

THE CITY OF EDMONTON
PROJECT AGREEMENT
VALLEY LINE LRT – STAGE 1

Schedule 26

Representatives and Key Individuals

*Edmonton Valley Line LRT – Stage 1
Project Agreement – Execution Version
Schedule 26 – Representatives and Key Individuals
Date: February 8, 2016*

SCHEDULE 26

REPRESENTATIVES AND KEY INDIVIDUALS

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SCHEDULE 26

REPRESENTATIVES AND KEY INDIVIDUALS

PART 1: CITY'S REPRESENTATIVES

1.1 APPOINTMENT OF THE CITY'S REPRESENTATIVE

- (a) The City has appointed the City's Representative to act as its representative and agent in relation to the Project, including in relation to Design, Construction, Services, the financing of the Project, and all other aspects of the Project Work. The City's Representative shall be entitled to exercise the functions set out in Section 1.3 [*Functions of the City's Representative*] of this Schedule.
- (b) During any period when there is no City's Representative, the functions which would otherwise be performed by the City's Representative shall be carried out by such other person as the City may designate by notice to Project Co, and such other person shall be treated in all respects as the City's Representative under this Agreement during such period. The City shall use commercially reasonable efforts to give reasonable advance notice of any such designation to Project Co where practicable.
- (c) Except as expressly stated in this Agreement, the City's Representative does not have any authority to release or relieve Project Co of any of its obligations under this Agreement or any other the Project Document.
- (d) Project Co and Project Co's Representative, except as otherwise notified by the City to Project Co and subject to Section 1.1(e) of this Schedule, are entitled to treat any act of the City's Representative as being expressly authorized by the City, and shall not be required to determine whether any express authority has in fact been given to such individual.
- (e) Any decision by the City's Representative is specific to the circumstances to which it relates, and shall not be construed as binding on, or limiting any other decision to be made by, the City's Representative, whether in the same or similar circumstances or otherwise.
- (f) In the exercise of any of its functions the City's Representative may:
 - (1) refer any matter to the City or any other person contemplated in this Agreement for advice or determination;
 - (2) rely upon any advice received or determination made following a reference pursuant to Section 1.1(f)(1) of this Schedule;
 - (3) rely on any other advice that the City's Representative considers necessary or appropriate in the circumstances; and

(4) in accordance with, and subject to the limitations in, Section 1.4 [*Delegation*] below, designate any other person to attend any meeting, review, inspection, test or other activity that is permitted to be attended by the City under the terms of this Agreement.

(g) The City's Representative shall work together with Project Co's Representative in the spirit of partnering and cooperation in the administration of the Project Agreement.

1.2 CHANGE OF THE CITY'S REPRESENTATIVE

The City may at any time and from time to time by notice to Project Co terminate the appointment of the City's Representative or appoint one or more substitute City's Representatives or temporary "acting" City's Representative(s). Any such notice shall specify the effective date of such termination, appointment or substitution, and the City shall use commercially reasonable efforts to give reasonable advance notice of any such appointment to Project Co where practicable.

1.3 FUNCTIONS OF THE CITY'S REPRESENTATIVE

The functions which may be performed by the City's Representative under this Agreement include the following:

- (a) monitoring all aspects and activities of the Project, and Project Co's performance of the Project Work in accordance with the Project Requirements, by any means, including the system of inspection, testing, surveys, certification, review and audits set out in this Agreement;
- (b) attending site and other progress and technical meetings (including in the company of such other the City representatives, consultants, contractors, Governmental Authorities and/or advisors as the City's Representative considers appropriate) and receiving and reviewing records and reports;
- (c) monitoring and reviewing the obtaining and, where applicable, renewal or extension by Project Co, of Project Approvals, and the compliance by Project Co with Applicable Laws, Project Approvals and the Project Requirements;
- (d) requesting Changes, including Minor Works, in accordance with Schedule 13 [*Changes*], receiving and considering Innovation Proposals, in accordance with Section 6 [*Innovation Proposals*] of Schedule 13 [*Changes*], and negotiating and making all consequential decisions on behalf of the City, including issuing Change Enquiries and Change Directives, under Schedule 13 [*Changes*] and countersigning Change Order Confirmations, under Schedule 13 [*Changes*] in respect of such Changes and Innovation Proposals;
- (e) making and receiving claims in respect of Force Majeure Events pursuant to Section 12 [*Force Majeure*] or in respect of Relief Events pursuant to Section 13 [*Relief Events*], of

this Agreement, and negotiating and making all consequential decisions on behalf of the City in respect of such claims;

- (f) monitoring the performance by Project Co of Project Co's Environmental Obligations set out in Schedule 10 [*Environmental Performance Requirements*];
- (g) auditing and monitoring Project Co's implementation of, and compliance with, the Quality Management System and Quality Management Plan;
- (h) monitoring the Project Co implementation of, and compliance with, the Safety Management Plan;
- (i) inspecting and auditing the Records required to be retained pursuant to this Agreement;
- (j) performing all such functions as may be ascribed to the City's Representative under this Agreement or any other City Project Document, or otherwise under the Project Requirements;
- (k) receiving and dealing with all matters submitted to the Review Procedure or for information only pursuant to any provision of this Agreement or any other City Project Document or otherwise under the Project Requirements;
- (l) performing any other functions under this Agreement or any other City Project Document or otherwise under the Project Requirements, which are to be carried out by the City; and
- (m) performing such other functions in respect of this Agreement or any other the City Project Document as the City may notify to Project Co from time to time.

1.4 DELEGATION

- (a) The City's Representative may delegate any of its authorities, duties or functions under this Agreement to a designated City employee or representative by written notice to Project Co.
- (b) The City's Representative notice of delegation provided for above shall include the name of the committee or individual to whom the authority, duty or function has been delegated and the time frame or period to which this delegation shall extend.
- (c) The City's Representative may rescind, change, modify, supplement or terminate in whole or in part any delegation as contemplated by this Section 1.4 at any time by written notice to Project Co.

PART 2: PROJECT CO'S REPRESENTATIVES AND KEY INDIVIDUALS

2.1 PROJECT CO'S REPRESENTATIVE

- (a) Project Co shall appoint a competent and qualified person to act as its representative and agent in connection with the Project. Such appointment shall be subject to acceptance by the City's Representative, such acceptance not to be unreasonably withheld.
- (b) Project Co's Representative shall:
 - (1) be a Key Individual;
 - (2) serve as the single point of contact for Project Co to the City and the City's Representative for all purposes under this Agreement and all other the City Project Documents;
 - (3) be an employee of, or an independent contractor directly engaged by, Project Co, or an Affiliate of Project Co;
 - (4) subject to Section 2.2(a), be physically located and present within the Greater Edmonton area not less than 4 days of every week during the Term and at all times be available to meet in person within the City's Representative or designate on 24 hours notice; and
 - (5) devote all working time, energy and skill to the Project and to carrying out the duties of Project Co's Representative.
- (c) Project Co's Representative shall be directly responsible for and fully engaged in, and shall not, except in accordance with Section 2.2 [*Change of Project Co's Representative*] of this Schedule, abdicate or delegate to any other employee or representative of Project Co the performance of Project Co's obligations under this Agreement and the other City Project Documents and all aspects of the Project Work, including:
 - (1) the integrated project management and stewardship of Project Co, the Project Contractors, and of the Project Work; and
 - (2) the contract management of all Project Contractors and any Sub-Contractors contracting directly with Project Co, and the oversight of the contract management of all other Sub-Contractors, including addressing and communicating to the City's Representative any issues raised by the Project Contractors and the Sub-Contractors in respect of the Project Work.
- (d) Project Co's Representative shall have full authority to act on behalf of Project Co for all purposes of the Project, and the City and the City's Representative:
 - (1) are entitled to treat any act of Project Co's Representative in connection with this Agreement or any other the City Project Document as being expressly authorized

by Project Co, and shall not be required to determine whether any express authority has in fact been given to such individual; and

- (2) may refuse to recognize any act in connection with this Agreement or any other the City Project Document of any employee or representative of Project Co other than Project Co's Representative.
- (e) Project Co's Representative shall work together with the City's Representative in the spirit of partnering and cooperation.

2.2 CHANGE OF PROJECT CO'S REPRESENTATIVE

- (a) Project Co shall appoint, with the prior acceptance of the City's Representative, such acceptance not to be unreasonably withheld, a substitute Project Co's Representative to serve in the place and stead of Project Co's Representative during any temporary absence of Project Co's Representative to ensure that at all times during the Term there is an accepted Project Co's Representative available and located within the Greater Edmonton area on the basis described in Section 2.1 [*Project Co's Representative*].
- (b) The appointment of Project Co's Representative shall not be terminated for any reason without prior notice to and the prior acceptance, not to be unreasonably withheld, of the City's Representative to both such termination and to the appointment of a substitute Project Co's Representative, provided that, in the case of death, serious illness or resignation of Project Co's Representative, such notice to and acceptance by the City's Representative shall take place as soon as practicable upon Project Co's Representative ceasing to act.
- (c) For the purposes of this Section 2.2 the City will be deemed to be acting reasonably in withholding its consent to the proposed termination and change to the Project Co's Representative if the qualifications, work experience; and other credentials are not at least substantially equivalent to those of the City approved Project Co Representative by reference RFQ and RFP submission material and City reference checks in respect of the initially approved appointee.
- (d) Project Co Representative cannot and shall not delegate any of his or her authority or power under this Agreement, except where a delegation is expressly provided for by a specific provision of this Agreement; or by prior City agreement confirmed in writing by City.

2.3 KEY INDIVIDUALS

- (a) Project Co represents to the City that the following are the Key Individuals for the Project as at the Effective Date (for those positions noted with a TBD, the individual appointed will be confirmed according to the timing requirements set out in the paragraph that follows this list who will perform the functions generally described in the attached Appendix A, and as more specifically set out in this Agreement):

- (1) Project Co's Representative:
- (2) Finance Manager:
- (3) Design Manager:
- (4) Systems Integration Manager:
- (5) SUI Leader:
- (6) Construction Manager:
- (7) Asset Manager:
- (8) Operations Manager:
- (9) Environmental Manager:
- (10) Quality Director:
- (11) Communications Manager (Construction Period)
- (12) Safety Manager:
- (13) Communications Manager (Operating Period):

Subsequent Appointments: Not less than 18 Months before the Target Service Commencement Date, Project Co shall submit to the City's Representative, for acceptance, not to be unreasonably withheld, in accordance with the Review Procedure, Project Co's proposed *Asset Manager*.

Not less than 365 days before the Target Service Commencement Date, Project Co shall submit to the City's Representative, for acceptance, not to be unreasonably withheld, in accordance with the Review Procedure, Project Co's proposed *Operations Manager* and the *Communications Manager* (Operating Period).

For those Key Individual appointments to be made after the Effective Date as noted above with a "TBD", the individuals appointed must be the same individuals confirmed in the Proposal Extracts or a substitute approved by the City, where the City is satisfied, acting reasonably, that the substitute has qualifications, work experience; and other credentials are at least substantially equivalent to those individuals previously approved or selected by the City for the same Key Individual position by reference to RFQ and RFP submission material, City reference checks in respect of the initially or previously approved appointee and any stipulated qualification requirements set out in this Agreement.

- (b) For each of the Key Individuals referred to in Section 2.3(a), such Key Individual shall:
- (1) be an employee of, or an independent contractor directly engaged by, Project Co, an Affiliate of Project Co or a Project Contractor; and
 - (2) be specifically designated for the purpose of such role,

and Project Co shall not, without the prior acceptance of the City's Representative, such acceptance not to be unreasonably withheld:

- (3) change any such Key Individual or any such Key Individual's job specification or responsibilities, provided that in the case of death, serious illness or resignation of the Key Individual, Project Co shall: (i) use all reasonable efforts to retain a temporary replacement with similar qualifications and experience to the unavailable Key Individual, pending acceptance of a permanent replacement by the City's Representative; and (ii) seek the consent of the City's Representative to a permanent replacement, with substantially equivalent qualifications and experience to those of the Key Individual being replaced, as soon as practicable following the unavailability of such Key Individual; or
 - (4) permit any such Key Individual to be employed or engaged, as the case may be, by any person in connection with the Project other than Project Co Project Contractor or an Affiliate of Project Co.
- (c) For the purposes of this Section 2.3 the City will be deemed to be acting reasonably in withholding its consent or approval to the proposed termination and change to a Key Individual if the qualifications, work experience; and other credentials are not at least substantially equivalent to those individuals previously approved or selected by the City for the same Key Individual position by reference to RFQ and RFP submission material, City reference checks in respect of the initially or previously approved appointee and any stipulated qualification requirements set out in this Agreement. If there is a Dispute in respect of whether the City is acting reasonably or not for any particular decision, Project Co shall defer making the proposed appointment, change or substitution until the Dispute has been resolved in accordance with the Dispute Resolution Procedure.

Subject to any specific provisions in respect of a Key Individual set out in this Agreement to the contrary and to Section 2.3(a), the following Key Individuals:

- (1) Project Co's Representative – Section 2.3(a)(1);
- (2) Finance Manager – Section 2.3(a)(2);
- (3) Environmental Manager – Section 2.3(a)(9);
- (4) Quality Director – Section 2.3(a)(10)(10); and
- (5) Safety Manager – Section 2.3(a)(12),

shall be required at all times during the Term. Subject to Section 2.3(d) of this Schedule, the remaining Key Individuals shall be required during the period from the Effective Date, or such later date as specified in Section 2.3(a) of this Schedule, to the Service Commencement Date, and any subsequent period during which any construction activities or any design in respect thereof are being carried out pursuant to this Agreement.

- (d) Subject to any specific provisions in respect of a Key Individual set out in this Agreement to the contrary, except for the Finance Manager the Key Individuals shall substantially perform their duties and work activities at Project Co's main project office located in Edmonton or at a site within the Lands (minimum of 4 days per week on average), during the period from the Effective Date, or such later date as specified in Section 2.3(a) of this Schedule, to the Service Commencement Date.

The following Key Individual positions:

- (1) Design Manager – Section 2.3(a)(3);
- (2) Systems Integration Manager – 2.3(a)(4);
- (3) SUI Leader – 2.3(a)(5);
- (4) Construction Manager – 2.3(a)(6); and
- (5) Communications Manager (Construction Period) – 2.3(a)(11),

shall be filled until the later of: (i) the third anniversary of the Service Commencement Date; and (ii) the date on which all Deficiencies and Early Handover Deficiencies identified in the applicable deficiency lists have been rectified.

The following Key Individual positions:

- (6) Asset Manager – Section 2.3(a)(7);
- (7) Operations Manager – 2.3(a)(8); and
- (8) Communications Manager (Operating Period) – 2.3(a)(13),

shall be filled from required date of appointment, as set out in Section 2.3(a), until end of the Term.

- (e) All Key Individuals shall be instructed and enabled by Project Co to act in a fair and impartial manner in carrying out their roles.
- (f) Subject to any specific provisions in respect of a Key Individual set out in this Agreement to the contrary, during the period from the Effective Date, or such later date as specified in Section 2.3 of this Schedule, to the end of Term, or such earlier date as specified in

Section 2.3 of this Schedule, a Key Individual, may undertake more than one Key Individual position if and to the extent only approved by the City in its discretion and only to the extent that such multiple roles do not compromise the ability of such person to effectively carry out the responsibilities of each Key Individual position so undertaken.

- (g) Subject to any specific provisions in respect of a Key Individual set out in this Agreement to the contrary, if any individual assumes with City approval the roles and responsibilities of more than one Key Individual position, that individual must either personally possess the necessary qualifications or at a minimum have immediate and direct access to Project Co Person resources that do possess these qualifications.

APPENDIX 26A

KEY INDIVIDUALS – OVERVIEW OF RESPONSIBILITIES

- **Project Co Representative**: that Key Individual that has day-to-day responsibility for ensuring that Project Co fulfills its on-going obligations to the City as specified in the Project Agreement through the entire Term and is also responsible for:
 - managing the Project Co relationships with its Subcontractors,
 - on-going communications with the City, and
 - communications with key stakeholders.
- **Finance Manager**: the Key Individual that is responsible for developing the financing plan and for arranging the private financing requirement of the Project. The financing plan may include both equity and debt and must address the financing during both the Construction Period and the Operating Period.
- **Design Manager**: the Key Individual that is responsible for managing and coordinating all of the Design work and reports directly to the other discipline leads as part of Project Co insofar as it relates to the design development.
- **Systems Integration Manager**: the Key Individual that is responsible for implementing and managing all system engineering processes to ensure that the multi-discipline works and subsystems, when integrated, will produce an LRT system that meets the technical performance and safety objectives of the Project. The system engineering processes shall include such items as Requirements Management, configuration management, Interface Management, Reliability, Availability and Maintainability (RAM) Analysis, safety assurance and certification, and Integration testing and demonstration.
- **SUI Leader**: the Key Individual that is responsible for developing, implementing and integrating the SUI principles and architectural considerations into the full Project design and more broadly tasked with ensuring those principles are carried through to detailed design and Construction. Such Key Individual will be instrumental in ensuring that the design solution meets and exceeds the City's expectations for SUI for the Project.
- **Construction Manager**: the Key Individual that is responsible for managing all of the Construction work, including all Construction and system installation related activities for the Project, maintaining vehicular traffic during Construction, Construction in a constrained urban environment, including coordination with other projects, Other Contractors, URP Companies and Governmental Authorities.
- **Asset Manager**: the Key Individual that is responsible for managing all of the LRV, systems, structures and right-of-way, Maintenance activities, including development of the final maintenance management and major replacement and rehabilitation plans, scheduled routine and unscheduled emergency maintenance, major replacement and rehabilitation program implementation, and development and operation of the maintenance management and asset management information systems.
- **Operations Manager**: the Key Individual that is responsible for managing all of the Operations activities, including development of the initial operations plan and revisions to this plan, development of operations plans for Special Events / incident response / emergency operations, recruitment /

training / supervision of operations personnel, ensuring consistent high quality services, ensuring safety, and implementation of and on-going utilization of an operations reporting system.

- **Quality Director**: the Key Individual that is responsible for developing, implementing and maintaining, and ensuring the effective operation of, the Quality Management System; preparing Quality Audit Plans and scheduling and coordinating Quality Audits of key processes with Project Co and applicable Project Co Persons; developing and effectively maintaining an effective process for: Nonconformity identification and reporting and implementing Corrective Action and Preventive Actions; and carrying out any other matters which, in accordance with this Agreement, are the responsibility of the Quality Director.
- **Environmental Manager**: the Key Individual that is responsible for: (i) ensuring that Project Co and all Project Co Persons comply with Project Co's Environmental Obligations, (ii) overseeing and directing all aspects of Project Co's environmental program for the Project, including the development and implementation of all plans and procedures required to ensure such compliance and to monitor and verify such compliance, (iii) overseeing the environmental auditing program as required under Schedule 10 [*Environmental Performance Requirements*] and Schedule 9 [*Quality Management*], and (iv) for ensuring that all reports required under this Agreement with respect to compliance with Project Co's Environmental Obligations are prepared and delivered as required.
- **Communications Manager**: the Key Individual that is responsible for developing and implementing the Design & Construction Communications and Public Involvement Plan and the Operations & Maintenance Communications Plan. The Communications Manager may be either a full time role or a part time role, provided that such part time position does not impair or compromise the performance of the responsibilities required of the Communications Manager.
- **Safety Manager**: the Key Individual that is responsible for directing all aspects of Project Co's implementation and compliance with the Health and Safety Management System and the SMPs, including oversight of all worksite safety inspections, independent audits and other safety audits; ensuring occupational health and safety and public safety issues are addressed and requirements are met, in accordance with this Agreement and the Health and Safety Management System; and managing all occupational health and safety issues associated with the Project on a day-to-day basis.