

SCHEDULE 4

LENDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the 9th day of May, 2014

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

(the "Region")

- AND -

**BNY TRUST COMPANY OF CANADA, acting as collateral trustee for and on behalf of the
Lenders**

(the "Lenders' Agent")

- AND -

**GRANDLINQ GP, a general partnership of Plenary GrandLinq GP Inc., Meridiam Infrastructure
Waterloo LRT ULC, Aecon GrandLinq GP Inc., Kiewit Waterloo Investors Corp. and Keolis
Waterloo General Partner Inc., existing under the laws of Alberta**

("Project Co")

WHEREAS:

- A. The Region and Project Co have entered into the Project Agreement.
- B. The construction of the System and the Public Infrastructure Works will have a positive impact on the Region of Waterloo by (i) providing a core transit artery as part of an integrated, expandable, multi-mode transit network, (ii) providing a fast, convenient, safe, comfortable and appealing travel mode choice; (iii) facilitating higher-density urban development; (iv) increasing transit ridership, and reducing traffic congestion; (v) meeting infrastructure needs to address continued population and employment growth in the Region, and (vi) improving quality of life for residents and travelers.
- C. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Project Operations, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.

- D. The Lenders' Agent has agreed to enter into this lenders' direct agreement (the "**Lenders' Direct Agreement**") with the Region in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- E. With a view to ensuring that the Region is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with the Region throughout the Project Term.

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:

1. DEFINITIONS

In this Lenders' Direct Agreement, unless the context otherwise requires:

- (a) "**Affiliate**" has the meaning given in the Project Agreement.
- (b) "**Appointed Representative**" means any of the following to the extent so identified in an Appointed Representative Notice:
- (i) the Lenders' Agent, any Lender or any of their Affiliates;
 - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
 - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
 - (iv) an administrator of Project Co;
 - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
 - (vi) any other person approved by the Region (such approval not to be unreasonably withheld or delayed).
- (c) "**Appointed Representative Notice**" has the meaning given in Section 8(b).
- (d) "**Business Day**" has the meaning given in the Project Agreement.
- (e) "**Change in Ownership**" has the meaning given in the Project Agreement.
- (f) "**Milestone Payments**" has the meaning given in Schedule 21 – Construction Period Payments.
- (g) "**Contractors**" has the meaning given in the Project Agreement.

- (h) “**Contracts**” has the meaning given in the Project Agreement.
- (i) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (j) “**Direct Agreements**” has the meaning given in the Project Agreement.
- (k) “**Enforcement Action**” means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (l) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (m) “**Equity Capital**” has the meaning given in the Project Agreement.
- (n) “**Exercise Date**” has the meaning given in Section 12(b).
- (o) “**Failure Points**” has the meaning given in the Project Agreement.
- (p) “**Financing**” has the meaning given in the Project Agreement.
- (q) “**General Partners**” has the meaning given in the Project Agreement.
- (r) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (s) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (t) “**Lender Representative**” means a representative (which may be the Lenders’ Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (u) “**Lenders**” has the meaning given in the Project Agreement.
- (v) “**Lenders’ Agent**” means BNY Trust Company of Canada, acting as collateral trustee for and on behalf of the Lenders.
- (w) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (x) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (y) “**Longstop Date**” has the meaning given in the Project Agreement.
- (z) “**Monitoring Notice**” has the meaning given in the Project Agreement.
- (aa) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (bb) “**Novation Date**” has the meaning given in Section 10(a).

- (cc) “**Novation Notice**” has the meaning given in Section 10(a).
- (dd) “**Party**” means any of the Region, Project Co or the Lenders’ Agent, and “**Parties**” means all of the Region, Project Co and the Lenders’ Agent.
- (ee) “**Project**” has the meaning given in the Project Agreement.
- (ff) “**Project Agreement**” means the project agreement made on or about May 6, 2014 between the Region and Project Co.
- (gg) “**Project Co**” means GrandLinq GP, a general partnership of Plenary GrandLinq GP Inc., Meridiam Infrastructure Waterloo LRT ULC, Aecon GrandLinq GP Inc., Kiewit Waterloo Investors Corp. and Keolis Waterloo General Partner Inc., existing under the laws of Alberta and any successor or permitted assign.
- (hh) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (ii) “**Project Co Party**” has the meaning given in the Project Agreement.
- (jj) “**Project Documents**” has the meaning given in the Project Agreement.
- (kk) “**Project Operations**” has the meaning given in the Project Agreement.
- (ll) “**Refinancing**” has the meaning given in the Project Agreement.
- (mm) “**Region Party**” has the meaning given in the Project Agreement.
- (nn) “**Region Project Documents**” means the Project Agreement and all other documents to which both the Region and Project Co are parties pursuant to or in connection with the Project Agreement.
- (oo) “**Restricted Person**” has the meaning given in the Project Agreement.
- (pp) “**Security**” means the security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents.
- (qq) “**Security Documents**” means all security granted by Project Co to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
 - (i) the general security agreement made on or about the date hereof by Project Co and each General Partner in favour of the Lenders’ Agent for and on behalf of, *inter alia*, the Lenders;
 - (ii) the limited recourse guarantee and pledge agreement made on or about the date hereof by Plenary Investments XV (Canada) Ltd. in favour of the Lenders’ Agent for and on behalf of, *inter alia*, the Lenders;

- (iii) the limited recourse guarantee and pledge agreement made on or about the date hereof by Meridiam Infrastructure Waterloo LRT, LP in favour of the Lenders' Agent for and on behalf of, *inter alia*, the Lenders;
 - (iv) the limited recourse guarantee and pledge agreement made on or about the date hereof by Aecon GrandLinq Inc. in favour of the Lenders' Agent for and on behalf of, *inter alia*, the Lenders;
 - (v) the limited recourse guarantee and pledge agreement made on or about the date hereof by Kiewit Canada Development Corp. in favour of the Lenders' Agent for and on behalf of, *inter alia*, the Lenders;
 - (vi) the limited recourse guarantee and pledge agreement made on or about the date hereof by Keolis Canada Investment 1 Inc. in favour of the Lenders' Agent for and on behalf of, *inter alia*, the Lenders;
 - (vii) the Direct Agreements;
 - (viii) the direct agreement made on or about the date hereof between the Lenders' Agent, Project Co, the Construction Contractor and each Construction Guarantor;
 - (ix) the direct agreement made on or about the date hereof between the Lenders' Agent, Project Co, and the OM&R Contractor (or, as applicable, any future direct agreement between any Maintenance and Rehabilitation Contractor and any Operations Contractor) with, *inter alia*, the Lenders' Agent and Project Co in respect of the Project; and
 - (x) the account control agreement between BNY Trust Company of Canada, as collateral trustee, The Toronto-Dominion Bank and Project Co and made on or about the date hereof.
- (rr) “**Step-In Date**” means the date on which the Region receives a Step-In Notice from the Lenders' Agent.
- (ss) “**Step-In Notice**” means the notice given by the Lenders' Agent to the Region pursuant to Section 8(a) stating that the Lenders' Agent is exercising its step-in rights under this Lenders' Direct Agreement.
- (tt) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:
- (i) the Step-Out Date;
 - (ii) the Termination Date (provided that the Region has complied with its obligations in Section 7 of this Lenders' Direct Agreement);

- (iii) the date that a transfer of Project Co’s rights and obligations under the Region Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
- (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
 - (A) the date falling 180 days after the Longstop Date; or
 - (B) the date falling two years after the Step-In Date.
- (uu) “**Step-Out Date**” means the date falling 30 days after the date on which the Region receives a Step-Out Notice.
- (vv) “**Step-Out Notice**” has the meaning given in Section 9(a).
- (ww) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (xx) “**Substantial Completion Date**” has the meaning given in the Project Agreement.
- (yy) “**Substantial Completion Payment**” has the meaning given in the Project Agreement.
- (zz) “**Suitable Substitute**” means a person, approved in writing by the Region in accordance with Sections 10(b) and 10(c), which:
 - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Region Project Documents; and
 - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the Region Project Documents.
- (aaa) “**System**” has the meaning given in the Project Agreement.
- (bbb) “**Termination Date**” has the meaning given in the Project Agreement.
- (ccc) “**Warning Notice**” has the meaning given in the Project Agreement.

2. INTERPRETATION

This Lenders’ Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Lenders’ Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders’ Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders’ 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 Lenders' 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 Lenders' 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 Lenders' 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 Lenders' 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 Lenders' 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 Lenders' 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 Lenders' 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 Lenders' 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 Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Lenders' Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

3. CONFLICT OF DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Lenders' Direct Agreement, the Project Agreement and any of the Direct Agreements, the provisions of this Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

4. TERM

- (a) This Lenders' Direct Agreement shall terminate automatically on the earliest of:
 - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
 - (ii) the Termination Date (provided that the Region has complied with its obligations in Section 7 of this Lenders' Direct Agreement); and
 - (iii) the date that any transfer of Project Co's rights and obligations under the Region Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within 30 days following its occurrence, the Lenders' Agent shall provide notice to the Region of the date referred to in Section 4(a)(i).

5. AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.
- (b) Project Co represents and warrants that the Lending Agreements have been entered into and negotiated on an arm's length basis.
- (c) Project Co and the Region shall not amend or modify the Region Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which

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consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Lenders or Project Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(b) within 30 days of receipt thereof.

- (d) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (e) The Lenders' Agent acknowledges having received a copy of the Project Agreement.
- (f) The Region acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to the Region as at the date of Financial Close.
- (g) The Region acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the Region Project Documents.
- (h) The Region agrees that any enforcement by the Lenders' Agent of a security interest in the Equity Capital of Project Co granted in favour of the Lenders' Agent as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default under the Project Agreement.
- (i) Project Co and the Lenders' Agent hereby authorize and instruct the Region (and the Region agrees) to pay all sums payable to Project Co under the Project Agreement as follows:
 - (i) in the case of the Substantial Completion Payment and Milestone Payments, to account no. 5463185 at The Toronto-Dominion Bank, 55 King Street West, Toronto, Ontario, M5K 1A2 or such other account as may be notified in writing by Project Co and the Lenders' Agent to the Region; and
 - (ii) in the case of all other sums payable to Project Co under the Project Agreement, to account no. 5463177 at The Toronto-Dominion Bank, 55 King Street West, Toronto, Ontario, M5K 1A2 or such other account as may be notified in writing by Project Co and the Lenders' Agent to the Region,

and Project Co and the Region agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, the Region shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.

- (j) The Lender's Agent acknowledges the provisions of Section 2.2(a) of Schedule 21 – Construction Period Payments to the Project Agreement and consents to Project Co

delivering the Lender Advance Confirmations to the Region, the Region Engineer and the Independent Certifier in accordance with such section.

- (k) The Region shall provide the Lenders' Agent with copies of any Warning Notice, Monitoring Notice or notice of default given to Project Co under the Project Agreement at the same time such notice is given to Project Co.
- (l) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, the Region shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.

6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify the Region of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
 - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 28 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
 - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities: (i) are inconsistent with the Region's role (in the Region's reasonable opinion); (ii) may compromise the reputation or integrity of the Region and/or any Region Party or the nature of the Project; or (iii) are inconsistent with the nature of the Region's transit system or the Region or the Project, so as to affect public perception of that system or the Project.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7. TERMINATION OF PROJECT AGREEMENT BY THE REGION

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, the Region may, at any time, serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.

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- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), the Region shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
 - (i) the Region promptly delivers written notice (a “**Default Notice**”) to the Lenders’ Agent setting out the Project Co Event of Default in reasonable detail;
 - (ii) not later than 30 days after the date of a Default Notice, the Region delivers written notice (an “**Indebtedness Notice**”) to the Lenders’ Agent setting out:
 - (A) all amounts owed by Project Co to the Region and any other existing liabilities and unperformed obligations of Project Co to the Region of which the Region is aware (having made reasonable enquiry), in each case, as of the date on which the Region sent the Default Notice; and
 - (B) all amounts which will become owing by Project Co to the Region and any other liabilities and obligations of Project Co to the Region of which the Region is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
 - (iii) the Notice Period has expired and the Lenders’ Agent has not delivered a Step-In Notice.
- (c) At any time after the Region sends an Indebtedness Notice but before the Region receives a Step-In Notice, if the Region discovers amounts that have become owing by Project Co to the Region or any other liabilities or obligations of Project Co to the Region that have come due but which were not included in the Indebtedness Notice, the Region shall deliver written notice (a “**Subsequent Indebtedness Notice**”) to the Lenders’ Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, the Region shall not terminate the Project Agreement on grounds:
 - (i) that the Lenders’ Agent has served a Step-In Notice or enforced any Security Document; or
 - (ii) arising prior to the Step-In Date of which the Region was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
 - (A) the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 180 days after the Longstop Date; or
 - (B) the grounds arose after the Substantial Completion Date, and neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:

- (1) arose prior to the Step-In Date;
 - (2) is continuing and capable of being cured; and
 - (3) would have entitled the Region to terminate the Project Agreement; or
- (C) the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
- (iii) arising solely in relation to Project Co.
- (e) The Region shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
- (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to the Region on or before the Step-In Date;
 - (ii) if any amount referred to in Section 7(b)(ii)(B) has not been paid on or before the last day of the Notice Period;
 - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; or
 - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that, except as otherwise provided in Section 10, Failure Points and/or Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but such Failure Points and Warning Notices (to the extent applicable under the terms of the Project Agreement) shall be taken into account after the Step-Out Date.

8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give the Region a Step-In Notice at any time:
- (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
 - (ii) during the Notice Period; or
 - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to the Region of:

- (i) its intention to deliver a Step-In Notice; and
- (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the Region Project Documents.
- (d) During the Step-In Period, the Region shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the Region Project Documents. Project Co agrees to be bound by all such dealings between the Region and the Appointed Representative to the same extent as if they had been between the Region and Project Co.

9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to the Region to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
 - (i) the rights and obligations of the Appointed Representative in relation to the Region under the Region Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
 - (ii) the Region will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the Region Project Documents; and
 - (iii) the Appointed Representative and the Region shall be and hereby are released from all obligations and liabilities to one another under the Region Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

10. NOVATION TO SUITABLE SUBSTITUTE

- (a) Subject to Section 10(b), at any time:
 - (i) after an Enforcement Event has occurred;
 - (ii) during the Notice Period; or
 - (iii) during the Step-In Period,

the Lenders' Agent may deliver to the Region and any Appointed Representative written notice (a "**Novation Notice**") that it wishes to transfer Project Co's rights and obligations

under the Region Project Documents to a proposed transferee, together with all information reasonably necessary for the Region to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which the Region receives the Novation Notice (“**Novation Date**”) for the transfer of Project Co’s rights and obligations under the Region Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) The Region shall promptly notify the Lenders’ Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. The Region shall notify the Lenders’ Agent, in writing, as to whether the person to whom the Lenders’ Agent proposes to transfer Project Co’s rights and liabilities under the Region Project Documents is approved by the Region as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by the Region of the Novation Notice and the date of receipt of any additional information requested by the Region. For greater certainty, if the Region fails to respond within such period, the Region shall be deemed not to have approved the proposed transferee.
- (c) The Region shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for the Region to withhold its approval if:
 - (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to the Region, acting reasonably, in respect of such breaches;
 - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or
 - (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the Region Project Documents or have the effect of increasing any liability of the Region, whether actual or potential.
- (d) If the Region withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders’ Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders’ Agent has good cause to believe will be acceptable to the Region, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.

- (e) On the Novation Date:
 - (i) Project Co and the Region will be released from their obligations under the Region Project Documents to each other, and the Suitable Substitute and the Region will assume those same obligations towards each other;
 - (ii) each of the rights of Project Co against the Region under the Region Project Documents and the rights of the Region against Project Co under the Region Project Documents will be cancelled, and the Suitable Substitute and the Region will acquire those same rights against each other;
 - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
 - (A) an agreement between the Region and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
 - (B) an agreement among the Region, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
 - (iv) any Failure Points and Warning Notices that arose prior to the Novation Date shall be cancelled, provided that, where the Region was entitled to make Deductions under Schedule 20 - Payment Mechanism arising from such Failure Points and Warning Notices and those Deductions have not yet been made against any payments to Project Co preceding the Novation Date, those outstanding Deductions shall still apply; and
 - (v) any subsisting ground for termination by the Region of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11. TRANSFERS

The Region shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

12. DIRECT AGREEMENTS

- (a) Notwithstanding any provision in the Direct Agreements, the Region hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Direct Agreements, except as provided in Sections 12(b) to 12(e) inclusive.

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- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, the Region shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Direct Agreements to step into and/or novate the Contracts in accordance with the Direct Agreements.
- (c) Following the Exercise Date, the Region shall not do anything to prejudice the rights which are not transferred to it pursuant to the Direct Agreements.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of any Contract assumed or novated by the Region pursuant to a Direct Agreement.
- (e) Notwithstanding the terms of the Direct Agreements and any other provisions of this Section 12, each of the Contractors (and any guarantors thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Contracts or any one of them in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, the Region shall not, prior to the date on which this Lenders' Direct Agreement terminates:
 - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Direct Agreements (and/or any of the Contracts) from the applicable Contractor;
 - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the applicable Contractor or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the applicable Contractor; or
 - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the applicable Contractor, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

The Region agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

13. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 13.

- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to the Region and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, the Region and the Lenders' Agent, each acting reasonably. The Region and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) The Region may assign, transfer or otherwise dispose of the benefit of the whole or part of this Lenders' Direct Agreement to any person to whom the Region assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and the Region of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lender's Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and the Region on substantially the same terms as this Lenders' Direct Agreement and Project Co and the Region shall enter into such new agreement with the assignee. Project Co and the Region shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

14. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Lenders' Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Lenders' Direct Agreement) and served by sending the same by registered mail or by hand, as follows:

If to the Region:

The Regional Municipality of Waterloo
150 Frederick Street, 4th Floor
Kitchener, Ontario
N2G 4J3

Fax: (519) 575-4494
Attn.: Lisa Buitenhuis, Acting Director,
Procurement and Supply Services

With a copy to the Region Representative at:

The Regional Municipality of Waterloo
50 Queen Street North, Suite 830
Kitchener, Ontario
N2H 6P4

Fax: (519) 745-4040
Attn.: Darshpreet Bhatti, Director, Rapid Transit

If to the Lenders' Agent:

BNY Trust Company of Canada
320 Bay Street, 11th Floor
Toronto, ON
M5H 4A6

Fax: (416) 360-1711
Attn.: Henry G. Hamilton II, VP

If to Project Co:

Plenary GrandLinq GP Inc.
Suite 2000-400 Burrard Street
Vancouver, British Columbia
V6C 3A6

Fax: (604) 638-3906
Attn.: Chief Financial Officer

With a copy to:

Meridiam Infrastructure Waterloo LRT ULC
357 Bay Street, Suite 501
Toronto, Ontario
M5H 2T7

Fax: (647) 347-8857
Attn.: Elisabeth Hivon

- (b) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 14(a) 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.
- (c) Subject to Sections 14(d) and 14(e):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) 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 by personal delivery in accordance with this Section 14.
- (e) 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 following Business Day.

15. AMENDMENTS

This Lenders' 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 Lenders' Direct Agreement.

16. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Lenders' 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.
- (b) 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.

17. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and

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employee, master and servant, or, except as provided in this Lenders' Direct Agreement, of principal and agent.

18. ENTIRE AGREEMENT

Except where provided otherwise in this Lenders' Direct Agreement, this Lenders' 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 Lenders' Direct Agreement.

19. SEVERABILITY

Each provision of this Lenders' Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lenders' 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 Lenders' Direct Agreement. If any such provision of this Lenders' 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 Lenders' Direct Agreement as near as possible to its original intent and effect.

20. ENUREMENT

This Lenders' 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.

21. GOVERNING LAW AND JURISDICTION

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario 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 Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

22. DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

23. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

24. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Lenders' 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.

25. COUNTERPARTS

This Lenders' Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Lenders' Direct Agreement which was so faxed.

26. CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 52 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information (as defined in the Project Agreement) as is necessary for the Lenders' Agent to comply with Applicable Law.

27. COPYRIGHT NOTICE

The Parties acknowledge that The Regional Municipality of Waterloo is the exclusive owner of copyright in the Project Agreement and this Lenders' Direct Agreement.

[This section intentionally left blank]

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

THE REGIONAL MUNICIPALITY OF WATERLOO

Per: _____

Name: Ken Seiling

Title: Regional Chair

I/We have authority to bind the corporation.

**BNY TRUST COMPANY OF CANADA, as Lenders'
Agent**

Per:

Name: Geralyn Krowles

Title: Authorized Signatory

I/We have authority to bind the corporation.

GRANDLINQ GP, by its general partners, PLENARY GRANDLINQ GP INC., MERIDIAM INFRASTRUCTURE WATERLOO LRT ULC, AECON GRANDLINQ GP INC., KIEWIT WATERLOO INVESTORS CORP. and KEOLIS WATERLOO GENERAL PARTNER INC.

PLENARY GRANDLINQ GP INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

MERIDIAM INFRASTRUCTURE WATERLOO LRT ULC

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

AECON GRANDLINQ GP INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

KIEWIT WATERLOO INVESTORS CORP.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

KEOLIS WATERLOO GENERAL PARTNER INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.