

City of Winnipeg
Request for Proposals to
Design, Build, Finance, (Operate) and
Maintain
**the Southwest Rapid Transitway (Stage 2)
and Pembina Highway Underpass**

Fairness Monitor's Report

October 28th, 2016



**RFP to Design, Build, Finance, (Operate) and Maintain
Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass
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1.0 Project Background

The project is an undertaking by the City of Winnipeg (the "City") for the design, construction, financing, maintenance and operation of the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass (the "Project"). The Project includes the widening and reconstruction of Pembina Highway and construction of 7.6 km of exclusive transitway runningway, nine (9) structures, one CN rail bridge reconstruction over an arterial road, two transitway bridges over arterial roads, separate transitway underpasses of a pair of CN wye tracks, a transitway overpass of an arterial road, a transitway overpass of the CN Letellier subdivision, and a pedestrian overpass connection between Investors Group Field and IGF Station, retaining wall structures, two drainage pump stations, land drainage and utility relocation works, rapid transit stations, park and ride facilities and active transportation paths. The Project also includes life cycle maintenance of the Southwest Transitway Stage 2 constructed works over a 30 year time frame and operational maintenance of the existing Southwest Transitway Stage 1.

2.0 P1 Consulting

P1 Consulting ("Fairness Monitor") was retained in August 2015 to perform fairness monitoring services and provide independent assurance to the City as to the fairness and appropriateness of specific project management activities related to the public-private partnership procurement process. The scope of the fairness monitoring services included providing an opinion on procurement process/contract selection and input on any fairness matters that arose during contract finalization/negotiations. Our mandate was to review and monitor the contract documents related to the selection process and communications, provide advice on best practices, review and monitor the evaluation and decision-making processes that were associated with the procurement to ensure fairness, equity, objectivity, transparency and adequate documentation throughout the evaluation process and up to Commercial Close. As Fairness Monitors we were also to attend, observe and provide guidance at the City's meetings, as well as the Proponent presentations. In particular, in our role as Fairness Monitor, we ascertained that the following steps were taken to ensure an open, fair and transparent process consistent with the Public-Private Partnerships Transparency and Accountability Act (the P3 Act):

- Compliance with the requisite procurement policies and procedures and the laws of tendering for the acquisition of services relating to public sector procurement;
- Adherence to confidentiality of bids, as applicable, and the evaluation process;
- Objectivity and diligence during the procurement process in order to ensure that it was conducted in an open and transparent manner;
- Proper definition and use of evaluation procedures and assessment tools in order to ensure that the process was unbiased;
- Compliance of project participants with strict requirements of conflict of interest and confidentiality during the procurement and evaluation processes;
- Security of information;
- Prevention of any conflict of interest amongst evaluators on the selection committee;
- Oversight to provide a process where all proponents were treated fairly.

Our final deliverable included the preparation of final report to the City that demonstrates and confirms the procurement process was conducted with openness, transparency, integrity, and accountability; and that the processes and decisions have been reasonably implemented and materially complied with by project management in delivery of those aspects of the Project.

3.0 Scope of the Fairness Monitor Engagement

The following are the tasks that P1 Consulting performed:

- **Review of the Request for Quotations (RFQ), Request for Proposals (RFP), Questions and Answers (Q&A) and Addenda:**
P1 Consulting reviewed the RFQ, RFP and Addenda, as required, and all other documents related to the procurement process to ensure that it met the principles of fairness and transparency and was consistent with regulatory and policy frameworks from a fairness perspective
- **Review of Requests For Clarifications (RFC), Requests for Information (RFI) and the Responses:**
P1 Consulting reviewed all RFIs and the responses submitted to the Proponents. P1 Consulting also reviewed any RFCs submitted by the City and their responses.
- **RFQ and RFP Submission Deadlines:**
P1 Consulting reviewed and approved the protocols regarding the Submission Deadlines as well as the subsequent completeness review.
- **Review of Evaluation Criteria and Framework (Procedures):**
P1 Consulting reviewed the evaluation criteria and framework for the RFQ and RFP to ensure that it met the principles of fairness and transparency and was consistent with the approach outlined in the procurement documents.
- **Advice on Best Practices:**
P1 Consulting attended sessions to ensure that all project team members were provided with briefings on best practices, including the principles and duties of fairness, care and protection of confidential information, avoidance and disclosure of conflict of interest, bias and undue influence, scoring procedures and sign-off on individual scoring sheets, preparation, treatment and retention of evaluation documents.
- **Meetings:**
P1 Consulting attended project meetings (project team, Major Capital Project Steering Committee, Council Seminars, evaluation consensus meetings and Commercially Confidential and Design Meetings), as directed by the City, for the purpose of observing and providing guidance or advice on the proposed processes and issues related to the Project.
- **Evaluation Meetings:**
P1 Consulting observed and documented evaluation meetings of the bid submissions, including the consensus sessions of the technical and financial evaluation teams. Additionally, during the evaluation process, we provided verbal and written advice with

respect to fairness, objectivity, consistency of process, conflict of interest and confidentiality to ensure strict accordance with the specifications and criteria set out in the RFQ and RFP documents, as well as consistency with the policies and practices of the City of Winnipeg.

- **Proponent Interaction:**

P1 Consulting attended and monitored all presentations with Proponents.

All of the tasks above were completed in a manner that was fair, open and transparent.

4.0 Request for Qualification Process

The Fairness Monitor received, reviewed and approved from a fairness perspective, copies of the draft and final RFQ and documents prior to their release. As addenda were issued, P1 Consulting also received, reviewed and approved copies of addenda documents from a fairness perspective. The evaluations were performed by the appropriate teams. The Fairness Monitor was represented at all evaluation meetings. The Fairness Monitor concluded that the review was performed fairly and in compliance with the City's Evaluation Framework.

4.1 Evaluation Teams

The members of the project team, including the evaluation committees, identified any potential Conflicts of Interest, which were reviewed and appropriately addressed by the City's internal Conflict of Interest Committee and the Fairness Monitor. All evaluation participants attended evaluator orientation training sessions prior to participating in the evaluation process, which the Fairness Monitor attended. The RFQ preparation and evaluation teams all signed the Confidentiality and Conflict of Interest Agreements and Undertakings prior to participating in the evaluation.

4.2 Proposal Receipt

The City of Winnipeg's Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Project RFQ Submissions were due on November 21st, 2014. The following five (5) Applicants submitted a proposal for evaluation on or before the Submission Deadline:

- Plenary Roads Winnipeg
- Red River Infrastructure Group
- WinnCity Transportation Partners
- Winnipeg Transport Integration Partners
- Voyageur Transit Partners

4.3 Location of the Proposals

The original RFQ submissions were securely held at the City's Materials Management offices.

5.0 Request for Proposal Process

In accordance with the RFQ, only those Proponents who pre-qualified in the RFQ process were eligible to participate in the RFP as Proponents. The RFP was released on July 17th, 2015 to the following Proponents:

- Plenary Roads Winnipeg
- Red River Infrastructure Group
- WinnCity Transportation Partners

5.1 Review of Solicitation Documents and Addenda

The Fairness Monitor received, reviewed and approved from a fairness perspective, copies of the draft and final RFP documents and the final procurement documents prior to their release. Relevant RFIs and their responses were reviewed from a fairness perspective. As addenda were issued, P1 Consulting also received, reviewed and approved copies of those addenda documents and reviewed them from a fairness perspective, prior to their release.

5.2 Commercially Confidential Meetings

Four sets of Commercially Confidential Meetings were held during the procurement process and were all attended by a Fairness Monitor, who confirmed that they were conducted in a fair manner.

5.3 Proposal Receipt

The Submission Deadline for the Technical Submission was March 4th, 2016 at 4:00:00 PM local Manitoba time, and the Submission Deadline for the Financial Submission was March 24th, 2016 at 4:00:00 PM local Manitoba time. The following three (3) Proponents submitted a proposal for evaluation on or before each of the Technical and Financial Submission Deadlines:

- Plenary Roads Winnipeg
- Red River Infrastructure Group
- WinnCity Transportation Partners

5.4 Location of the Proposals

The Technical Submissions were securely located at Materials Management Division offices at the City of Winnipeg, 185 King St. The Financial Submissions was securely located at Materials Management Division offices at the City of Winnipeg, 185 King St. These sites maintained the confidentiality of the documents and the Evaluators adhered to the pre-established document control process.

5.5 RFP Evaluation

The Evaluation Framework was developed by Deloitte, on behalf of the City of Winnipeg, and was received, reviewed and approved by the Fairness Monitor from a fairness perspective before it was provided to the members of the evaluation committee and sub-committees.

The evaluation included the following:

5.5.1 Compliance Review

The City of Winnipeg's procurement team received, opened and conducted the compliance review of the Technical and Financial RFP submissions. The results of the compliance review were reviewed by the Fairness Monitor who concluded that the review was performed fairly.

5.5.2 Technical Review

Each member of the Technical Evaluation Team (TET) individually reviewed the responses for the Technical Submissions. Following the individual reviews, the TET participated in a team consensus meeting to arrive at scores for the Technical Submissions. The Technical Submissions were reviewed and evaluated by the Technical evaluation teams in accordance with the established criteria. Fairness Monitor concluded that the review was performed fairly and in compliance with the City of Winnipeg's Evaluation Framework. Only Proponents who achieved a minimum score of 70% passed the Technical Submission review.

5.5.3 Financial Review

After completion of the Technical Submission review, the Financial Submissions were evaluated. Only those Proponents who passed the Technical Submission review moved on to the financial review. Each member of the Financial Evaluation Team (FET) individually reviewed the responses for the Financial Submissions. Following the individual reviews, the FET participated in a team consensus meeting to arrive at scores for the Financial Submissions. The FET was separate from TET, and each team had different team members and roles and responsibilities related to the Evaluation Process. The financial information was severed from the Technical Submission to prevent any price bias during the technical evaluation. The Financial Submission was scored in accordance with the RFP and the evaluation matrix which was received, reviewed and approved by the Fairness Monitor from a fairness perspective. The Fairness Monitor concluded that the review was performed fairly and in compliance with City of Winnipeg's Evaluation Framework.

5.5.4 Clarification Process

P1 reviewed all RFCs issued by the City during the RFP evaluation. The responses from Proponents were reviewed in accordance with the RFP and the Evaluation Framework which was received, reviewed and approved by the Fairness Monitor from a fairness perspective.

5.6 Evaluation Teams

The members of the project team, including the evaluation committees confirmed that they did not have any Conflicts of Interest (and where some were noted, were properly reviewed by the City's internal Conflict of Interest (COI) Committee and P1 Consulting and mitigation measures that were determined by the COI Committee and P1 Consulting to be sufficient were taken by the City, where appropriate) and attended evaluator orientation training sessions prior to reviewing the submissions, which the Fairness Monitor attended. The RFP preparation and evaluation teams all signed the Confidentiality and Conflict of Interest Agreements and Undertakings prior to participating in the evaluation.

A representative from P1 Consulting attended and monitored all of the evaluation sessions as an observer.

5.7 Negotiations Proponent and Preferred Proponent

As a result of the RFP evaluation, and in accordance with the City of Winnipeg's Evaluation Framework, **Plenary Roads Winnipeg** was selected as Negotiations Proponent and subsequently as Preferred Proponent. No matters related to fairness were raised during the Negotiations Period or during the closing period.

6.0 **Compliance with the Public-Private Partnerships Transparency and Accountability Act (the P3 Act)**

The Proponents on the Project had the opportunity to provide their comments about the Project Agreement during the RFP open period through Commercially Confidential Meetings. Proponents were also provided an opportunity to submit both general and Commercially Confidential Requests for Information. Pursuant to the input received from Proponents, some amendments were made to the Project Agreement which, when amended, was issued as an addendum prior to the RFP Submission Date. The Proponents were required to base their Submission on the amended Project Agreement.

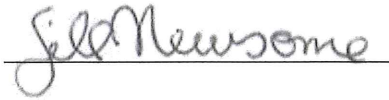
During the procurement process, none of the Proponents identified a fairness concern related to the content of the Project Agreement or amendments to the Project Agreement. Although P1 Consulting, the Fairness Monitor in this procurement, has not done a detailed review of the Project Agreement and is not expressing a legal or business opinion on its content, P1 Consulting confirms that it does not have fairness concerns with the Project Agreement processes related to the Project Agreement.

A summary of the Project Agreement as required pursuant to Section 7(2)(f) of the P3 Act and Regulation 4 is attached in Appendix A.

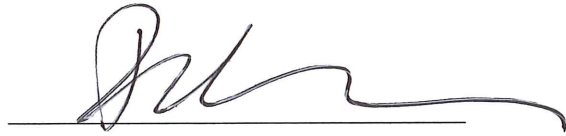
7.0 **Conclusion**

As the Fairness Monitor for the City of Winnipeg – Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass, we certify, in our opinion that, the entire procurement process was undertaken in a fair, open, and transparent manner.

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Jill Newsome
Lead Fairness Monitor



Robin McLernon
Fairness Monitor

Appendix A
Contract Summary per Section 7(2)(f) of the P3 Act and Regulation 4

Capitalized terms are as defined in the Project Agreement.

(a) the names of the parties to the contract;

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

BETWEEN:

THE CITY OF WINNIPEG

AND:

PLENARY ROADS WINNIPEG TRANSITWAY LP,
a limited partnership formed under the laws of the Province of Alberta, by its general partners

PLENARY ROADS WINNIPEG TRANSITWAY GP INC.,
a corporation formed under the laws of the Province of British Columbia
and

PCL BRT (WINNIPEG) GP INC.,
a corporation formed under the laws of the Province of Alberta,
("Project Co")

(b) a brief description of the work required under the contract, including the location;

The project is an undertaking by the City of Winnipeg (the "City") for the design, construction, financing, maintenance and operation of the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass (the "Project"). The Project includes the widening and reconstruction of Pembina Highway and construction of 7.6 km of exclusive transitway runningway, nine (9) structures, one CN rail bridge reconstruction over an arterial road, two transitway bridges over arterial roads, separate transitway underpasses of a pair of CN wye tracks, a transitway overpass of an arterial road, a transitway overpass of the CN Letellier subdivision, and a pedestrian overpass connection between Investors Group Field and IGF Station, retaining wall structures, two drainage pump stations, land drainage and utility relocation works, rapid transit stations, park and ride facilities and active transportation paths. The Project also includes life cycle maintenance of the Southwest Transitway Stage 2 constructed works over a 30 year time frame and operational maintenance of the existing Southwest Transitway Stage 1.

(c) the payment structure and terms of payment;

A summary of the payment structure as described in greater detail in Section K and Schedule 14 the Project Agreement is as follows:

- Substantial Completion Payment (**Project Agreement Section K1**)
 - On the Substantial Completion Date, Project Co will submit an invoice to the City in respect of the Substantial Completion Payment in the form agreed to by the Parties. The City will pay the Substantial Completion Payment, plus applicable GST, no later than 5 Business Days following the Substantial Completion Date. The Substantial Completion

Payment represents 60% of Project Co's total Capitalized Cost

- **Monthly Payments (Project Agreement Section K2 and Schedule 14)**
 - Once the Project has been commissioned into use, the City will provide Project Co with regular payments throughout the course of the 30-year maintenance term. The Monthly Payment includes two components:
 - **Capital Payment:** This component is intended to pay Project Co for the outstanding portion of the capital cost of constructing the Project.
 - **Operations and Maintenance Payment:** This component is intended to pay Project Co for its annual costs of maintaining the Project. These payments are indexed to a measure of inflation (Statistics Canada consumer price index).

Project Co will submit monthly invoices no later than seven Business Days following the end of each Contract Month. Following receipt of the invoice the City will review and pay each invoice within seven Business Days. Any such payments are subject to adjustment as described in the following Payment Adjustment section:

- **Payment Adjustments (Project Agreement Section K3 and Schedule 14):**
 - Monthly payments may be adjusted for a variety of reasons. Within seven Business Days following the end of each Contract Month Project Co will submit a:
 - **Performance Monitoring Report;** and
 - **Payment Adjustment Report:** This report sets out any Payments Adjustments required for the contract month just ended and will include deductions in relation to Availability, Quality, and Service Failures.
- **Change Orders (Project Agreement Section I and Schedule 17):**
 - Change Order is defined as a variation, addition, reduction, substitution, modification, deletion, removal or other change, other than one which does not have a material effect, to the whole or any part of the Design and Construction, the OMR Services or the Technical requirements.

Once a Change Order Confirmation has been issued all Parties will, as soon as practicable, do all acts and execute all documents necessary to implement the Change Order, including provision for payment to Project Co in the amount set out in the Estimate, and, if applicable, implementation of an adjustment to Project Co's Design and Construction Schedule or the Monthly Payments.

(d) the time frames for construction and the time frames for ownership, operation or maintenance by the private sector entity;

(Project Agreement Sections G and H)

Timeframes for construction are: Mobilization in August 2016 with Substantial Completion in October 2019 and Total Completion by December 2019.

Maintenance begins in December 2019 and continues until October 2049.

Operation by the City begins in April 2020 after a period of training for City staff.

(e) the form and type of security required, including its term and value;

(Project Agreement Sections B2, D3, D4 and E11)

On Commercial Close Project Co has an obligation to provide an irrevocable letter of credit in the amount of \$7,500,000 to the City securing its obligation to achieve Financial Close on or before the Financial Close Target Date. Unless the Financial Close Letter of Credit is drawn by the City in accordance with the provisions of the Project Agreement, the City will release and deliver the Financial Close letter of Credit to Project Co on Financial Close.

On Commercial Close, Project Co has an obligation to provide an irrevocable standby letter of credit (the "Early Access Letter of Credit") in the amount of \$3,000,000 and to maintain it until the Stadium Access Works are completed in accordance with the Project Agreement.

Aside from the foregoing, there is no requirement for performance security as between Project Co and the City in the Project Agreement. However, there is a provision in the Project Agreement that from Financial Close to the Final Completion Date Project Co. is required to ensure that the performance security obligations of the Construction Contractor set out in the Construction Contract as of Financial Close are retained and maintained. Such performance security arrangements may include parent company guarantees, letters of credit, performance bonds or subguarding. There is provision for the replacement of such performance security, with the City's prior written consent, provided the replacement performance security is materially equivalent to the Construction Contract Performance Security as of Financial Close.

(f) the requirements for insurance, including the type of policy, the limits and term of the policy and the party responsible for obtaining the insurance;

(Project Agreement Section M and Schedule 11)

The insurance responsibilities for the Project are outlined in Section M of the Project Agreement and Schedule 11 thereto. The following is a summary only of those portions of the Project Agreement. Capitalized terms are as defined in the Project Agreement; however, for purposes of reading this summary it will suffice for them to be read with their industry standard meaning.

Project Co is responsible for procuring, or causing to be procured, all the required insurance. All insurance must be procured from an Eligible Insurer, which is defined in Schedule 1 as;

"Eligible Insurer" means an insurer licensed to transact business in Manitoba and who has a current rating of at least A- X from A. M. Best's or A- from Standard and Poors or an insurer that is an agency or crown corporation of the Province of Manitoba;

During the Construction Period, the required insurance is summarized below;

- Project specific general liability wrap-up insurance in an amount not less than \$75,000,000 inclusive per occurrence and annual aggregate. The maximum deductible under this policy is \$100,000 per occurrence.
This policy insures the liability of: Project Co; Lenders; contractors/subcontractors; and consultants for injury to people or damage to property of others during construction.

- Project specific course of construction insurance in the form of an "all risks" builder's risk policy(s) covering all property forming part of the Project including but not limited to the New Infrastructure and the Existing Infrastructure. The policy also insures delay in start-up cover for a minimum of 12 months. The principal maximum deductible under this policy is \$100,000 per occurrence.
This policy insures damage to the Project property during construction and the resultant business interruption cost including debt service.
- Project-specific professional errors and omissions insurance in an amount of not less than \$25,000,000 per claim and term aggregate with a 36 month Extended Reporting Period. The maximum deductible under this policy is \$250,000 per claim.
This policy insures the professional liability of the Construction Contractor and the design professionals.
- Project specific pollution liability insurance in the amount of at least \$10,000,000 per occurrence and aggregate. The maximum deductible under this policy is \$100,000 per occurrence.
This policy insures liability for certain pollution events on behalf of Project Co, the Construction Contractor and Lenders.
- Automobile liability insurance on all vehicles owned, operated or licensed in the name of Project Co in an amount of not less than \$5,000,000 per occurrence. Project Co is required to ensure that each of its subcontractors on the Project maintains comparable insurance in an amount of not less than \$5,000,000.
These policies insure the owners of licenced automobiles as required by law.
- Property insurance for the equipment and tools used on the Project by the Construction Contractor and all sub-contractors. The minimum deductible on this policy is \$50,000 per occurrence.
The policies insure the owners of the tools and equipment.
- Project Co is required to ensure that workers compensation coverage is provided and maintained from Mobilization to the Substantial Completion Date by the Construction Contractor and its subcontractors.
These registrations under the Workers Compensation Board of Manitoba insure injury to workers as required by law.

From Substantial Completion to the Termination Date (OMR Period) the required insurance is summarized below;

- General liability insurance in an amount not less than \$50,000,000 per occurrence and annual general aggregate. The maximum deductible under this policy is \$100,000 per occurrence. This policy insures the liability of Project Co, Lenders and the contractors for injury to people or damage to property of others during operations.
- "All risks" property insurance covering the New Infrastructure forming part of the Project on a replacement cost basis. The policy will also insure business interruption cover for a minimum of 12 months. The principal maximum deductible under this policy is \$100,000 per occurrence. This policy insures damage to the Project property during operations and the resultant business interruption cost including debt service.
- Standard Comprehensive Boiler and Machinery insurance insuring not less than the replacement value of the New Infrastructure including business interruption cover for a minimum of 12 months.
This policy insures the explosion or breakdown of pressure vessels and power generating or transmission equipment during operations.

- Automobile liability insurance on all vehicles owned, operated or licensed in the name of Project Co in an amount of not less than \$5,000,000 per occurrence. Project Co is required to ensure that each of its subcontractors on the Project maintains comparable insurance in an amount of not less than \$5,000,000.
These policies insure the owners of licenced automobiles as required by law.
- Project Co is required to ensure that workers compensation coverage is provided and maintained during the OMR Period by the OMR Provider and its subcontractors.
These registrations under the Workers Compensation Board of Manitoba insure injury to workers as required by law.

Where appropriate, the City and others (such as, funders, CN, U of M, MB Hydro) are to be:

- additional insureds and/or
- afforded a subrogation waiver and/or
- afforded non-vitiation protection and/or
- afforded notice of cancellation or material change in the insurance policies procured or caused to be procured by Project Co.

Insurance claim settlement proceeds from first party direct damage property insurance covers are to be used in accordance with the Project Agreement and Schedule 20 – Insurance Trust Agreement. Essentially, these proceeds must be used to repair or replace the asset unless the Project is terminated.

Other than where loss is caused by the City, Project Co is responsible for all deductibles under the insurance.

The Project Agreement provides a protocol to adjust the Monthly Payment throughout the OMR Period where Project Co's required insurance increases through no fault of its own. Additionally, there is a protocol to address circumstances where the required insurance is not available during the OMR Period through no fault of Project Co. There are escalating mitigations up to declaring a Force Majeure and making a Termination Payment to Project Co.

(g) a description of the rights and obligations of the parties in the event of a default or a termination of the contract;

City's Step-in Rights (Project Agreement Section S1): Under certain circumstances specified in the Project Agreement, including if the City believes a risk to public security exists or if Project Co is not diligently pursuing the Design and Construction or the OMR Services, the City may exercise its Step-In rights in order to take Remedial Action to correct the risk, conduct the City Operations, ensure that the New Infrastructure is available for use by the City and City Parties, remedy a Project Co Default or otherwise advance the Project. If the need for Remedial Action is not brought about by any breach, act or omission of Project Co then the Remedial Action shall constitute a Relief Event.

Termination Events and Termination by the City (Project Agreement Sections S2, S3, S4): The Project Agreement lists the sets of circumstances that constitute Termination Events, including the bankruptcy of Project Co, if Project Co abandons the Project, if Project Co fails to achieve Substantial Completion by the Longstop Date, if Project Co accumulates a certain number of Deductions in respect of performance failures during the OMR Period, if Project Co fails to cure a default within 21 days (unless caused directly by a breach by the City). Subject to the City obligation to provide notice to the Lenders pursuant to the Lenders' Direct Agreement and the rights of the Lenders to step-in and cure the default, on the

occurrence of a Termination Event the City is entitled to terminate the Project Agreement by notice to Project Co.

The City may also terminate the Project Agreement at any time for convenience or as a result of an extended Force Majeure Event or Relief Event as described above.

Termination by Project Co **(Project Agreement Section S5)**: Project Co is entitled to terminate the Project Agreement if: the City fails to pay Project Co and does not remedy such failure within 30 days of receiving notice from Project Co or if the City breaches the assignment provision of the Project Agreement and does not remedy such breach within 30 days.

Project Co is also entitled to terminate as a result of an extended Force Majeure Event or Relief Event as described above.

Consequences of Termination **(Project Agreement Section S7 and Schedule 15)**: In the event of termination of the Project Agreement, the Monthly Payment will be prorated according to the number of days in the month up to and including the termination date and the Termination Payment will be calculated in accordance with the formula contained in Schedule 15 – Termination Payments.

Survival of Obligations **(Project Agreement Section S8)**: Except as otherwise provided by the Project Agreement, all representations, warranties, indemnities and other specified obligations within the Project Agreement survive the termination or expiry of the Project Agreement.

(h) an update to the risk allocation matrix that was prepared under clause 2(3)(b) for the P3 procurement method used for the project, such that the updated matrix shows, for each identified risk,

(i) whether the risk is explicitly allocated by the contract and, if so, to whom it is allocated, and

(ii) whether the allocation is consistent with the allocation as previously proposed and, if it is not, how it varies from the proposed allocation;

The Project Agreement allocates risks and responsibilities between the City and Project Co. This risk allocation was pursued by the City on the basis that the risks should be held and managed by the party in the best position to do so. Some risks are assigned to Project Co, with some risks assigned to the City, and some shared between the City and Project Co.

The Project Agreement includes detailed risk allocation provisions over the 3.5 year construction period and the 30-year OMR Period. Table 1 summarizes the key risk allocation between the City and Project Co.

Table 1: Risk Allocation Summary

Risk	Retained by City	Transfer to Project Co	Shared	Notes on Any Changes to Risk as Previously Proposed
A. General				
1. Compliance with applicable law and standards		✓		N/A
2. Designated change in law	✓			
3. Changes in applicable law		✓		N/A
4. Changes in standards			✓	N/A
5. Permits, Licenses and Approvals (Including CN and Manitoba Hydro approvals)			✓	N/A
6. Access to Lands, Encumbrances, Liens			✓	N/A

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Risk	Retained by City	Transfer to Project Co	Shared	Notes on Any Changes to Risk as Previously Proposed
7. Geotechnical		✓		N/A
8. Contamination			✓	N/A
9. Defects in Existing Infrastructure			✓	N/A
B. Design and Construction				
10. Design development (Detailed design)		✓		N/A
11. Construction management delays		✓		N/A
12. Construction latent defects		✓		N/A
13. Construction warranty for Maintenance-Exempt Work		✓		N/A
14. Scope changes initiated by City during construction	✓			N/A
15. Adverse weather conditions		✓		N/A
16. Labour relations			✓	N/A
17. Safety and security		✓		N/A
18. Stadium Access Works		✓		N/A
19. Utility Work			✓	<ul style="list-style-type: none"> Project Co is responsible for all utility work for the Project, including Manitoba Hydro utility relocation work, however a cost sharing regime is in place as described below. <ul style="list-style-type: none"> The City is responsible for reimbursing Project Co for certain utility costs that exceed a pre-determined baseline amount established by the City, subject to Project Co's obligation to mitigate such costs. Project Co is entitled to relief from the City in the event that Manitoba Hydro fails to perform its obligations in accordance with the applicable utility agreement and causes delay to Project Co in achieving Substantial Completion.
20. CN Rail Interface			✓	<ul style="list-style-type: none"> Project Co is responsible for all interface with CN Rail to compel them to fulfil their obligations, with the City required to provide assistance to resolve non-performance by CN. Project Co is entitled to relief from the City in the event that CN Rail fails to perform its obligations that causes delays to Project Co in achieving Substantial Completion.
21. Traffic Management		✓		<ul style="list-style-type: none"> Project Co is subject to payment deductions for lane closures during the construction period that exceed their target number of closure days as per their proposal.
22. Rectification of deficiencies		✓		N/A
23. Commissioning		✓		N/A

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Risk	Retained by City	Transfer to Project Co	Shared	Notes on Any Changes to Risk as Previously Proposed
C. Maintenance and Rehabilitation				
24. Operational and preventive maintenance (Stage 1 and Stage 2)		✓		N/A
25. Rehabilitative maintenance – Stage 1	✓			N/A
26. Rehabilitative maintenance – Stage 2		✓		N/A
27. Winter Maintenance		✓		N/A
28. Bus operations – Stage 1 and Stage 2	✓			N/A
29. Maintenance of roadway connections between the Transitway and street system	✓			N/A
30. Default of Operator or Project Co		✓		N/A
31. Inflation risk			✓	N/A
32. Asset residual		✓		N/A
D. Force Majeure				
33. Force Majeure			✓	N/A
E. Relief Events				
34. Relief Events			✓	N/A
F. Termination of Project Agreement				
35. Termination for convenience of City	✓			N/A
36. Termination for default of Project Co		✓		N/A
37. Termination for Force Majeure			✓	N/A

(i) a description of all other financial obligations of the parties, contingent or otherwise.

Other financial obligations of the parties, contingent or otherwise not covered by items 4 (a) through (h) include:

Force Majeure Events (Project Agreement Section N)

Force Majeure Event means any war, civil war, invasion, insurrection, armed conflict, act of foreign enemy, revolution, terrorist act, interference by military authorities, nuclear explosion, tornado, earthquake, pressure waves caused by devices traveling at supersonic speeds, contamination by ionizing radiation, epidemic, or quarantine restriction that prevents, delays or interrupts the performance of any obligation under this Project Agreement other than any obligation to pay any money.

The length and severity of a Force Majeure Event will dictate the financial impact.

Relief Event (Project Agreement Section O)

Relief Event refers to an event such as a Designated Change in Law coming into effect after March 24, 2016 that delays Project Co from achieving completion of the Stadium Access Works or Substantial Completion by the specified deadlines; adversely interfere or causes failure of OMR Services, and in certain situations causes an increase in the cost of Design and Construction or the OMR Services.

The length and severity of a Relief Event will dictate the financial impact.

Utility Work (Project Agreement Section F17)

The Project Agreement includes a cost sharing mechanism between Project Co and the City for work related to Specified Utility Costs. Specified Utility Costs refers to Project Co's direct out-of-pocket costs billed by Utility Companies and costs incurred when a Utility Company permits Project Co or the

Construction Contractor to self-perform Specified Utility Works.

The overall Specified Utility Costs will dictate the financial impact.

Cash Allowances (Project Agreement Section E12)

Project Co shall open the Cash Allowance Account and deposit the Cash Allowance Amount into the Cash Allowance Account on Financial Close and shall manage the Cash Allowance Account solely for the purposes of carrying out the Contaminated Wye Area Work.

Public Art (Project Agreement Section F19 and Schedule 23)

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. Payments from the cash allowance will be made for the development, fabrication, construction, and management of public art.

Independent Certifier (Project Agreement Section F10 and Schedule 10)

In consideration of the Independent Certifier performing the Certification Services in accordance with the Independent Certifier Agreement, the City and Project Co shall each pay one-half of the Fees to the Independent Certifier in accordance with the payment schedule specified in the Independent Certifier Agreement.