

SCHEDULE 9-1

CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT

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

BETWEEN:

THE CITY OF WINNIPEG

(the "City")

AND:

PLENARY ROADS [REDACTED]

PLENARY ROADS [REDACTED]

and

PCL [REDACTED],

("Project Co")

AND:

PCL CONSTRUCTORS CANADA INC.,

a corporation incorporated under the laws of the Province of Alberta

(the "Construction Contractor")

AND:

PCL CONSTRUCTION GROUP INC.,

a corporation incorporated under the laws of the Province of Alberta

(the "Construction Guarantor")

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. Project Co and the Construction Contractor have entered into the Construction Contract, which requires the Construction Contractor and the Construction Guarantor to enter into this Construction Contractor’s Direct Agreement with the City.
- C. The City intends to enter into this Construction Contractor’s Direct Agreement in accordance with Applicable Law.

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:

A1. Capitalized Terms

- A1.1 Capitalized terms used in this Construction Contractor’s Direct Agreement have the meaning set out in the Project Agreement, unless otherwise expressed in this Construction Contractor’s Direct Agreement.

A2. Definitions

- A2.1 In this Construction Contractor’s Direct Agreement, unless the context otherwise requires:
 - (a) “**Default Notice**” has the meaning given in Section A6.1(a) of this Construction Contractor’s Direct Agreement;
 - (b) “**Party**” means the City, the Construction Contractor, the Construction Guarantor or Project Co, and “**Parties**” means the City, the Construction Contractor, the Construction Guarantor and Project Co;
 - (c) “**Step-In Notice**” has the meaning given in Section A7.1(b) of this Construction Contractor’s Direct Agreement; and
 - (d) “**Substitute**” has the meaning given in Section A7.1(b) of this Construction Contractor’s Direct Agreement.

A3. Interpretation

- A3.1 This Construction Contractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
 - (a) The headings in this Construction Contractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction Contractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor’s Direct Agreement;

- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Construction Contractor's Direct Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous;
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity;
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders;
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Construction Contractor's Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned;
- (f) The words in this Construction Contractor's Direct Agreement shall bear their natural meaning;
- (g) References containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Construction Contractor's Direct Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation";
- (h) In construing this Construction Contractor's Direct Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Construction Contractor's Direct Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- (i) Where this Construction Contractor's Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the

obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day;

- (j) Where this Construction Contractor's Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day;
- (k) Any reference to time of day or date means the local time or date in Winnipeg, Manitoba;
- (l) Unless otherwise indicated, time periods will be strictly construed;
- (m) Whenever the terms "will" or "shall" are used in this Construction Contractor's Direct Agreement they shall be construed and interpreted as synonymous and to read "shall";

A4. Conflict in Documents

- A4.1 In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement, the Project Agreement and the Construction Contract, this Construction Contractor's Direct Agreement shall prevail.
- A4.2 In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

A5. Agreements

- A5.1 Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Construction Contract without the prior written consent of the City, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor's Direct Agreement and does not have the effect of increasing any liability of the City, whether actual or potential. Project Co and the Construction Contractor shall provide to the City a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section A5.1 shall not apply to Change Orders provided for under the Project Agreement.
- A5.2 Each of the Parties acknowledges having received a copy of the Project Agreement and the Construction Contract.
- A5.3 If the Construction Contractor gives Project Co any notice of any default(s) under the Construction Contract that may give the Construction Contractor a right to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder, then the Construction Contractor shall concurrently provide the City with a copy of such notice and set out in reasonable detail the default(s).

A6. No Termination By Construction Contractor Without Default Notice

A6.1 The Construction Contractor shall not exercise any right it may have to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder unless:

- (a) the Construction Contractor first delivers a written notice (a "**Default Notice**") to the City setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder; and
- (b) within a period of five Business Days of the City receiving the Default Notice:
 - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder have not been remedied; and
 - (ii) the Construction Contractor has not received a Step-In Notice from the City;

provided that if, within such period of five Business Days, the City agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of five Business Days shall be extended to 45 days.

A7. Step-In Rights

A7.1 The City may at any time:

- (a) within five Business Days or, if such period has been extended in accordance with Section A6 of this Construction Contractor's Direct Agreement, 45 days of the City receiving a Default Notice; or
- (b) if the City has not received a Default Notice and if the City's right to terminate the Project Agreement has arisen and is continuing;

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Construction Contract either with the City or a third party designated the City in the Step-In Notice (the "**Substitute**"), provided that the City can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Construction Contract.

A7.2 Subject to Section A7.4 of this Construction Contractor's Direct Agreement, upon receipt by the Construction Contractor of a Step-In Notice:

- (a) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and the City or the Substitute, as applicable, and the

Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);

- (b) the existing and future rights of Project Co against the Construction Contractor under the Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and the City or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to the City if the City pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section A6 of this Construction Contractor's Direct Agreement;
 - (c) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Construction Contract shall be assigned, novated or granted, as required by the City or the Substitute, as applicable, each acting reasonably, to the City or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
 - (d) at the City's request, the Construction Contractor shall enter into, and shall cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section A7.2(c) of this Construction Contractor's Direct Agreement to enter into, and the City shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including an agreement between the City or the Substitute, as applicable, and the Construction Contractor, acceptable to the City and the Construction Contractor, each acting reasonably, on substantially the same terms as the Construction Contract.
- A7.3 Subject to Section A7.4 of this Construction Contractor's Direct Agreement, Project Co shall, at its own cost, cooperate fully with the City and the Substitute in order to achieve a smooth transfer of the Construction Contract to the City or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Contract, ongoing supervisory activities and scheduling.

- A7.4 The rights granted by Sections A7.2 and A7.3 of this Construction Contractor's Direct Agreement shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- A7.5 If the City gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and the City shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

A8. Construction Contractor Liability

- A8.1 The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
- (a) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for the City, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (b) the appointment by the City of any other person to review the progress of or otherwise report to the City in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to the City;

provided always that nothing in this Section A8 shall modify or affect any rights which the Construction Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- A8.2 In the event the City delivers a Step-In Notice, the Construction Contractor shall have no greater liability to the City or any Substitute than it would have had to Project Co under the Construction Contract, and the Construction Contractor shall be entitled in any proceedings by the City or any Substitute to rely on any liability limitations in the Construction Contract.

A9. Project Co as Party

- A9.1 Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Construction Contract by complying with its obligations hereunder.

A10. Construction Guarantor Party

A10.1 The Construction Guarantor agrees with the City that the Construction Guarantor has entered into a guarantee or covenant referred to in Section A7.2(c), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of the City, and agrees that the Construction Guarantor shall in accordance with Section A7 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Construction Guarantor enters into this Construction Contractor's Direct Agreement solely for the purposes of this Section A10.

A11. Assignment

A11.1 Project Co shall not, without the prior written consent of the City, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.

A11.2 The City may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom the City may assign or otherwise dispose of their interest in the Project Agreement pursuant to Section X6 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.

A11.3 The Construction Contractor shall not, without the prior written consent of the City and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except as may be permitted under the Construction Contract.

A12. Notices

A12.1 All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Construction Contractor's Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Construction Contractor's Direct Agreement) and served by sending the same by registered mail or by hand (in each case, with a copy by electronic transmission), as follows:

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]
Address: 400 Burrard Street, Suite 2000
Vancouver, BC V6C 3A6

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

If to the Construction Contractor:

PCL Constructors Canada Inc.
1540 Gamble Place
Winnipeg, MB R3T 1N6

Attn.: Jim Dougan, President Eastern
Canada
Email: JDougan@pcl.com

If to the Construction Guarantor:

PCL Construction Group Inc.
9915-56 Avenue
Edmonton, AB T6E 5L7

Attn.: Gordon Stephenson, Vice
President, Corporate Finance
Email: GHStephenson@pcl.com

A12.2 Any Party to this Construction Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section A12.1 of this Construction Contractor's Direct Agreement by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.

A12.3 Subject to Sections A12.4 and A12.5 of this Construction Contractor's Direct Agreement:

- (a) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
- (b) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.

A12.4 If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall

not be mailed but shall be made or given by personal delivery in accordance with this Section A12.

A12.5 If any notice delivered by hand is so delivered either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.

A13. Amendments

A13.1 This Construction Contractor's Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Construction Contractor's Direct Agreement.

A14. Waiver

A14.1 No waiver made or given by a Party under or in connection with this Construction Contractor's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

A14.2 Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

A15. Relationship Between The Parties

A15.1 The Parties are independent contractors. This Construction Contractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Construction Contractor's Direct Agreement, of principal and agent.

A16. Entire Agreement

A16.1 Except where provided otherwise in this Construction Contractor's Direct Agreement, this Construction Contractor's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Construction Contractor's Direct Agreement.

A17. Severability

A17.1 Each provision of this Construction Contractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Construction Contractor's Direct Agreement is declared invalid, unenforceable or illegal by the courts

of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Construction Contractor's Direct Agreement. If any such provision of this Construction Contractor's Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Construction Contractor's Direct Agreement as near as possible to its original intent and effect.

A18. Enurement

A18.1 This Construction Contractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

A19. Governing Law and Jurisdiction

A19.1 This Construction Contractor's Direct Agreement shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable therein and shall be treated in all respects as a Manitoba contract, without regard to conflict of laws principles.

A19.2 The Parties agree that the courts of the Province of Manitoba and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Construction Contractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

A20. Further Assurance

A20.1 Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Construction Contractor's Direct Agreement.

A21. Language of Agreement

A21.1 Each Party acknowledges having requested and being satisfied that this Construction Contractor's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

A22. Counterparts

A22.1 This Construction Contractor's Direct 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.

IN WITNESS WHEREOF the Parties have executed this Construction Contractor's Direct Agreement as of the date 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

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.

PCL CONSTRUCTORS CANADA INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

We have authority to bind the corporation.

PCL CONSTRUCTION GROUP INC.

Per: _____

Name:

Title:

I have authority to bind the corporation.

SCHEDULE 9-2

OMR PROVIDER'S DIRECT AGREEMENT

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

BETWEEN:

THE CITY OF WINNIPEG

(the "City")

AND:

PLENARY ROADS [REDACTED]

PLENARY ROADS [REDACTED]

and

PCL [REDACTED]

("Project Co")

AND:

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

(the "OMR Provider")

AND:

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

(the "OMR Guarantor")

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. Project Co and the OMR Provider have entered into the OMR Contract, which requires the OMR Provider and the OMR Guarantor to enter into this OMR Provider’s Direct Agreement with the City.
- C. The City intends to enter into this OMR Provider’s Direct Agreement in accordance with Applicable Law.

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:

A1. Capitalized Terms

- A1.1 Capitalized terms used in this OMR Provider’s Direct Agreement have the meaning set out in the Project Agreement, unless otherwise expressed in this OMR Provider’s Direct Agreement.

A2. Definitions

- A2.1 In this OMR Provider’s Direct Agreement, unless the context otherwise requires:

- (a) “**Default Notice**” has the meaning given in Section A6.1(a) of this OMR Provider’s Direct Agreement;
- (b) “**Party**” means the City, the OMR Provider, the OMR Guarantor or Project Co, and “**Parties**” means the City, the OMR Provider, the OMR Guarantor and Project Co;
- (c) “**Step-In Notice**” has the meaning given in Section A7.1 of this OMR Provider’s Direct Agreement; and
- (d) “**Substitute**” has the meaning given in Section A7.1 of this OMR Provider’s Direct Agreement.

A3. Interpretation

- A3.1 This OMR Provider’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this OMR Provider’s Direct Agreement are for convenience of reference only, shall not constitute a part of this OMR Provider’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this OMR Provider’s Direct Agreement;
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this OMR Provider’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous;

- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity;
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders;
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this OMR Provider's Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned;
- (f) The words in this OMR Provider's Direct Agreement shall bear their natural meaning;
- (g) References containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this OMR Provider's Direct Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation";
- (h) In construing this OMR Provider's Direct Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this OMR Provider's Direct Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- (i) Where this OMR Provider's Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day;
- (j) Where this OMR Provider's Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00

p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day;

- (k) Any reference to time of day or date means the local time or date in Winnipeg, Manitoba;
- (l) Unless otherwise indicated, time periods will be strictly construed;
- (m) Whenever the terms “will” or “shall” are used in this OMR Provider’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”;

A4. Conflict in Documents

- A4.1 In the event of ambiguities, conflicts or inconsistencies between or among this OMR Provider’s Direct Agreement, the Project Agreement and the OMR Contract, this OMR Provider’s Direct Agreement shall prevail.
- A4.2 In the event of ambiguities, conflicts or inconsistencies between or among this OMR Provider’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

A5. Agreements

- A5.1 Project Co and the OMR Provider shall not amend, modify, or depart from the terms of the OMR Contract without the prior written consent of the City, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this OMR Provider’s Direct Agreement and does not have the effect of increasing any liability of the City, whether actual or potential. Project Co and the OMR Provider shall provide to the City a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section A5.1 shall not apply to Change Orders provided for under the Project Agreement.
- A5.2 Each of the Parties acknowledges having received a copy of the Project Agreement and the OMR Contract.
- A5.3 If the OMR Provider gives Project Co any notice of any default(s) under the OMR Contract that may give the OMR Provider a right to terminate the OMR Contract or to treat it as having been repudiated by Project Co or to discontinue the OMR Provider’s performance thereunder, then the OMR Provider shall concurrently provide the City with a copy of such notice and set out in reasonable detail the default(s).

A6. No Termination By OMR Provider Without Default Notice

- A6.1 The OMR Provider shall not exercise any right it may have to terminate the OMR Contract or to treat it as having been repudiated by Project Co or to discontinue the OMR Provider’s performance thereunder unless:
 - (a) the OMR Provider first delivers a written notice (a “**Default Notice**”) to the City setting out in reasonable detail the default(s) on which the OMR Provider intends

to rely in terminating the OMR Contract or to treat it as having been repudiated by Project Co or to discontinue the OMR Provider's performance thereunder; and

- (b) within a period ending 30 days after the Service Provider notifies the City of the expiry of any relevant period for the exercise of step-in or similar rights by the Lenders, or, if the Lenders have no such step-in or similar rights, then 30 days after the later of the City receiving Default Notice or the expiry of the applicable cure period under the OMR Contract:
 - (i) the default(s) on which the OMR Provider intends to rely in terminating the OMR Contract or to treat it as having been repudiated by Project Co or to discontinue the OMR Provider's performance thereunder have not been remedied; and
 - (ii) the OMR Provider has not received a Step-In Notice from the City;

provided that until such time as the City gives the OMR Provider a notice that the City will not be exercising their step-in rights, the City shall pay the OMR Provider's reasonable costs of continued performance.

A7. Step-In Rights

A7.1 The City may at any time:

- (a) within the time period referred to in Section A6.1(b); or
- (b) if the City has not received a Default Notice and if the City's right to terminate the Project Agreement has arisen and is continuing;

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the OMR Contract either with the City or a third party designated by the City in the Step-In Notice (the "**Substitute**"), provided that the City can demonstrate to the OMR Provider, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the OMR Contract.

A7.2 Subject to Section A7.4 of this OMR Provider's Direct Agreement, upon receipt by the OMR Provider of a Step-In Notice:

- (a) Project Co and the OMR Provider will be deemed to be released from their existing and future obligations under the OMR Contract to each other (except with respect to any and all indemnities from Project Co or the OMR Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and the City or the Substitute, as applicable, and the OMR Provider will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
- (b) the existing and future rights of Project Co against the OMR Provider under the OMR Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the OMR Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and the City or the Substitute, as applicable, and the OMR Provider will be deemed to

acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the OMR Provider to the City if the City pays for the OMR Provider's reasonable costs of continued performance pursuant to Section A6 of this OMR Provider's Direct Agreement;

- (c) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the OMR Provider to be performed, observed or carried out by the OMR Provider as contained in, referred to, or inferred from the OMR Contract shall be assigned, novated or granted, as required by the City or the Substitute, as applicable, each acting reasonably, to the City or the Substitute, as applicable, and the OMR Provider shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the OMR Provider, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
 - (d) at the City's request, the OMR Provider shall enter into, and shall cause the OMR Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section A7.2(c) of this OMR Provider's Direct Agreement to enter into, and the City shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including an agreement between the City or the Substitute, as applicable, and the OMR Provider, acceptable to the City and the OMR Provider, each acting reasonably, on substantially the same terms as the Construction Contract.
- A7.3 Subject to Section A7.2(d) of this OMR Provider's Direct Agreement, Project Co shall, at its own cost, cooperate fully with the City and the Substitute in order to achieve a smooth transfer of the OMR Contract to the City or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the OMR Contract, ongoing supervisory activities and scheduling.
- A7.4 The rights granted by Sections A7.2 and A7.3 of this OMR Provider's Direct Agreement shall be of no force or effect if, at any time the OMR Provider receives a Step-In Notice, the OMR Provider has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the OMR Contract that it is or has validly exercised those step-in rights. If the OMR Provider receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- A7.5 If the City gives a Step-In Notice within the time provided hereunder at any time after the OMR Provider has terminated the OMR Contract or treated it as having been repudiated by Project Co or discontinued the OMR Provider's performance thereunder in

accordance with the terms of this OMR Provider's Direct Agreement, the OMR Provider agrees that the OMR Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and the City shall pay the OMR Provider's reasonable costs for re-commencing the obligations it has under the OMR Contract and the OMR Provider shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the OMR Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

A8. OMR Provider Liability

A8.1 The liability of the OMR Provider hereunder shall not be modified, released, diminished or in any way affected by:

- (a) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for the City, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
- (b) the appointment by the City of any other person to review the progress of or otherwise report to the City in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to the City;

provided always that nothing in this Section A8 shall modify or affect any rights which the OMR Provider might have otherwise had to claim contribution from any other person whether under statute or common law.

A8.2 In the event the City delivers a Step-In Notice, the OMR Provider shall have no greater liability to the City or any Substitute than it would have had to Project Co under the OMR Contract, and the OMR Provider shall be entitled in any proceedings by the City or any Substitute to rely on any liability limitations in the OMR Contract.

A9. Project Co as Party

A9.1 Project Co acknowledges and agrees that the OMR Provider shall not be in breach of the OMR Contract by complying with its obligations hereunder.

A10. OMR Guarantor as Party

A10.1 The OMR Guarantor agrees with the City that the OMR Guarantor has entered into a guarantee or covenant referred to in Section A7.2(c), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the OMR Provider of a Step-In Notice and without the requirement of any further action on the part of the City, and agrees that the OMR Guarantor shall in accordance with Section A7 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The OMR Guarantor enters into this OMR Provider's Direct Agreement solely for the purposes of this Section A10.

A11. Assignment

- A11.1 Project Co shall not, without the prior written consent of the City, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this OMR Provider's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- A11.2 The City may assign or otherwise dispose of the benefit of the whole or part of this OMR Provider's Direct Agreement to any person to whom the City may assign or otherwise dispose of their interest in the Project Agreement pursuant to Section X6 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the OMR Provider of such assignment or disposition.
- A11.3 The OMR Provider shall not, without the prior written consent of the City and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this OMR Provider's Direct Agreement except as may be permitted under the OMR Contract.

A12. Notices

- A12.1 All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this OMR Provider's Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this OMR Provider's Direct Agreement) and served by sending the same by registered mail or by hand (in each case, with a copy by electronic transmission), as follows:

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]
Address: 400 Burrard Street, Suite 2000
Vancouver, BC V6C 3A6

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

If to the OMR Provider: **[Address]**

Attn.: [•]
Email: [•]

If to the OMR Guarantor: **[Address]**

Attn.: [•]
Email: [•]

A12.2 Any Party to this OMR Provider's Direct Agreement may, from time to time, change any of its contact information set forth in Section A12.1 of this OMR Provider's Direct Agreement by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.

A12.3 Subject to Sections A12.4 and A12.5 of this OMR Provider's Direct Agreement:

- (a) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
- (b) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.

A12.4 If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery in accordance with this Section A12.

A12.5 If any notice delivered by hand is so delivered either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.

A13. Amendments

A13.1 This OMR Provider's Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this OMR Provider's Direct Agreement.

A14. Waiver

A14.1 No waiver made or given by a Party under or in connection with this OMR Provider's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in

one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

A14.2 Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

A15. Relationship Between The Parties

A15.1 The Parties are independent contractors. This OMR Provider's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this OMR Provider's Direct Agreement, of principal and agent.

A16. Entire Agreement

A16.1 Except where provided otherwise in this OMR Provider's Direct Agreement, this OMR Provider's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this OMR Provider's Direct Agreement.

A17. Severability

A17.1 Each provision of this OMR Provider's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this OMR Provider's Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this OMR Provider's Direct Agreement. If any such provision of this OMR Provider's Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this OMR Provider's Direct Agreement as near as possible to its original intent and effect.

A18. Enurement

A18.1 This OMR Provider's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

A19. Governing Law and Jurisdiction

A19.1 This OMR Provider's Direct Agreement shall be governed by and construed in accordance with the laws of Manitoba and the laws of Canada applicable therein and shall be treated in all respects as a Manitoba contract, without regard to conflict of laws principles.

A19.2 The Parties agree that the courts of the Province of Manitoba and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action,

suit, proceeding or dispute in connection with this OMR Provider's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

A20. Further Assurance

A20.1 Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this OMR Provider's Direct Agreement.

A21. Language of Agreement

A21.1 Each Party acknowledges having requested and being satisfied that this OMR Provider's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

A22. Counterparts

A22.1 This OMR Provider's Direct 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.

IN WITNESS WHEREOF the Parties have executed this OMR Provider's Direct Agreement as of the date first above written.

THE CITY OF WINNIPEG

Per: _____

Name:

Title:

Per: _____

Name:

Title:

We have authority to bind the City.

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.

[OMR PROVIDER]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.