

SCHEDULE 23

PUBLIC ART

SECTION A DEFINITIONS

A1. Capitalized Terms

A1.1 Capitalized terms used in this Schedule 23 have the meanings set out in the Project Agreement, unless otherwise expressed in this Schedule 23.

A2. Definitions

A2.1 **“Artist”** means the artist as selected for each Individual Art Project;

A2.2 **“Artist Agreement”** means the artist agreement for an Individual Art Project to be entered into between Project Co, WAC, the City and the Artist in the form attached as Appendix C to this Schedule 23;

A2.3 **“Artist Fee”** means the fee to be paid to the Artist in accordance with the Artist Agreement;

A2.4 **“Artwork”** means (i) the art project as proposed by the Artist in response to the Call to Artists, including a description of the proposed art project, a proposed project time line, proposed implementation plans and a description of the proposed materials, methods and processes to be used to create, produce and fabricate the art project, all of which must be developed collaboratively with the Public Art Committee and approved by the City and which is more particularly described in Schedule D of the Artist Agreement; (ii) all drawings, documents, materials, designs, models, concepts, plans, maquettes and specifications relating to the Individual Art Project; and (iii) the final piece of Integrated Art installed at each Individual Art Site pursuant to each Artist Agreement;

A2.5 **“Artwork Administration Costs”** means all of WAC’s costs related to the artist selection process, including artist proposal costs and jury fees, communication, community engagement strategies, photographic documentation and plaques;

A2.6 **“Call to Artists”** means the request for proposals issued by WAC and as more particularly described in Section D of the Winnipeg Arts Council - Guideline for the Public Art Process attached as Schedule D to the Management Agreement;

A2.7 **“Commission Costs”** means all costs related to fully realizing each Artwork, including Incremental Public Art Construction Costs, detailed design development, the Artist Fee, technical consultation including the engineering and landscape architectural design and drawings necessary to fabricate and install any Integrated Art, insurance as set out in the Artist Agreement, all approvals, permit fees, fabrication costs and installation costs;

A2.8 **“Designated Public Art Costs”** means the Commission Costs, Management Fee and Artwork Administration Costs;

- A2.9 **“Incremental Public Art Construction Costs”** means the cost of the artistic enhancements to the New Infrastructure to integrate the Artwork in the New Infrastructure. For clarity, if Project Co is using a uniform type of tile within a station/all stations and the artistic enhancement involves a tiling mosaic, then the Incremental Public Art Construction Cost will be the difference between the cost to use the uniform tiles and the cost of using the tiling mosaic;
- A2.10 **“Individual Art Project”** means the development, design, fabrication and installation of each individual Artwork at each one of the selected Locations;
- A2.11 **“Individual Art Site”** means each location for the Individual Art Project as described in Schedule “C” to the Artist Agreement, or such other site as the Public Art Committee may select;
- A2.12 **“Integrated Art”** means any type of integrated physical, visual, audiovisual art that goes above and beyond the base expression of a structure or open space, with the explicit purpose of artistic and/or community expression. Integrated Art may include:
- (a) interior or exterior architectural elements (special surface treatments, architectural detail, or lighting);
 - (b) works integrated into the design of the site, buildings and landscape, including walls, floors and ceilings, glass, lighting, and publicly accessible open spaces such as plazas and courtyards;
 - (c) infrastructure elements including bridges, retaining walls, dividing lane fences, paving for approaches or platforms;
 - (d) landscape elements (fountains, hard and soft landscaping elements, lighting, furniture); and
 - (e) interactive multi-media works (temporary or permanent); digital, film or electronic works displayed on screens or projected on surfaces, including works commissioned or purchased to be installed in new or pre-existing screens;
- A2.13 **“Locations”** means Transitway stations, Transitway grade separations, Park and Rides, Transitways, Kiss and Rides, AT tunnels, AT pathways as such locations are described in Schedule 18 – Technical Requirements;
- A2.14 **“Maintenance Manual”** means in relation to each Artwork (i) maintenance manual or maintenance instructions describing in detail the specifications of materials and finishes, method of cleaning, preserving and maintaining the Artwork; (ii) a complete set of all relevant drawings which describe in detail the design, construction method and fabrication specifications of the Artwork (including, product literature, names of suppliers and names of manufactures); and (iii) other materials that the Artist would wish to have included in an historical archive, all prepared by the Artist;
- A2.15 **“Management Agreement”** means the Management Agreement to be entered into between Project Co, WAC and the City in the form attached as Appendix B to this Schedule 23;

- A2.16 “**Management Fee**” means the fee to be paid to WAC for the management of the Public Art component of the Project in the amount of \$ [REDACTED] of the Public Art Cash Allowance;
- A2.17 “**Public Art**” means the full complement of Integrated Art included in the Project;
- A2.18 “**Public Art Cash Allowance**” means the cash allowance allocated to Public Art within Project Co’s overall capital costs, in the total amount of \$ [REDACTED];
- A2.19 “**Public Art Cash Allowance Account**” means account no [REDACTED] at TD Canada Trust;
- A2.20 “**Public Art Committee**” means the public art team described in Section D of this Schedule 23;
- A2.21 “**Public Art Coordinator**” has the meaning given in Section F1.1(n);
- A2.22 “**Public Art Plan**” means the public art plan as approved by the City and described in Section E of this Schedule 23;
- A2.23 “**Public Art Policy**” means the City of Winnipeg’s Public Art Policy attached as Appendix A to this Schedule 23; and
- A2.24 “**WAC**” means the Winnipeg Arts Council Inc.

SECTION B APPENDICES

B1. Appendices

- B1.1 The following documents will be attached hereto as Appendices and form an integral part of this Schedule 23:
- (a) Appendix A – The City of Winnipeg Public Art Policy;
 - (b) Appendix B – Form of Management Agreement; and
 - (c) Appendix C – Form of Artist Agreement.

SECTION C PUBLIC ART CASH ALLOWANCE

C1. Public Art Cash Allowance

- C1.1 Project Co shall open the Public Art Cash Allowance Account and deposit the Public Art Cash Allowance into the Public Art Cash Allowance Account on Financial Close and shall manage the Public Art Cash Allowance Account in accordance with this Section C1 solely for the Designated Public Art Costs in accordance with this Schedule 23.
- C1.2 The cash flow process applicable to the Public Art Cash Allowance Account will be as follows:

- (a) Project Co will deposit the Public Art Cash Allowance into the Public Art Cash Allowance Account on Financial Close;
- (b) Project Co will hold and manage all monies in the Public Art Cash Allowance Account solely for the purposes of paying the Designated Public Art Costs;
- (c) interest earned on the Public Art Cash Allowance Account will accrue in the Public Art Cash Allowance Account and will be for the benefit of the City;
- (d) Project Co shall provide a reconciliation of the Public Art Cash Allowance Account to the City and WAC on a monthly basis summarized by Individual Art Projects and including the total Commission Costs, costs incurred to date, and anticipated costs to complete for each;
- (e) subject to Project Co's obligation to fund the Public Art Cash Allowance Account pursuant to Section C1.2(a), the City shall make deposits into the Public Art Cash Allowance Account in the event that the funding of the Designated Public Art Costs, for work approved by the City in advance of the expenditure being incurred, exceeds the then balance of the Public Art Cash Allowance Account;
- (f) if, at Final Completion, there exists a positive balance in the Public Art Cash Allowance Account, such balance will be the property of the City and will be paid by Project Co to the City or as the City direct; and
- (g) the Parties agree to mutually review the operation of the Public Art Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.

For clarity, the City shall be under no obligation to fund amounts in excess of the outstanding balance in the Public Art Cash Allowance Account in accordance with Section C1.2(e) unless the City has approved any required expenditures in advance.

C1.3 Project Co shall, when requesting use of the Public Art Cash Allowance Account for the purposes paying Designated Public Art Costs, provide to the City, with a copy to WAC, a request for payment approval and the City shall, within 10 Business Days of receipt of such request, advise Project Co, in writing, whether or not payment is approved.

C1.4 When the City approves the payment pursuant to Section C1.3, Project Co shall make payment from the Public Art Cash Allowance Account in accordance with the request for payment.

C1.5 Project Co acknowledges and agrees that:

- (a) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Public Art Cash Allowance Account or Designated Public Art Costs as set out in this Schedule 23;
- (b) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co or any Project Co Party in connection with the Public Art Cash Allowance Account shall be attributed solely to and shall benefit Designated Public Art Costs;

- (c) all costs and expenses related to the administration of the Public Art Cash Allowance Account, shall be borne by Project Co and shall not be charged to the Public Art Cash Allowance Account; and
- (d) any costs, expenses or delays related to funding or managing the Public Art Cash Allowance Account are the responsibility of Project Co.

C2. Public Art Cost Exclusions

C2.1 The following costs are not Designated Public Art Costs and Project Co shall not use funds from the Public Art Cash Allowance in relation to any of the following costs:

- (a) project management costs of Project Co, including any cost associated with the Public Art Coordinator;
- (b) the Design and Construction of the New Infrastructure, other than as contemplated in this Schedule 23;
- (c) upgraded finishes that are part of the Design and Construction of the New Infrastructure; and
- (d) maintenance of New Infrastructure and/or the Public Art.

SECTION D PUBLIC ART COMMITTEE

D1. Public Art Committee

D1.1 Project Co, the City, WAC and the Artist shall each have the following general responsibilities:

- (a) Project Co shall fabricate, install and maintain the Public Art as more particularly set out in Section F;
- (b) The City shall liaise with the Public Art Committee and the required City departments to assist in implementing the Public Art component of the Project as more particularly set out in Section G;
- (c) WAC shall manage the Public Art component of the Project which will include oversight, implement communications and community engagement activities as more particularly set out in Section H; and
- (d) Each Artist shall develop and design his or her Artwork as more particularly set out in Section I

D1.2 Project Co, the City and WAC will each designate a representative to support the Public Art component of the Project. These representatives will form part of the Public Art Committee for the Project, which will consist of:

- (a) two representatives of Project Co, one of who shall be Project Co's Public Art Coordinator;

- (b) the City's public art liaison;
- (c) WAC's public art manager; and
- (d) each selected Artist (solely for the purposes of his or her Individual Art Project).

D1.3 The Public Art Committee shall be responsible for the following:

- (a) developing a timeline for specific Project Co deliverables to ensure that the overall Public Art component of the Project will be complete upon Substantial Completion of the New Infrastructure;
- (b) providing feedback to WAC on the Public Art Plan; and
- (c) working collaboratively to ensure that the Public Art component of the Project is completed in accordance with the terms of this Schedule 23.

D1.4 No later than 30 days following Financial Close, the Public Art Committee shall meet to identify their working relationship, roles and responsibilities matrix, approvals processes and procedures, and the form of reports that are required, all in accordance with this Schedule 23.

D1.5 The Public Art Committee's roles and responsibilities will terminate one month following the Final Completion Date.

SECTION E PUBLIC ART PLAN

E1. Public Art Plan

- E1.1 WAC shall develop, in collaboration with the Public Art Committee, and implement, maintain, monitor, periodically update, and manage the Public Art Plan in accordance with this Schedule 23.
- E1.2 Project Co shall be responsible for ensuring that Public Art is integrated into the Project in accordance with the Public Art Plan.
- E1.3 The Public Art Plan shall include the approved Locations of the Integrated Art, the proposed budget for each piece of Integrated Art, a timeline and schedule for the procurement, selection, development and completion of the Integrated Art.

SECTION F PROJECT CO RESPONSIBILITIES

F1. Project Co Covenants

- F1.1 Project Co shall,
 - (a) ensure that at least seven Locations in the Project include a minimum of one piece of Integrated Artwork;
 - (b) at Commercial Close, enter into the Management Agreement with the City and WAC;

- (c) pay WAC the Management Fee from the Public Art Cash Allowance Account in accordance with the terms of the Management Agreement;
- (d) reimburse WAC for the Artwork Administration Costs from the Public Art Cash Allowance Account;
- (e) pay the Commission Costs from the Public Art Cash Allowance Account;
- (f) ensure that the Public Art does not interfere with City Operations, including the flow of passengers;
- (g) to the extent required for each Individual Art Project, fabricate, construct and install the Artwork;
- (h) ensure Public Art is fully installed at Substantial Completion;
- (i) comply with the Public Art Policy to such extent that it applies to the Public Art component of the Project;
- (j) implement the Public Art Plan for each of the Individual Art Projects consistent with the Public Art Committee recommendations;
- (k) meet quarterly, or as deemed necessary by WAC, with the Public Art Committee to report on the status of the Public Art component of the Project, including the status of the Individual Art Projects, the financial status of the Public Art Cash Allowance, the timing of the payments to the Artists and to WAC and the schedule status;
- (l) ensure that all deliverables are completed within the schedule and timelines as set out by the Public Art Committee;
- (m) ensure that all necessary insurance is in place for the Public Art component of the Project;
- (n) appoint the public art coordinator, who shall be a member of Project Co's design team and who shall:
 - (i) act as Project Co's representative on the Public Art Committee;
 - (ii) ensure Project Co's compliance with the Public Art Policy to the extent that it applies to Public Art;
 - (iii) coordinate with WAC on all aspects of Project Co's participation and deliverables of the Public Art component of the Project;
 - (iv) liaise with the City, WAC and the Artist to ensure successful delivery of the Public Art component of the Project; and
 - (v) ensure fair and equitable involvement of the Artists,

the ("**Public Art Coordinator**").

F2. Maintenance and Handback Requirements

- F2.1 During the OMR Period, Project Co shall maintain the Public Art in accordance with the Maintenance Manual and in accordance with the standards as more particularly set out in Part E of Schedule 18 - Technical Requirements of the Project Agreement.
- F2.2 Project Co may consult with each Artist with respect to the maintenance of each Artwork in accordance with the terms of the Artist Agreement.
- F2.3 Public Art will be handed back to the City in accordance with Schedule 19 – Handback Procedure and Part F of Schedule 18 - Technical Requirements.

SECTION G CITY RESPONSIBILITIES

G1. City Responsibilities

- G1.1 The City's Representative shall be responsible for:
- (a) the appointment of a public art liaison who will represent the City on the Public Art Committee and liaise with other City of Winnipeg employees and representatives as required for the Public Art component of the Project; and
 - (b) approve the Public Art Plan as proposed by the Public Art Committee.

SECTION H WAC RESPONSIBILITIES

H1. WAC Responsibilities

- H1.1 WAC shall:
- (a) define the objective and guiding themes of the Public Art component of the Project to address the natural and cultural elements of the surrounding neighbourhoods and to create the Public Art Plan;
 - (b) appoint a public art manager who will represent WAC on the Public Art Committee, chair the Public Art Committee meetings and liaise with other WAC employees and representatives as required for the Public Art component of the Project;
 - (c) facilitate the selection of the Artist and Public Art through the jury process for each of the Individual Art Projects, in collaboration with the Public Art Committee, and in accordance with the Management Agreement;
 - (d) coordinate with Project Co to ensure that the incorporation of the Public Art is true to the Artists' vision, is completed within the budget allocated for the Individual Art Project and does not negatively impact Project Co's Design and Construction Schedule; and
 - (e) ensuring the execution of the Artist Agreement between Project Co, the City, WAC and the Artist for each Individual Art Project.

SECTION I ARTIST RESPONSIBILITIES

I1. Artist Agreement

I1.1 Project Co, the City and WAC shall each enter into the Artist Agreement with each Artist and shall carry out their respective responsibilities for each of the Individual Art Projects as set out in each Artist Agreement.

I2. Artist Responsibilities

I2.1 The Artist shall:

- (a) be a member of the Public Art Committee for his or her Individual Art Project; and
- (b) carry out all responsibilities of the Artist set out in the Artist Agreement.

APPENDIX A

The City of Winnipeg Public Art Policy

[Note: The portions of the policy that are not applicable to the Public Art component of the Project have been struck out in the attached policy.]

See attached.

APPENDIX B
MANAGEMENT AGREEMENT

THIS AGREEMENT is made the 21st day of June, 2016

BETWEEN:

THE CITY OF WINNIPEG,

(the “City”)

AND:

WINNIPEG ARTS COUNCIL INC.

 (“WAC”),

AND:

PLENARY ROADS [REDACTED]

PLENARY ROADS [REDACTED]

and

PCL [REDACTED],

(“Project Co”)

WHEREAS:

- A. Project Co has been contracted by the City to design, build, finance, (operate) and maintain the City’s Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass project (the “Project”);
- B. WAC is responsible for administering an overall public art program within the City of Winnipeg and has expertise and experience in the management and administration of public art; and
- C. The Parties have agreed to collaborate to achieve the incorporation of the Public Art component of the Project by engaging WAC as the manager of the Public Art component of the Project upon the terms and conditions as more particularly set out herein.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

SECTION A DEFINITIONS

A1.1 Capitalized terms used in this Management Agreement have the meanings set out in Schedule “A” – Definitions.

SECTION B MANAGEMENT OF PUBLIC ART

B1.1 WAC covenants and agrees to manage the Public Art component of the Project in accordance with the terms and conditions as more particularly set out in the following documents which will be attached hereto as Schedules and form an integral part of this Management Agreement:

- (a) Schedule “A” – Definitions;
- (b) Schedule “B” – Schedule 23 – Public Art of the Project Agreement;
- (c) Schedule “C” – The City of Winnipeg Public Art Policy;
- (d) Schedule “D” – Winnipeg Art Council - Guideline for the Public Art Process; and
- (e) Schedule “E” – Form of Artist Agreement.

B1.2 WAC will facilitate the selection of the Artist and Public Art through the jury process for each of the Individual Art Projects, in collaboration with the Public Art Committee, and in accordance with the process and criteria as more particularly set out in Schedule “D”.

SECTION C TERM

C1.1 This Management Agreement is effective from the date set out in the recitals and continues until the date that is 30 days following the Final Completion Date (the “Term”).

SECTION D MANAGEMENT FEE

D1.1 Project Co shall pay WAC the Management Fee in the total amount of \$ [REDACTED]. The Management Fee is payable by Project Co in seven instalments in accordance with the following schedule:

- Phase 1: June 2016 to October 2016 = \$ [REDACTED]
- Phase 2: November 2016 to January 2017 = \$ [REDACTED]
- Phase 3: April 2017 to September 2017 = \$ [REDACTED]
- Phase 4: October 2017 to October 2018 = \$ [REDACTED]
- Phase 5: November 2018 to October 2019 = \$ [REDACTED]
- Phase 6: November 2019 to December 2019 = \$ [REDACTED]
- Phase 7: Final Completion + 30 days = \$ [REDACTED]

SECTION E ARTWORK ADMINISTRATION COSTS

E1.1 Project Co shall reimburse WAC for Artwork Administration Costs within 30 days of receipt of an invoice from WAC up to a maximum of \$ [REDACTED].

SECTION F REPORTING & AUDIT REQUIREMENTS

- F1.1 WAC shall be responsible to report at the times and in the manner requested by the City and Project Co and without limiting the generality of the foregoing, shall provide:
- (a) a record of the Management Fee and Artwork Administration Costs related to the Public Art component of the Project, together with supporting documentation, including but not restricted to invoices, payroll records and bank records including cancelled cheques;
 - (b) a year-end audited financial statement detailing the use of the Management Fee and Artwork Administration Costs ; and
 - (c) an annual report for each year of this Management Agreement.
- F1.2 WAC shall establish and maintain accurate and complete accounting and other records (including supporting documents), prepared in accordance with generally accepted accounting principles in effect in Canada, including those principles and standards approved or recommended from time to time by the Canadian Institute of Chartered Accountants, and to preserve all accounting records, financial document and other records relating to the Public Art component of the Project and its use for the purpose of implementing the matter set forth in this Agreement for the period of six years following the calendar year in which the matters documented by such accounting records, financial document and other records occurred.
- F1.3 WAC shall make available all records and documents referred to in the foregoing section at all reasonable times during this Management Agreement and for a period of six years following the Term, for inspection and a financial and compliance audit by the City and its representatives and auditors at the City's expense, and shall produce such records and documents on demand, provide reasonable facilities for such inspections and audits, provide copies of and extracts from such records and documents upon request by the City or its representatives or auditors, and promptly provide such other information and explanations as may be reasonably requested by the City or its representatives or auditors from time to time.

SECTION G CONFIDENTIAL INFORMATION

- G1.1 WAC shall not make, and shall not cause or permit any public announcement to be made relating to the Public Art component of the Project except as approved in advance by the City.
- G1.2 Subject to Section G1.3, each Party shall maintain (and shall ensure that each of 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, was in the public domain;
 - (b) after disclosure, became part of the public domain through no fault of the Party receiving the Confidential Information or those for whom it is responsible at 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.

G1.3 WAC shall not disclose Confidential Information delivered by any other Party and neither Project Co nor the City shall disclose Confidential Information delivered by WAC except:

- (a) to such of its affiliates, officers, employees, consultants, advisors and contractors (including, in the case of Project Co, its lenders and potential lenders, investors and potential investors, and rating agencies, surety companies and prospective guarantors) who reasonably require access to the Confidential Information for the due performance of this Management Agreement, each Artist Agreement or the obligations of Project Co in relation to Public Art under the Project Agreement.
- (b) as required by *The Freedom of Information and Protection of Privacy Act, 1997* (Manitoba) or any other applicable law;
- (c) as required by the Province of Manitoba;
- (d) as required by PPP Canada (or its successor) in accordance with the City's obligations to PPP Canada (or its successor); or
- (e) where the disclosure is consented to by the other Parties.

SECTION H RELEASE AND INDEMNITY

- H1.1 The City's responsibility with respect to this Management Agreement is limited to the roles and responsibilities in accordance with the terms and conditions set out herein, and neither the City nor Project Co shall be liable for any injury to or loss or damage suffered by WAC or its professional advisors, contractors, sub-contractors, officers, employees, agents, servants, or persons for whom it is responsible in the performance or purported performance of this Management Agreement, including death or economic loss, caused by or in any way related to the performance of this Management Agreement or the implementation of the activities set forth herein.
- H1.2 The Parties acknowledge and agree that WAC is an independent contractor and that neither WAC, nor any officer, employee, servant, or agent of WAC, shall be deemed to be an employee, servant, agent or representative of the City or Project Co, respectively.
- H1.3 WAC shall indemnify and save harmless the City and Project Co from and against all claims, losses, damages, costs, actions and other proceedings made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any injury, infringement, loss or damage arising from any negligent act or omission of WAC, its professional advisors, contractors, sub-contractors, officers, employees, agents, servants, or persons for whom it is responsible in the performance or purported performance of this Management Agreement or the carrying out or implementation of activities set forth herein.

SECTION I TERMINATION

I1.1 This Management Agreement shall terminate on the earlier of the termination of the Project Agreement and the date that is 30 days following the Final Completion Date.

SECTION J NOTICE

J1.1 Any notice, payment, demand, request, statement, consent, objection or other communication (collectively referred to herein as “**Notice**”) required or permitted to be given under this Agreement shall be deemed to have been given if it is in writing and made by personal delivery, delivered by courier, sent by pre-paid registered mail or by facsimile transmission (in each case, with a copy always by electronic transmission), and addressed as follows:

(a) If to the City:

- (i) 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

(b) If to WAC:

- (i) Winnipeg Arts Council,
103-110 Princess Street
Winnipeg, MB R3B 1K7

Attn.: Tricia Wasney, Manager-Public Art
Email: twasney@winnipegarts.ca

(c) If to Project Co:

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

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

- J1.2 A Notice shall be deemed to have been given on the day it is personally delivered or delivered by courier, or if sent by registered mail, on the fourth business day after the date on which it was mailed or the day on which the facsimile was transmitted.
- J1.3 Either Party may, by Notice to the other, designate another address in Canada to which a Notice may be given, and from and after the giving of such Notice, the address specified therein shall be deemed to be the address of that Party for the giving of Notice pursuant to this Agreement.

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

WINNIPEG ARTS COUNCIL INC.

Per: _____

Name: Carol A. Philips

Title: Executive Director

I have authority to bind the corporation.

PLENARY ROADS [REDACTED]
[REDACTED]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

We have authority to bind the corporation.

PCL [REDACTED]
[REDACTED]

Per: _____

Name:

Title:

I have authority to bind the corporation.

SCHEDULE “A”

Definitions

SECTION A

A1. Defined Terms

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

- A1.1 **“Artist”** means the artist as selected for each Individual Art Project;
- A1.2 **“Artwork”** means (i) the art project as proposed by the Artist in response to the Call to Artists, including a description of the proposed art project, a proposed project time line, proposed implementation plans and a description of the proposed materials, methods and processes to be used to create, produce and fabricate the art project, all of which must be developed collaboratively with the Public Art Committee and approved by the City and which is more particularly described in Schedule D of the Artist Agreement; (ii) all drawings, documents, materials, designs, models, concepts, plans, maquettes and specifications relating to the Individual Art Project; and (iii) the final piece of Integrated Art installed at each Individual Art Site pursuant to each Artist Agreement;
- A1.3 **“Artwork Administration Costs”** means all of WAC’s costs related to the artist selection process, including artist proposal costs and jury fees, communication, community engagement strategies, photographic documentation and plaques;
- A1.4 **“Call to Artists”** means the request for proposals issued by WAC and as more particularly described in Section D of the Winnipeg Arts Council - Guideline for the Public Art Process attached as Schedule D to this Management Agreement;
- A1.5 **“City”** has the meaning given in the recitals;
- A1.6 **“Confidential Information”** means any information that is identified as information delivered in confidence when delivered to another Party;
- A1.7 **“Final Completion Date”** means the date on which final completion of the design and construction under the Project Agreement is achieved;
- A1.8 **“Individual Art Project”** means the development, design, fabrication and installation of each individual Artwork at each one of the selected Locations;
- A1.9 **“Individual Art Project Budget”** means the total budget established for an Individual Art Project pursuant to the Artist Agreement;
- A1.10 **“Individual Art Site”** means each location for the Individual Art Project as described in Schedule “C” to the Artist Agreement, or such other site as the Public Art Committee may select;

- A1.11 **“Integrated Art”** means any type of integrated physical, visual, audiovisual art that goes above and beyond the base expression of a structure or open space, with the explicit purpose of artistic and/or community expression. Integrated Art may include:
- (a) interior or exterior architectural elements (special surface treatments, architectural detail, or lighting);
 - (b) works integrated into the design of the site, buildings and landscape, including walls, floors and ceilings, glass, lighting, and publicly accessible open spaces such as plazas and courtyards;
 - (c) infrastructure elements including bridges, retaining walls, dividing lane fences, paving for approaches or platforms;
 - (d) landscape elements (fountains, hard and soft landscaping elements, lighting, furniture); and
 - (e) interactive multi-media works (temporary or permanent); digital, film or electronic works displayed on screens or projected on surfaces, including works commissioned or purchased to be installed in new or pre-existing screens;
- A1.12 **“Locations”** means Transitway stations, Transitway grade separations, Park and Rides, Transitways, Kiss and Rides, AT tunnels, AT pathways as such locations are described in Schedule 18 - Technical Requirements;
- A1.13 **“Management Fee”** means the fee to be paid to WAC for the management of the Public Art component of the Project in accordance with Section D1.1 of the Management Agreement;
- A1.14 **“Party”** means Project Co, the City or WAC, and **“Parties”** means collectively Project Co, the City and WAC;
- A1.15 **“Project”** has the meaning given in the recitals;
- A1.16 **“Project Agreement”** means the agreement entered into between the City and Project Co dated June 21, 2016;
- A1.17 **“Project Co”** has the meaning given in the recitals;
- A1.18 **“Public Art”** means the full complement of Integrated Art included in the Project;
- A1.19 **“Public Art Committee”** means the public art team described in Section D of Schedule 23 to the Project Agreement;
- A1.20 **“Public Art Coordinator”** has the meaning given in Section F1.1(n) of Schedule 23 – Public Art to the Project Agreement;
- A1.21 **“Public Art Plan”** means the public art plan as approved by the City and described in Section E of Schedule 23 – Public Art to the Project Agreement;

- A1.22 **“Public Art Policy”** means the City of Winnipeg’s Public Art Policy attached as Appendix C to this Management Agreement;
- A1.23 **“Site”** means the location for the Individual Art Project as described in Schedule “C” of the Artist Agreement, or such other site as the Public Art Committee may select;
- A1.24 **“Term”** has the meaning given in Section C1.1; and
- A1.25 **“WAC”** has the meaning given in the recitals.

SCHEDULE “B”

Schedule 23 - Public Art of the Project Agreement

[Insert Schedule 23 to the Project Agreement.]

SCHEDULE “C”

The City of Winnipeg Public Art Policy

[Attach City of Winnipeg Public Art Policy]

SCHEDULE “D”

Winnipeg Arts Council – A Guideline for the Public Art Process



WINNIPEG
ARTS COUNCIL

Guideline for the PUBLIC ART PROCESS

Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass

SECTION A GENERAL INDIVIDUAL ART PROJECT PROCESS

A1.1 The process of each Individual Art Project will vary according to the nature of the work or the Site. The following is a general process that WAC is responsible to facilitate:

- (a) the Public Art Committee will finalize the Public Art Plan and provide it to the City for approval;
- (b) Individual Art Projects are further developed and a Call to Artists is created by WAC in consultation with the Public Art Committee;
- (c) WAC sends out Call to Artists and posts details on the WAC web site and disseminates in other ways as appropriate;
- (d) WAC receives artist project submissions and arranges jury review;
- (e) submissions are reviewed by the jury;
- (f) the jury selects a shortlist of artists;
- (g) WAC contacts short listed artists who are asked to prepare detailed proposals for the next stage. Artists are paid an honorarium at this stage for development of the second stage detailed proposals. The honorarium will be [REDACTED] dollars (\$ [REDACTED]);
- (h) WAC receives detailed second stage proposals and arranges second stage jury review;
- (i) detailed proposals reviewed by jury;
- (j) successful candidate is recommended by the jury;
- (k) detailed proposals reviewed by the Public Art Committee;

- (l) recommended artist is contacted by WAC;
- (m) WAC prepares and confirms the Artist Agreement; and
- (n) work under the Artist Agreement commences.

SECTION B PROJECT JURY

B1.1 For each Individual Art Project, a jury is assembled, which will include six people. The composition of the jury will be as follows:

- (a) one artist/arts professionals;
- (b) one member of community in which Individual Art Project occurs;
- (c) Project Co's Public Art Coordinator;
- (d) Another member of Project Co's design team;
- (e) the City's assigned public art liaison for the Project; and
- (f) WAC (as facilitator, non-voting).

B1.2 The jury will have the following responsibilities:

- (a) evaluate submissions for the purpose of selecting the most appropriate public artwork for the Site;
- (b) review, consider and discuss artists' submission materials;
- (c) consider reports and comments from the Public Art Committee;
- (d) rank finalists and recommend one artist or artist team for the Individual Art Project according to stated selection criteria;
- (e) make a written record of recommendation and reasons for selection; and
- (f) maintain confidentiality of all submissions.

B1.3 The suggested payment for jury members is as follows:

- (a) Jury fees are typically \$ [REDACTED] per half day (under four hours) and \$ [REDACTED] per full day (over four hours).

B1.4 Most public art juries require two full days. The City's public art liaison for the Project, WAC's representative and Project Co's Public Art Coordinator and design team representative will not receive payment for service on the juries.

SECTION C SELECTION CRITERIA

C1. Site Criteria

C1.1 The following factors will be carefully considered in the selection of each site:

- (a) suitability with the goals of the Project and the Public Art Plan;
- (b) visibility and public accessibility of the site;
- (c) public safety;
- (d) traffic patterns;
- (e) relationship of proposed artwork to existing or future architectural features, natural features and urban design;
- (f) function;
- (g) facility users and surrounding community and interaction of users and community members with proposed artwork;
- (h) future development plans for area;
- (i) landscape design;
- (j) relationship of proposed artwork to existing artworks within the site vicinity;
- (k) environmental impact;
- (l) public accessibility of the artwork;
- (m) social context of the artwork; and
- (n) other criteria as appropriate.

C2. Artwork Criteria

C2.1 The following factors will be considered in selecting an artwork:

- (a) artistic quality: the artwork should be of the highest quality and evaluated relative to its artistic merit, independent of any other considerations;
- (b) context: works of art must be compatible in scale, material, form and content with their surroundings. Consideration should be given to the architectural, historical, geographical, and social/cultural context of the site;
- (c) media: all forms of visual art may be considered;

- (d) permanence: due consideration should be given to the structural and surface soundness, and to inherent resistance to theft, vandalism and weathering;
- (e) ability to maintain: significant consideration should be given to the cost and amount of on-going maintenance and/or repair anticipated;
- (f) public safety and accessibility: each work should be evaluated to ensure that it does not present a hazard to public safety and complies with all applicable building codes and accessibility requirements;
- (g) diversity: works should be reflective of the diversity of the City, in expression, media, location, and cultural representation;
- (h) feasibility: proposed artworks should be evaluated relative to their feasibility and convincing evidence of the artist's ability to successfully complete the work as proposed. Factors to be considered include, but are not limited to: Individual Art Project Budget, timeline, artist's experience, soundness of materials, and City approval requirements;
- (i) duplication: to assure that the artwork will not be duplicated, the artist should be asked to warrant that the work is unique and an edition of one, unless stated otherwise in the contract; and
- (j) other: any other specific criteria that is developed by the Public Art Committee for each Individual Art Project and outlined in the Call to Artists.

C3. Artist Criteria

C3.1 The following factors will be considered in selecting the artist:

- (a) qualifications and professional experience;
- (b) quality of work and appropriateness of artistic expression to specific project;
- (c) sensitivity to the site and context of the proposed project location;
- (d) demonstrated and assessed ability to successfully execute the project under the criteria developed for the project and within the budget and timelines;
- (e) permanence and durability of materials (where applicable) and ability to meet all safety requirements and applicable building codes; and
- (f) specific criteria that is developed by the Public Art Committee for each Individual Art Project and outlined in the Call to Artists.

SECTION D CALL TO ARTISTS

D1. The following items will be included in the Call to Artists:

- (a) Individual Art Project description and goals;

- (b) Individual Art Project parameters, including media, site details, context, Site map;
- (c) application procedure and submittal requirements (for e.g., completed application form, support materials, resume, references, artist statement);
- (d) list of items that will not be accepted at this preliminary stage (models, etc.);
- (e) eligibility criteria, including geographic restrictions for residency of artists, if any;
- (f) type of competition (open or limited, local or national);
- (g) deadlines and timelines for submission and competition stages;
- (h) start and completion dates for project;
- (i) contact person (WAC);
- (j) amount of budget available, and what the artist must include in Individual Art Project Budget outline;
- (k) instructions for return of materials (pick up or self-addressed stamped envelope);
- (l) a summary of the main terms and conditions of the Artist Agreement;
- (m) names of jurors, whenever possible; and
- (n) if required, specific criteria that is developed by the Public Art Committee for each Individual Art Project.

SCHEDULE “E”

Form of Artist Agreement

[Insert Form of Artist Agreement]

APPENDIX C
ARTIST AGREEMENT

THIS AGREEMENT is made the [•] day of [•], [•]

BETWEEN:

THE CITY OF WINNIPEG,

(the “City”),

– AND –

WINNIPEG ARTS COUNCIL INC.

(the “WAC”),

– AND –

PLENARY ROADS [REDACTED]

PLENARY ROADS [REDACTED]

and

PCL [REDACTED],

(“Project Co”)

– AND –

[ARTIST]

(the “Artist”),

WHEREAS:

- A. Project Co has been contracted by the City to design, build, finance, (operate) and maintain the City’s Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass project (the “Project”);
- B. Project Co and the City have retained WAC to act as the manager for the Public Art component of the Project; and
- C. The Artist has been selected to create the Artwork.

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 GENERAL

A1. Definitions

A1.1 Capitalized terms used in this Artist Agreement have the meanings set out in Schedule “A” – Definitions.

A2. Schedules

A2.1 The following documents are attached hereto as Schedules and form an integral part of this Artist Agreement:

- (a) Schedule “A” – Definitions
- (b) Schedule “B” – The City of Winnipeg Public Art Policy;
- (c) Schedule “C” – Site
- (d) Schedule “D” – Artwork Proposal
- (e) Schedule “E” – Public Art Committee

A3. Objective

A3.1 The Parties agree that the objective of this Artist Agreement is to enhance the design of the Site with public art, through the inclusion of an artist-designed public art feature, and thereby acknowledge and support the stated desire for an artistically distinctive feature that provides character and significance to the Site.

A3.2 The Parties will collaborate through the Public Art Committee to integrate the Individual Art Project into the Site as part of the Project.

A4. Scope of Work

A4.1 The Individual Art Project will be delivered through the Public Art Committee with each Party having the roles and responsibilities as more particularly set out in Schedule E – Public Art Committee.

A4.2 The Parties shall work collaboratively to ensure that the final design of the Artwork can be achieved within the Individual Art Project Budget and within Project Co’s design and construction schedule, as such schedule may be amended in accordance with the Project Agreement.

A4.3 The Parties agree to comply with the City of Winnipeg Public Art Policy as attached hereto as Schedule “B” to such extent that the policy applies to the Public Art component of the Project.

A5. Term

- A5.1 This Artist Agreement is effective from the date set out in the recitals and continues until **[insert date]** (the “Term”). ***[Note: Date to be inserted from the Call to Artist applicable to the Individual Art Project.]***
- A5.2 The Individual Art Project shall be installed no later than the Scheduled Substantial Completion Date of the Project.

SECTION B BUDGET, COSTS AND PAYMENT

B1. Individual Art Project Budget

- B1.1 A total budget of **[•]** has been established for the Artwork which includes the Commission Costs applicable to the Individual Art Project (the “**Individual Art Project Budget**”).
- B1.2 The Artist, in conjunction with Project Co and WAC, will develop a budget for the cost of materials, fabrication and installation of the Individual Art Project and such costs shall not exceed the Individual Art Project Budget.

B2. Artist Fee

- B2.1 Project Co shall pay the Artist an Artist Fee in the total amount of **[•]**, inclusive of all applicable taxes, including goods and services tax, if applicable. The Artist Fee will be paid in three equal instalments in accordance with the following schedule:
- (a) initial payment will be made upon execution of this Artist Agreement by all Parties;
 - (b) interim payment will be made when all materials are on Site and when installation of the Artwork begins; and
 - (c) final payment will be made upon completion of the Artist’s Work.

OR

[Insert payment schedule.]

B3. Commission Costs

- B3.1 Project Co shall reimburse the Artist for all Commission Costs included in the Individual Art Project Budget and incurred in completing the Artist’s Work within 30 days of receipt of an invoice from the Artist.
- B3.2 The Artist shall provide Project Co with appropriate supporting documentation of all Commission Costs upon request.

B4. Reporting and Audit Requirements

- B4.1 The City, WAC and/or Project Co or anyone designated by any of them may audit and inspect accounts, records, receipts, vouchers, and other documents relating to the Artist's Work and/or the Commission Costs and make copies of same. The Artist will make available all facilities for such audits and inspections and will furnish the City, WAC and/or Project Co with all such information as they may from time to time require with reference to such accounts, records, receipts, vouchers, and other documents.
- B4.2 The Artist will cause all such accounts, records, receipts, vouchers, and other documents to be preserved and kept available for audit and inspection at any reasonable time, and from time to time, until the expiration of seven years from the date of termination of this Artist Agreement.

SECTION C ARTIST COVENANTS, REPRESENTATIONS AND WARRANTIES

C1. Artist Covenants

[Note: The covenants in Section C1 will be revised depending on the nature of the Artwork and the nature of the Artist's Work (whether it includes construction/fabrication and/or installation in addition to development and design) under each individual Artist Agreement.]

- C1.1 The Artist shall attend Public Art Committee meetings, as deemed necessary by WAC or Project Co, for the purposes as set out in Schedule E – Public Art Committee or as otherwise provided in this Artist Agreement. The Artist will present to the City, WAC and Project Co as necessary.
- C1.2 The Artist shall conduct the Artist's Work to the satisfaction of the Public Art Committee.
- C1.3 The Artist agrees to provide all labour and materials necessary to perform and complete the Artist's Work and the Artwork and to fulfill all of the obligations of the Artist set out in this Artist Agreement.
- C1.4 The Artist shall provide conceptual design and detailed design in the form and in accordance with the timelines set out in the Call to Artists and shall review construction drawings which will be prepared by Project Co.
- C1.5 The Artist will consult with the ***[Note: Insert neighbourhood where Individual Art Project is located]*** community in order to appropriately conceptualize the Artwork specific for the neighbourhood.
- C1.6 The Artist agrees that the Artist Fee and Commission Costs is the total payment for the Artist's Work and the Artwork, and that no other compensation whatsoever will be payable to the Artist by any of the Parties.
- C1.7 The Artist shall not assign, transfer or sub-contract the creative and artistic aspects of the Artist's Work to a sub-contractor or employee without the prior written consent of WAC, Project Co and the City. The Artist may employ qualified personnel and retain

sub-contractors to work under the Artist's personal supervision and assist with other aspects of the Artist's Work.

- C1.8 Any travel necessary for the performance and completion of the Artist's Work and the Artwork will be at the expense of the Artist and shall be included in the Artist Fee, including attending any inauguration or dedication ceremony
- C1.9 The Artist shall be responsible to pay all government assessments, Employment Insurance, Income Tax, Workers' Compensation and Canada Pension Plan payments relating to the Artist and/or the Artist's employees, if any. The Artist shall also be responsible for the payment of all costs, wages, benefits, taxes and salaries in connection with any personnel that he/she may utilize to perform and complete the Artist's Work and the Artwork.
- C1.10 The Artist shall review and comply with all statutes, regulations, codes, by-laws and governmental requirements applicable to the Artist's Work and the Artwork and where necessary, will review the same with the authorities having jurisdiction. Where alterations to applicable law are to be requested, the Artist and Project Co shall work together to prepare such requests. Applicable laws which may be the subject of such joint requests include the *Manitoba Building Code*, the *National Building Code*, the *Winnipeg Fire Code* and the *City of Winnipeg Zoning By-laws*.
- C1.11 The Artist shall comply with Project Co's Safety Plan.
- C1.12 The Artist represents, warrants and covenants that:
- (a) the Artist's Work and the Artwork will be and are unique and original;
 - (b) the Artist's Work and the Artwork will be fully the result of the artistic efforts of the Artist and the same will not infringe, misappropriate or otherwise violate (i) the intellectual property rights of any third party whatsoever, including without limitation, any copyright; and (ii) the moral rights of any individual;
 - (c) reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the Maintenance Manual prepared by the Artist;
 - (d) the Artist's Work, the Artwork and public display of the Artwork will in no way violate any exhibition rights or any other rights that may exist under the *Copyright Act* or any similar legislation in other applicable jurisdictions;
 - (e) other than the Artist Fee and the reimbursements of the Commission Costs, no other compensation whatsoever will be payable to the Artist with respect to the Artist's Work and the Artwork;
 - (f) the Artist is a registrant for the purposes of the G.S.T. and the Artist's G.S.T. registration number is [•];
 - (g) the Artwork is and will be free and clear of any liens or encumbrances from any source whatsoever.

- C1.13 The Artist represents, warrants and covenants that the Artist's Work and the Artwork will be performed and completed in a professional and competent manner and that the Artwork will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate the deterioration of the Artwork. At the request of Project Co, the Artist shall promptly correct, at its own expense and in a manner approved by Project Co, defects, deficiencies and non-compliant items. The correction of any defect, deficiency or non-compliant item shall be completed in a manner consistent with professional conservation standards (including by means of repair or refabrication of the Artwork). This warranty shall survive for one year from the installation of the Artwork.
- C1.14 The Artist shall within 30 days of the completion of the installation of the Artwork provide each of WAC, Project Co and the City with a draft copy of the Maintenance Manual. The Parties agree that the Maintenance Manual shall be subject to review and approval by the Parties.
- C1.15 The Artist shall review all design revisions once the Individual Art Project enters the final fabrication phase and shall be available on Site during installation of the Artwork to review and approve any changes to the agreed-upon design.
- C1.16 The Artist shall be available to the City, Project Co and WAC for consultation as to the proper method of cleaning, preserving and maintaining the Artwork. No additional fees will be payable to the Artist for this consultation prior to the fifth anniversary of the date of execution of this Artist Agreement. In the event that Project Co requests that the Artist be available for a consultation at any time after the fifth anniversary of the date of execution of this Artist Agreement, then in such case, Project Co agrees to pay the Artist's reasonable fees with respect to such consultation at its sole cost.
- C1.17 The Artist shall have no right to a claim against WAC, Project Co or the City for loss or damage to the Artwork, in whole or in part, in the event that the Site is altered and the Artwork is, temporarily or permanently, dismantled in whole or in part.

C2. Insurance

- C2.1 The Artist shall provide and maintain, the following insurance coverage, at all times during the Individual Art Project:
- (a) accident and disability insurance in an amount to sustain the Artist's current lifestyle; and
 - (b) professional liability insurance, in an amount deemed appropriate by the City for the Individual Art Project, which insurance shall include an extended reporting period of not less than 12 months after the Scheduled Substantial Completion Date.
- C2.2 Deductibles for any required insurance policies shall be borne by the Artist.
- C2.3 The Artist shall not cancel, materially alter, or cause any policy to lapse until 30 days after written notice of such change has been approved by the Project Co, the City and WAC.

C2.4 The Artist will provide the City and Project Co with a certificate of insurance for all required policies at least two business days prior to the commencement of any work on the Individual Art Project, but in no event later than seven business days from notification of the award of this Artist Agreement.

C3. Indemnification

C3.1 The Artist hereby agrees that he/she will, from time to time, and at all times hereafter, defend, keep harmless and fully indemnify WAC, Project Co and the City, their successors and assigns, from and against all actions, claims and demands whatsoever which may be brought against or made upon WAC, Project Co and the City, their successors and assigns, and against all losses, liabilities, judgments, costs, demands or expenses which WAC, Project Co and the City may sustain, suffer or be put to resulting from or arising out of:

- (a) the Artist's failure to exercise reasonable care, skill or diligence in the performance or rendering of the Artist's Work or services required hereunder to be performed or rendered by the Artist, his/her agents, servants, employees or sub-contractors or any of them;
- (b) any claim for lien or other liability under *The Builders' Liens Act* (Manitoba), and any amendments thereto, in connection with the performance and completion of the Artist's Work and/or the Artwork;
- (c) any breach of any representation, warranty and/or covenant made by the Artist; and
- (d) death or injury to any persons or property.

C4. Confidentiality

C4.1 Subject to any legal requirements, the Artist shall maintain (and shall ensure that each of its officers, employees, consultants, advisors and contractors maintain) the confidentiality of the Confidential Information shall not disclose such Confidential Information.

C4.2 Each of the City, Project Co and WAC shall maintain (and shall ensure that each of its officers, employees, consultants, advisors and contractors maintain) the confidentiality of the Confidential Information of the Artist and shall not disclose such Confidential Information except:

- (a) to such of its affiliates, officers, employees, consultants, advisors and contractors (including, in the case of Project Co, its lenders and potential lenders, investors and potential investors, and rating agencies, surety companies and prospective guarantors) who reasonably require access to the Confidential Information for the due performance of this Artist Agreement or the obligations of Project Co in relation to Public Art under the Project Agreement.
- (b) as required by *The Freedom of Information and Protection of Privacy Act*, 1997 (Manitoba) or any other applicable law;

- (c) as required by the Province of Manitoba;
- (d) as required by PPP Canada (or its successor) in accordance with the City's obligations to PPP Canada (or its successor); or
- (e) where the disclosure is consented to by the Artist.

SECTION D PROJECT CO COVENANTS, REPRESENTATIONS AND WARRANTIES

D1. Project Co Covenants

[Note: The covenants in Section D1 will be revised depending on the nature of the Artwork and the nature of Project Co's Work (construction/fabrication, installation and/or supervision) under each individual Artist Agreement.]

- D1.1 Project Co agrees to pay the Artist Fee and Commission Costs in accordance with Section B of this Artist Agreement.
- D1.2 Project Co shall provide the Artist with design and engineering expertise to assist in the creation of a design for the Artwork and will be responsible for all aspects of engineering approvals for the Artwork.
- D1.3 The required consents, approvals, licenses and permits necessary in respect of the Artist's Work and the Artwork will be applied for and obtained by Project Co.
- D1.4 Project Co shall deliver the Artwork and/or the materials required to fabricate and install the Artwork to the Site.
- D1.5 Project Co agrees to provide all labour and materials necessary to perform and complete Project Co's Work and the Artwork and to fulfill all of the obligations as set out in this Artist Agreement.
- D1.6 Project Co shall be responsible for all costs and supervision relating to the fabrication, installation and construction of the Artwork, including the cost of any Site preparations and any Site restorations that are required for the installation of the Artwork at the Site.
- D1.7 Project Co is responsible for certifying the structural integrity of the Artwork at least 30 days prior to commencement of the installation of the Artwork at the Site.
- D1.8 Upon Project Co taking possession of the Artwork, the Artwork will be the responsibility of Project Co. In the event of any physical loss or damage to the Artwork prior to the completion and installation of the Artwork, Project Co will immediately rectify the loss and damage by repair, restoration, replacement or other appropriate means at no additional cost to the City, WAC or the Artist.
- D1.9 Project Co shall review and comply with all statutes, regulations, codes, by-laws and governmental requirements applicable to Project Co's Work and the Artwork and where necessary, will review the same with the authorities having jurisdiction. Where alterations to applicable law are to be requested, the Artist and Project Co shall work together to prepare such requests. Applicable laws which may be the subject of such

joint requests include the *Manitoba Building Code*, the *National Building Code*, the *Winnipeg Fire Code* and the *City of Winnipeg Zoning By-laws*.

D2. Maintenance

- D2.1 Upon installation of the Artwork, Project Co will clean the Artwork to ensure that all dirt, imperfections and extraneous materials are removed from the Artwork.
- D2.2 Project Co shall ensure that the Artwork is maintained in a clean condition and in good repair. Project Co shall use reasonable efforts to consult with the Artist concerning the cleaning, maintenance, preservation, repair, restoration and replacement of the Artwork and agrees that the same will be made in accordance with generally recognized principles of conservation, and, where applicable, the Maintenance Manual.

SECTION E WAC COVENANTS, REPRESENTATIONS AND WARRANTIES

E1. WAC Covenants

- E1.1 WAC shall ensure that should the Artist require direction in any regard as to the Artist's Work and/or the Artwork, WAC shall provide such direction in a prompt and timely fashion.
- E1.2 WAC shall prepare and install at the Site a plaque or other suitable documentation identifying the Artist, the title of the Artwork, the year of completion, and a description of the Parties' involvement with the administration of the Artwork, with the wording to be determined by the Public Art Committee, and shall maintain such plaque or documentation in good repair as may be reasonable.
- E1.3 WAC will assist the Artist in undertaking community consultation as related to the Artwork development as appropriate.
- E1.4 WAC will include the Artwork in all of the promotional materials afforded to other public art projects such as photographic documentation, the creation of a postcard and inclusion in the gallery of public art on WAC's website and in the public art map.

SECTION F ARTWORK PROCESS

F1. Progress, Completion and Final Acceptance

- F1.1 During the Term of this Agreement, representatives of WAC will inspect the Artist's and Project Co's progress on the Artwork through Public Art Committee meetings, on-site studio visits and/or photographic documentation provided by the Artist or Project Co, all of which must be satisfactory to the Public Art Committee. The progress payments set out in Section B2 will be made when the Public Art Committee certifies that the milestones set out in Section B2 have been performed and/or completed.
- F1.2 WAC and/or the City may reject the Artwork and require that it be redone if it is not in conformance with the Artist's Work and/or this Artist Agreement. WAC and the City reserve the right to reject any portion of the Artwork outright if it cannot be brought into satisfactory conformance.

- F1.3 Project Co shall maintain the Artwork in accordance with the Project Agreement.
- F1.4 If the Artist is unable for any reason beyond their control to perform and complete the Artist's Work and/or the Artwork or refuses to perform or complete the Artist's Work and/or the Artwork, then the City may terminate this Artist Agreement by providing notice thereof to the other Parties and the Artist will be compensated up to the date of termination for that portion of the Artist's Work which has been completed by the Artist to the satisfaction of the City, WAC and Project Co in accordance with this Artist Agreement. Notwithstanding the foregoing and notwithstanding anything else contained in this Artist Agreement, the Artist and/or the Artist's heirs, executors or assigns shall, upon written request, promptly (1) relinquish and disclose to WAC all intellectual property rights relating to the Artist's Work and the Artwork and all design, maquette, specifications and all such other materials and documents which would enable WAC to complete the Artwork and the Artist's Work; (2) irrevocably assign to WAC all of the Artist's right, title and interest in and to and possession of the Artwork and the Artist's Work, all intellectual property rights relating to the Artwork and the Artist's Work and all design, maquette, specifications and all such other materials and documents which would enable WAC to complete the Artwork and the Artist's Work; and (3) waive the moral rights of the Artist in the Artwork and the Artist's Work for the benefit of WAC and its successors, assigns and licensees, and assign all intellectual property rights relating to the Artwork and all design, maquette, specifications and all such other materials and documents which would enable WAC to complete the Artwork and the Artist's Work. WAC may, at its sole option, perform and complete the Artwork and the Artist's Work or cause the Artwork and the Artist's Work to be completed and/or performed by another artist who is capable of performing and/or completing the Artwork with the same aesthetic sense as the Artist or otherwise. WAC's opinion on this issue will be final.
- F1.5 The City may terminate this Artist Agreement, without notice, if the Artist is in default in any material respect in the performance of any of his/her obligations under this Artist Agreement or otherwise commits any material breach of this Artist Agreement, and such default continues after seven days' written notice from the City and WAC to the Artist stating the particulars of such default.
- F1.6 Upon the termination or expiration of this Agreement, the Artist shall forthwith deliver to the City, Project Co and WAC a copy of all drawings, documents, materials, designs, models, concepts, plans, maquettes and specifications relating to the Individual Art Project.
- F1.7 Upon termination or expiration of this Artist Agreement, the Artist will be compensated up to the date of termination for that portion of the Artist's Work and Artwork which has been satisfactorily completed in accordance with this Artist Agreement, in full satisfaction of all claims under this Artist Agreement.

SECTION G RIGHT OF OWNERSHIP AND USE

G1. Ownership of Artwork

- G1.1 The Artist, Project Co and WAC each acknowledge that none of the Artist, Project Co and WAC shall have any ownership interest in the final piece of Integrated Art installed

at the Site and that the City shall, at all times, retain all right, title and ownership in and to the Integrated Art.

- G1.2 For clarity, title to each item and part of the Integrated Art, but not the risk of loss or damage or destruction thereof, shall pass to the City upon receipt of such item at the Site.

G2. Models and Maquettes

- G2.1 WAC shall have ownership of the models and maquettes relating to the Artwork and the Artist shall transfer physical possession of the said models and maquettes to WAC.

G3. Intellectual Property Rights

- G3.1 Subject to Section F1.4, the Parties agree that (1) all right, title and interest in and relating to the design of the Artwork, including copyright, will be the exclusive property of the Artist; (2) the Artist does not waive his/her moral rights in the Artwork nor assign the intellectual property rights relating to the Artwork. Notwithstanding any other provision of this Artist's Agreement, the City shall have sole discretion as to the placement and movement of the Artwork, whether at the Site or outside the Site.

- G3.2 Notwithstanding Section G3.1, the Artist and Project Co shall not make any three-dimensional reproductions of the Artwork larger than 50% of the scale of the Artwork, or grant permission to others to do so, except with the prior written consent of the City. If the Artwork is produced as multiples and/or is not three-dimensional, the Artist and Project Co shall not make, reproduce, record or translate into other languages, formats or mediums, the Artwork for any other client, purchaser or any third party, nor will the Artist or Project Co grant permission to others to do so, except with the prior written consent of the City. For clarity, the Artist and Project Co are authorized to make two-dimensional reproductions of any size of the Artwork, including but not limited to photographs for the Artist's portfolio, media publicity, catalogues or other similar publications. This Section shall apply in addition to the requirements of Section G3.7.

- G3.3 The Artist hereby grants, to each of the City, Project Co and WAC, a non-exclusive, worldwide, perpetual, irrevocable, non-transferable, royalty free right and license to: (1) use; (2) copy, produce, reproduce, modify and adapt in any form; (3) translate into other languages, formats or mediums; (4) sell two-dimensional reproductions at locations or sites owned or leased by the City, Project Co and/or WAC; (5) exhibit; (6) broadcast; and (7) publicize in any medium, the Artwork and the Artist's Work and all intellectual property rights in and relating to the Artwork and the Artist's Work for the following purposes (a) promotional purposes; (b) educational purposes; (c) public information purposes; (d) critical review purposes; and (e) public relations purposes.

- G3.4 Where Project Co or WAC or the City make use of the Artwork and/or any of the intellectual property rights relating to the Artwork, they will ensure that the Artist is identified as the creator of the design of the Artwork and all related intellectual property rights. This Section G3.4 shall not apply in cases where the Artist has assigned and waived its rights in accordance with Section F1.4.

- G3.5 The City, Project Co and WAC, each of them, irrevocably assign and transfer to the Artist, without consideration, all of the City's, Project Co's and WAC's: (1) copyright in and to the Artwork, if any; (2) intellectual property rights relating to the Artwork, if any; (3) right, title and interest in and to the Artwork, except for the models and maquettes relating to the Artwork; (4) intellectual property rights relating to the Artwork, if any; and (5) copyright in and to the said models and maquettes, if any. Each of the City, Project Co and WAC waive all of their moral rights in the Artwork and in all intellectual property rights relating to the Artwork in favour of the Artist. This Section shall not apply where the Agreement is terminated pursuant to Section F1.4.
- G3.6 The Parties shall promptly notify each other of any conflicting use, act of infringement or appropriation that comes to their attention relating to the Artwork and all intellectual property rights relating to the Artwork.
- G3.7 Where the Artist makes use of the Artwork or any of the intellectual property rights relating to the Artwork, in accordance with any of the rights set out in this Artist Agreement, the Artist shall ensure that credit is given to the City, WAC and Project Co in a way that is reasonable in the circumstances. The credit reading will be determined by the Public Art Committee.
- G3.8 The Artist shall cause each of his/her employees, agents and sub-contractors to execute all documents, including assignments, that WAC, Project Co and/or the City may require, during and after the termination of this Artist Agreement, without further consideration, in order to perfect or protect the rights of WAC, Project Co and/or the City in the Artwork.

SECTION H GENERAL TERMS AND CONDITIONS

- H1.1 The Artist and Project Co shall not in any way disparage the Artwork, aspects of the Artwork or the Project. Without limiting the generality of the foregoing, the Artist and Project Co shall not make reference to the Artwork or reproduce the Artwork, or any portion thereof, in a way which reflects discredit on the City, WAC, the Artwork or the Project.
- H1.2 Upon the occurrence of a Relief Event or a Force Majeure Event (as such terms are defined in the Project Agreement), the City and Project Co shall be relieved of their obligations under this Artist Agreement in the same manner as provided for in the Project Agreement and Project Co shall inform the Artist of any consequential changes to the design and construction schedule and the Scheduled Substantial Completion Date made in accordance with the terms of the Project Agreement. To the extent that the Artist is prevented by a Force Majeure Event from performing all or a material part of its obligations under this Artist Agreement, the Artist is relieved from performance of such obligations.
- H1.3 The Parties acknowledge that the Artist and the Artist's sub-contractors are independent contractors and are not employees or under control of WAC, the City or Project Co.
- H1.4 The Parties agree that this Artist Agreement is a contract for services and not a contract of employment. In providing the Artist's Work, the Artist is not under the control of either WAC, Project Co or the City and, subject to the provisions of this Artist Agreement, the Artist may use his/her own discretion as to the manner of providing the Artist's Work.

The Artist is not and will not hold itself out to be, and nothing herein will be construed so as to constitute the Artist, as an agent, legal representative, partner, joint venturer or employee of either WAC, Project Co and/or the City. The Artist acknowledges and agrees that, as an independent contractor, the Artist is not entitled to any payment from either WAC, Project Co or the City in connection with or arising out of “overtime” or any work by the Artist on a “general holiday” or any vacation pay under *The Employment Standards Code* (Manitoba) or under any comparable legislation in any other jurisdiction.

- H1.5 No assignment of this Artist Agreement will be made by WAC or the Artist without the express written consent of the City and Project Co. Project Co and the City may only assign this Artist Agreement in accordance with Sections X3 and X6 of the Project Agreement.
- H1.6 This Artist Agreement will be interpreted, performed and enforced in accordance with the laws of Manitoba and Canada as applicable. The Parties agree that the courts of the Province of Manitoba will have jurisdiction.
- H1.7 This Artist Agreement and the Schedules attached hereto form the entire agreement between the Parties and no other representations, either oral or written, will form part of this Artist Agreement.
- H1.8 This Artist Agreement will enure to the benefit of and are binding upon the Parties hereto and their respective heirs, executors, representatives, successors and permitted assigns, as the case may be.
- H1.9 The Parties agree to do all things and execute all such documents and assurances as may be required in order to give full effect to this Artist Agreement.
- H1.10 Words importing the masculine gender include the feminine gender, and words importing the singular include the plural and vice versa, as the context of this Artist Agreement may require.
- H1.11 Except as otherwise provided in this Artist Agreement, termination of this Artist Agreement shall be without prejudice to, and shall not affect:
- (a) all representations, warranties and indemnities under this Artist Agreement;
 - (b) Sections B4, C3, C4, C1.16, G3 and any other provision of this Artist Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or are required to give effect to such termination or the consequences of such termination,
- all of which shall survive the termination of this Artist Agreement.
- H1.12 In the event that there is more than one Artist who is a party to this Artist Agreement, then the Parties agree that all of the Artists will be jointly and severally liable under this Artist Agreement.
- H1.13 Any notice, payment, demand, request, statement, consent, objection or other communication (collectively referred to herein as “Notice”) required or permitted to be

given under this Agreement shall be deemed to have been given if it is in writing and made by personal delivery, delivered by courier, sent by pre-paid registered mail or by facsimile transmission (in each case, with a copy always by electronic transmission), and addressed as follows:

(a) If to the City:

(i) 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

(b) If to WAC:

(i) Winnipeg Arts Council,
103-110 Princess Street
Winnipeg, MB R3B 1K7

Attn.: Tricia Wasney, Manager-Public Art
Email: twasney@winnipegarts.ca

(c) If to Project Co:

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

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

(d) If to the Artist:

(i) Attention: [•]

[•]

Phone: [•]

Facsimile: [•]

Email: [•]

H1.14 A Notice shall be deemed to have been given on the day it is personally delivered or delivered by courier, or if sent by registered mail, on the fourth business day after the date on which it was mailed or the day on which the facsimile was transmitted.

H1.15 Either Party may, by Notice to the other, designate another address in Canada to which a Notice may be given, and from and after the giving of such Notice, the address specified therein shall be deemed to be the address of that Party for the giving of Notice pursuant to this Agreement.

H1.16 It is agreed that each Party has read and fully understands this Artist Agreement, and has either received independent legal advice or voluntarily chosen not to receive independent legal advice, as the case may be, in connection with the implications of this Artist Agreement.

THE CITY OF WINNIPEG

Per: _____

Name:

Title:

Per: _____

Name:

Title:

We have authority to bind the City.

WINNIPEG ARTS COUNCIL INC.

Per: _____

Name:

Title:

I have authority to bind the corporation.

PLENARY ROADS [REDACTED]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

We have authority to bind the corporation.

PCL [REDACTED]

Per: _____

Name:

Title:

I have authority to bind the corporation.

Witness

Per: _____

Name:

[ARTIST]

Per: _____

Name:

SCHEDULE “A”

Definitions

SECTION A

A1. Defined Terms

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

- A1.1 **“Artist”** has the meaning given in the recitals;
- A1.2 **“Artist Fee”** means the fee to be paid to the Artist in accordance with the Artist Agreement;
- A1.3 **“Artist’s Work”** means **[the development and design of the Artwork]** and all works resulting therefrom;

[Note: Definition of “Artist’s Work to be revised depending on the nature of the Artwork for a particular Artist Agreement and the required involvement of the Artist with respect to fabrication/construction and/or installation.]

- A1.4 **“Artwork”** means (i) the art project as proposed by the Artist in response to the Call to Artists, including a description of the proposed art project, a proposed project time line, proposed implementation plans and a description of the proposed materials, methods and processes to be used to create, produce and fabricate the art project, all of which must be developed collaboratively with the Public Art Committee and approved by the City and which is more particularly described in Schedule D of the Artist Agreement; (ii) all drawings, documents, materials, designs, models, concepts, plans, maquettes and specifications relating to the Individual Art Project; and (iii) the final piece of Integrated Art installed at the Site pursuant to this Artist Agreement;
- A1.5 **“Call to Artists”** means the request for proposals issued by WAC for the Individual Art Project;
- A1.6 **“City”** has the meaning given in the recitals;
- A1.7 **“Commission Costs”** means all costs related to fully realizing each Artwork, including detailed design development, technical consultation including the engineering and landscape architectural design and drawings necessary to fabricate and install any Integrated Art, insurance as set out in the Artist Agreement, all approvals, permit fees, fabrication costs and installation costs;
- A1.8 **“Confidential Information”** means any information that is identified as information delivered in confidence when delivered to another Party except information that,
- (a) at the time of the disclosure, was in the public domain;

- (b) after disclosure, became part of the public domain through no fault of the Party receiving the Confidential Information or those for whom it is responsible at 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.
- A1.9 **“Final Completion Date”** means the date on which final completion of the design and construction under the Project Agreement is achieved;
- A1.10 **“Financial Close”** means June 24, 2016;
- A1.11 **“Force Majeure Event”** means any war, invasion, insurrection, armed conflict, act of foreign enemy, revolution, terrorist act, interference by military authorities, nuclear explosion, contamination by ionizing radiation, epidemic, or quarantine restriction that prevents, delays or interrupts the performance of any obligation of the Artist under this Artist Agreement, other than any obligation to pay any money, and provided such event does not occur by reason of:
- (a) the negligence of the Artist (or those for whom the Artist is responsible pursuant to Applicable Law); or
 - (b) any act or omission of the Artist (or those for whom the Artist is responsible pursuant to Applicable Law) that is in breach of the provisions of the Artist Agreement.
- A1.12 **“Individual Art Project”** means the development, design, fabrication and installation of the Artwork at the Site;
- A1.13 **“Individual Art Project Budget”** has the meaning given in Section B1.2 of the Artist Agreement;
- A1.14 **“Integrated Art”** means any type of integrated physical, visual, audiovisual art that goes above and beyond the base expression of a structure or open space, with the explicit purpose of artistic and/or community expression. Integrated Art may include:
- (a) interior or exterior architectural elements (special surface treatments, architectural detail, or lighting);
 - (b) works integrated into the design of the site, buildings and landscape, including walls, floors and ceilings, glass, lighting, and publicly accessible open spaces such as plazas and courtyards;
 - (c) infrastructure elements including bridges, retaining walls, dividing lane fences, paving for approaches or platforms;
 - (d) landscape elements (fountains, hard and soft landscaping elements, lighting, furniture); and

- (e) interactive multi-media works (temporary or permanent); digital, film or electronic works displayed on screens or projected on surfaces, including works commissioned or purchased to be installed in new or pre-existing screens;
- A1.15 **“Locations”** means Transitway stations, Transitway grade separations, Park and Rides, Transitways, Kiss and Rides, AT tunnels, AT pathways as such locations are described in Schedule 18 - Technical Requirements;
- A1.16 **“Maintenance Manual”** means in relation to the Artwork (i) maintenance manual or maintenance instructions describing in detail the specifications of materials and finishes, method of cleaning, preserving and maintaining the Artwork; (ii) a complete set of all relevant drawings which describe in detail the design, construction method and fabrication specifications of the Artwork (including, product literature, names of suppliers and names of manufactures); and (iii) other materials that the Artist would wish to have included in an historical archive, all prepared by the Artist;
- A1.17 **“Party”** means Project Co, the City, WAC or the Artist and **“Parties”** means collectively Project Co, the City, WAC and the Artist;
- A1.18 **“Project”** has the meaning given in the recitals;
- A1.19 **“Project Agreement”** means the agreement entered into between the City and Project Co dated June 21, 2016;
- A1.20 **“Project Co”** has the meaning given in the recitals;
- A1.21 **“Project Co’s Safety Plan”** means the safety plan for the Project developed and implemented by Project Co in accordance with the Project Agreement;
- A1.22 **“Project Co’s Work”** means **[the fabrication and installation of the Artwork];**
- [Note: Definition of “Project Co’s Work to be revised depending on the nature of the Artwork for a particular Artist Agreement and the required involvement of Project Co with respect to fabrication/construction, installation and/or supervision.]***
- A1.23 **“Public Art”** means the full complement of Integrated Art included in the Project;
- A1.24 **“Public Art Committee”** means the public art team described in Schedule E to this Artist Agreement;
- A1.25 **“Public Art Policy”** means the City of Winnipeg’s Public Art Policy attached as Schedule B to this Artist Agreement;
- A1.26 **“Scheduled Substantial Completion Date”** means October 1, 2019, as such date may be adjusted in accordance with the terms of the Project Agreement;
- A1.27 **“Site”** means the Location for the Artwork as described in Schedule “C” to this Artist Agreement, or such other site as the Public Art Committee may select;
- A1.28 **“Term”** has the meaning given in Section A5; and

A1.29 **“WAC”** has the meaning given in the recitals.

SCHEDULE “B”

The City of Winnipeg Public Art Policy;

[Attach City of Winnipeg Public Art Policy]

SCHEDULE “C”

Site

[Attach map identifying location for each Artist Agreement required for each Individual Art Project]

SCHEDULE “D”

Artwork Proposal

[Attach Artist’s proposal for each Artist Agreement.]

SCHEDULE “E”

Public Art Committee

SECTION A

A1. Public Art Committee

A1.1 Project Co, the City, WAC and the Artist shall each have the following general responsibilities:

- (a) Project Co shall fabricate, install and maintain each piece of Integrated Art as more particularly set out in Section F of Schedule 23 – Public Art;
- (b) The City shall liaise with the Public Art Committee and the required City departments to assist in implementing the Public Art component of the Project as more particularly set out in Section G of Schedule 23 – Public Art;
- (c) WAC shall manage the Public Art component of the Project which will include oversight, implement communications and community engagement activities as more particularly set out in Section H of Schedule 23 – Public Art; and
- (d) Each Artist shall develop and design his or her Artwork as more particularly set out in Section I of Schedule 23 – Public Art.

A1.2 Project Co, the City and WAC will each designate a representative to support the Public Art component of the Project. These representatives will form part of the Public Art Committee for the Project, which will consist of:

- (a) Project Co’s Public Art Coordinator;
- (b) the City’s public art liaison;
- (c) WAC’s public art manager; and
- (d) each selected Artist (solely for the purposes of his or her Individual Art Project).

A1.3 The Public Art Committee shall be responsible for the following:

- (a) developing a timeline for specific Project Co deliverables to ensure that the overall Public Art component of the Project will be complete upon Substantial Completion of the New Infrastructure;
- (b) providing feedback to WAC on the Public Art Plan; and
- (c) working collaboratively to ensure that the Public Art component of the Project is completed in accordance with the terms of Schedule 23 – Public Art.

A1.4 No later than 30 days following Financial Close, the Public Art Committee shall meet to identify their working relationship, roles and responsibilities matrix, approvals processes

and procedures, and the form of reports that are required, all in accordance with this Schedule 23.

A1.5 The Public Art Committee's roles and responsibilities will terminate one month following the Final Completion Date.

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