - (ii) supply information not provided by Project Co;
- (b) upon receipt of a request from the Lenders’ Agent under Section B8.2(a) of this Agreement, the City shall as soon as is practicable respond to the request for information to the extent that the information sought is known by or reasonably available to the City; and
- (c) the City shall not incur any liability or obligation to the Lenders’ Agent in respect of information supplied or confirmed to the Lenders’ Agent under Section B8.2(b) of this Agreement, except to the extent that the City knew or ought to have known that the information supplied or confirmed was incorrect or misleading.

B9. Lenders’ Agent’s Step-In Rights

B9.1 Without prejudice to the Lenders’ Agent’s or the Lenders’ rights under any agreement between the Lenders’ Agent and/or the Lenders and Project Co, the Lenders’ Agent may give the City a Step-In Notice at any time:

- (a) during which a Termination Event is subsisting, whether or not a Default Notice has been served;
- (b) during the Notice Period; or

- (c) if the Lenders’ Agent delivers a notice to the City stating that an event has occurred and is continuing which, under Project Co’s financing arrangements with the Lenders’ Agent, entitles the Lenders’ Agent to give a Step-In Notice.

B9.2 The Lenders’ Agent or the Representative may at any time during the Step-In Period, but not more often than is reasonably required for the purposes of any remedial plan being considered by the Lenders’ Agent, require the City to provide current information regarding the liabilities and obligations of Project Co under the Project Agreement (and information relating to the Project Co Default under the Project Agreement), in which event the City shall as soon as practicable supply to the Lenders’ Agent all such information that is known to senior officials of the City that have been directly involved in the Project Agreement, having made due inquiry.

B9.3 Upon the issuance of the Step-In Notice and until the end of the Step-In Period, (i) the Lenders’ Agent or the Representative may exercise the rights of Project Co under the Project Agreement arising from and after the Step-In Date, and (ii) the Lenders’ Agent or the Representative shall be the exclusive agent of Project Co for all matters relating to the Project Agreement and involving the City, including but not limited to the giving and receiving of all notices and communications under the Project Agreement.

B9.4 During any Step-In Period, the City shall consider and decide upon (in its absolute discretion) any extension of the time period in Section B11.1(a) of this Agreement proposed in connection with any remedial plan put forward by the Lenders’ Agent or the Representative, but the exercise by the Lenders’ Agent of its Step-in Rights shall not otherwise affect the cure period referred to in Section B11.1(a) of this Agreement.

B9.5 All rights of the Lenders’ Agent under Sections B9.2, B9.3, B9.4 and B10.1 of this Agreement may be exercised on behalf of the Lenders’ Agent by the Representative named in the Step-In Notice.

B9.6 The Lenders’ Agent shall, in the Step-In Notice, provide details to the City of any performance security required by the Lenders’ Agent of the Construction Contractor during the Step-In Period.

B10. Step-Out

B10.1 The Lenders’ Agent may at any time during the Step-In Period deliver to the City a Step-Out Notice which specifies the Step-Out Date.

B10.2 Upon expiry of the Step-In Period:

- (a) the City will no longer deal with the Lenders’ Agent or the Representative and will deal with Project Co or the Suitable Substitute Contractor (if applicable); and
- (b) the Lenders’ Agent and the Representative are released from all obligations and liabilities under the Project Agreement.

B11. Termination

B11.1 Before the City may terminate the Project Agreement under Section S4.1(a) of the Project Agreement upon a Termination Event under Section S2.1(d), (e), (f), (h), (i), (j) or

(l) of the Project Agreement, the City shall deliver to the Lenders’ Agent a Default Notice and provide to the Lenders’ Agent an opportunity to cure the Project Co Default or the subsisting grounds that gave rise to the applicable Termination Event, in accordance with the following:

- (a) the Lenders’ Agent shall have 90 days from the giving of such Default Notice to cure the Project Co Default or such subsisting grounds, as applicable;
- (b) if the Project Co Default or such subsisting grounds, as applicable can only be cured following the appointment of a receiver or receiver-manager, and if such process requires longer than the 90-day cure period, then the Lenders’ Agent shall be entitled to such longer period, provided:
 - (i) the Lenders’ Agent obtained such contractual rights to appoint a receiver or receiver-manager of Project Co as a prudent lender would obtain; and
 - (ii) the Lenders’ Agent diligently proceeds to have a receiver or receiver-manager appointed and thereafter diligently proceeds to cure the Project Co Default or such subsisting grounds, as applicable (but in any event within 90 days of appointment of the receiver or receiver-manager); and
- (c) if the Project Co Default is an Incurable Default, then Section S2.1(l)(iii) of the Project Agreement shall apply to the Lenders’ Agent, with such changes as are necessary to the context thereof.

B11.2 Before the City may terminate the Project Agreement under Section S4(a) of the Project Agreement upon a Termination Event under Sections S2.1(a), (b), (c), (g), and (k) of the Project Agreement, the City shall give the Lenders’ Agent five Business Days’ notice of the occurrence of such Termination Event or the reasonably anticipated occurrence of such Termination Event.

B12. Lenders’ Agent’s Option Upon Termination

B12.1 If the City, after duly affording the Lenders’ Agent the opportunity required by Section B11 of this Agreement to cure the Project Co Default or the subsisting grounds that gave rise to a Termination Event specified in Section B11 of this Agreement or giving the Lenders’ Agent notice of the occurrence of certain Termination Events, as applicable, terminates the Project Agreement pursuant to Section S4.1(a) of the Project Agreement by notice to Project Co and the Lenders’ Agent, then the Lenders’ Agent may, within 45 days of receiving notice of the termination, require the City to enter into a new Project Agreement (the “**New Project Agreement**”) directly with a Representative or a Suitable Substitute Contractor on the same terms (and having the same remaining Project Term) as the Project Agreement except as stated otherwise in this Agreement, with the intent being that the novation of the Project Agreement will place the City in the same position as if the Project Agreement had not been terminated. In that event:

- (a) the Representative shall cure all existing Project Co Defaults as soon as reasonably practicable (or, in the case of an Incurable Default, mitigate as contemplated by Section S2.1(l)(iii) of the Project Agreement);

- (b) no Termination Payment shall be payable by the City in respect of the Project Agreement being terminated;
- (c) if the Termination Event that gave rise to the New Project Agreement was a Termination Event pursuant to Section 2.1(j) of the Project Agreement, then none of the subsisting factual grounds for termination in respect of the Project Agreement being terminated (including Deductions) caused by Project Co under the Project Agreement shall apply to the New Project Agreement;
- (d) if the Termination Event that gave rise to the New Project Agreement was a Termination Event pursuant to Section S2.1(g) of the Project Agreement, then the deadline date set forth in Section S2.1(g) of the New Project Agreement shall be 180 days after the Longstop Date;
- (e) the City, the Lenders' Agent, and Project Co all acknowledge that this Agreement has been cancelled upon the entering into of the New Project Agreement and this Section B12 of this Agreement shall be deleted and not included in any Lenders' Direct Agreement entered into under Section D2 of the New Project Agreement; and
- (f) the Representative may at any time thereafter:
 - (i) subject to the same terms and conditions as set out in Sections B8.1(a) and B8.1(b) of this Agreement; and
 - (ii) provided any Project Co Defaults by the Representative, as Project Co under the New Project Agreement have been cured or, in the case of Incurable Defaults, mitigated as contemplated by Section S2(l)(iii) of the Project Agreement or, in either case, the Representative has made arrangements satisfactory to the City, acting reasonably, for the Suitable Substitute Contractor to use diligent efforts to effect such cure or mitigation,

assign all of its rights and obligations under the New Project Agreement to a Suitable Substitute Contractor.

B12.2 Following the assignment referred to in Section B12.1(f) of this Agreement, the Representative shall be released from all liabilities and obligations to the City under or in relation to the Project Agreement and the New Project Agreement.

B12.3 In order to give effect to this option, no Termination Payment arising upon termination of the Project Agreement under Section S4.1(a) of the Project Agreement shall become payable until after 45 days following the effective date of termination.

B13. Representations and Warranties

B13.1 The City hereby represents and warrants to and in favour of the Lenders' Agent that:

- (a) the City has all requisite capacity, power and authority to enter into and perform its obligations under this Agreement;

- (b) this Agreement has been duly authorized on behalf of the City and, upon execution and delivery, constitutes a legal, valid and binding obligation of the City; and
- (c) the City has not consented to any assignment of the Substantial Completion Payment, any Monthly Payments, any Termination Payments, or any other payment becoming due by the City to Project Co under the Project Agreement other than under this Agreement.

B14. Assignment

- B14.1 The City shall not assign or transfer its rights and obligations under this Agreement except to a permitted assignee of its interest in the Project Agreement in accordance with Section X6 of the Project Agreement and provided such permitted assignee agrees in writing with the other Parties hereto to be bound by the terms and conditions of this Agreement.
- B14.2 Project Co shall not assign or transfer its rights and obligations under this Agreement except concurrently with the assignment or transfer by Project Co to an assignee of Project Co's rights and obligations under the Project Agreement in accordance with Section X3 of the Project Agreement.
- B14.3 The Lenders' Agent may assign or transfer its rights and obligations under any agreement between the Lenders' Agent and/or Lenders and Project Co (other than this Agreement) in accordance with the terms thereof without the consent of the City. The City and Project Co will, upon request by any such successor to the Lenders' Agent, enter into a new direct agreement with that party on terms that are the same in all material respects as the terms of this Agreement, as contemplated by and in accordance with Section D2 of the Project Agreement. The Lenders' Agent may not otherwise transfer or assign its rights and obligations under this Agreement except with the prior consent of the City, who may withhold such consent if the City, acting reasonably, considers that such assignment may in any material way impair or prejudice the rights of the City under the Project Agreement.

B15. Approval of Suitable Substitute Contractor

- B15.1 In connection with the assignment to a Suitable Substitute Contractor under Section B8 of this Agreement or an assignment to a Suitable Substitute Contractor pursuant to Section B12 of this Agreement, the Lenders' Agent will deliver all information reasonably required by the City to determine whether the proposed transferee is a Suitable Substitute Contractor. The City will advise the Lenders' Agent within 10 Business Days from its receipt of the information referred to above whether it accepts a proposed transferee as a Suitable Substitute Contractor. If the City fails to respond within such 10 Business Days, the City will be deemed to have accepted the Suitable Substitute Contractor. The City acknowledges and agrees that it will not be reasonable for the City to withhold its consent if a proposed Suitable Substitute Contractor has the financial capability, reputation, expertise, resources and abilities necessary to perform the obligations of Project Co under the Project Agreement.

B16. Replacement of Subcontractor

B16.1 The City acknowledges that where it becomes necessary for Project Co to replace the OMR Provider, a replacement OMR Provider can most efficiently be procured only if the consequences of future Payment Adjustments are “reset” to zero. Accordingly, where the OMR Provider is replaced either by Project Co or pursuant to this Agreement, then provided that:

- (a) the replacement OMR Provider is at arm’s length from the replaced OMR Provider; and
- (b) the OMR Provider has not previously been replaced more than once in the immediately preceding five year period;

then, 100% of the Deductions accrued by Project Co prior to such replacement shall be cancelled.

SECTION C COMMUNICATIONS

C1. Notices

C1.1 Any notice, consent, approval or other communication 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 always by electronic transmission), to the following respective addresses:

If to the City:

The City of Winnipeg
Winnipeg Transit
Asset Management Office
414A Osborne Street
Winnipeg, MB R3L 2A1

Attn: Jesse Crowder, P.Eng., Project Manager
Email: jcrowder@winnipeg.ca

With a copy to:

The City of Winnipeg
Winnipeg Transit
Office of the Director
421 Osborne Street
Winnipeg, MB R3L 2A2

Attn: Dave Wardrop, Director
Email: dwardrop@winnipeg.ca

If to Project Co:

Plenary Roads [REDACTED]
400 Burrard Street, Suite 2000
Vancouver, BC V6C 3A6

Attn: Brian Clark, Senior Vice President
Email: Brian.Clark@plenarygroup.com

If to the Lenders' Agent: BNY Trust Company of Canada
320 Bay Street, 11th Floor
Toronto, ON M5H 4A6

Attn: Corporate Trust Administration
Email: henry.hamilton@bnymellon.com

C1.2 Any Party may change its address information by giving notice to the other Parties in the manner specified in Section C1.1 of this Agreement.

C2. Authority to Give Notices

C2.1 The Parties designate for the time being the following individuals as having authority to communicate to the other any notice, approval, consent, waiver or other communication under this Agreement:

- (a) in the case of the City: Jesse Crowder, P.Eng., Project Manager
- (b) in the case of Project Co: Authorized signatories of Plenary Roads [REDACTED]
- (c) in the case of the Lenders' Agent: Authorized signatory of BNY Trust Company of Canada

C2.2 In the absence of any further designation or limitation communicated with reference to this Section C2, each Party may assume that any notice, approval, consent, waiver or other communication under this Agreement given by the above individual has been duly authorized and is binding upon the relevant Party hereto.

C3. Confidential Information

C3.1 Each Party shall, upon delivering any information to the other pursuant to this Agreement that includes information delivered in confidence, identify the information delivered in confidence (the "**Confidential Information**"). The receiving Party shall maintain (and shall ensure that its officers, employees, consultants, advisors and contractors maintain) the confidentiality of the Confidential Information, with the exception of information that:

- (a) at the time of the disclosure to the receiving Party, was in the public domain;
- (b) after disclosure to the receiving Party became part of the public domain through no fault of the receiving Party or those for whom it is responsible under Applicable Law;
- (c) was in the possession of the receiving Party at the time of disclosure to it, as demonstrated by written records; or
- (d) was received by the receiving Party from a third party who had a lawful right to disclose the information.

C4. Disclosure of Confidential Information

C4.1 No Party to this Agreement shall disclose Confidential Information delivered by another Party hereto except:

- (a) to such of its officers, employees, consultants, advisors and contractors (including without limitation any rating agency, surety company or guarantor, and any person with whom the disclosing Party proposes to do business in furtherance of the purposes of this Agreement or the Project Agreement) who reasonably require access to the Confidential Information for the due performance of or to further the purposes of this Agreement or the Project Agreement;
- (b) as required by FIPPA or any other Applicable Law; or
- (c) where the disclosure is consented to by the applicable other Party.

C5. Public Disclosure of Agreement

C5.1 The Lenders' Agent and Project Co agree that the City will be at liberty to make public disclosure of this Agreement, excepting only any portions thereof that the Lenders' Agent or Project Co has, prior to signing of this Agreement, established to the satisfaction of the City, acting reasonably, would be exempted from disclosure under FIPPA.

SECTION D MISCELLANEOUS

D1. Applicable Law and Jurisdiction

D1.1 This Agreement shall be governed by the laws in force in Manitoba, including the federal laws of Canada applicable therein. Except as may be agreed to by the Parties and subject to Section D6, Manitoba courts shall have exclusive jurisdiction over all matters arising in relation to this Agreement, and each Party accepts the jurisdiction of Manitoba courts.

D2. Amendment and Waiver

D2.1 No amendment of this Agreement is effective unless made in writing and signed by a duly authorized representative of each Party hereto. No waiver of any provision of this Agreement 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 any of the Parties with respect to the performance of any obligation under this Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

D3. Additional Assurances

D3.1 Each Party agrees from time to time to 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 Agreement according to their spirit and intent; but this Section D3 shall

not in any event be construed as obligating the City to amend or enact any statute or regulation.

D4. Counterparts

D4.1 This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by Portable Document Format (PDF) transmission shall constitute good delivery.

D5. Entire Agreement

D5.1 Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No Party has relied on any representation except as expressly set out in this Agreement.

D6. Dispute Resolution Procedure

D6.1 The Parties agree that the Dispute Resolution Procedure provided for in the Project Agreement shall apply to any dispute under this Agreement, with such reasonable amendments as are necessary to adapt the Dispute Resolution Procedure to this Agreement. If there is any dispute in relation to amendments to the Dispute Resolution Procedure, the matter shall be determined by arbitration before one arbitrator and in accordance with *The Arbitration Act, 1997* (Manitoba).

IN WITNESS WHEREOF each of the Parties has executed this Agreement as of the day and year first above written.

THE CITY OF WINNIPEG

Per: _____

Name: Brian Bowman, J.D, B.A. (Adv), CPA (Hon.),
CGA (Hon)

Title: Mayor

Per: _____

Name: Richard Kachur

Title: City Clerk

We have authority to bind the City.

Approved as to Financial Details:

Approved:

Michael Ruta, FCA
Chief Financial Officer

Douglas D. McNeil, P.Eng.
Chief Administrative Officer

Certified as to Contract Details:

Certified as to Contract Details:

Dave Wardrop, CPA, CMA, P.Eng.
Director of Transit

Lester Deane, P.Eng.
Director of Public Works

Reviewed as to Business Terms:

Reviewed as to Business Terms:

Scott Payne
Project Manager
Manager, Asset Management Office
Winnipeg Transit

Brad Neirinck, P.Eng.
Manager of Engineering
Public Works Department

Legally Reviewed and Certified as to Form:

Lisa R. Rowswell, Solicitor
for Director of Legal Services and City Solicitor

BNY TRUST COMPANY OF CANADA

Per: _____

Name:

Title:

Per: _____

Name:

Title:

We have authority to bind the corporation.

PLENARY ROADS [REDACTED]
[REDACTED]
[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have authority to bind the corporation.

PCL [REDACTED]
[REDACTED]
[REDACTED]

Per: _____
Name:
Title:

I have authority to bind the corporation.