

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

Schedule 27

Expansion Protocols

***Edmonton Valley Line LRT – Stage 1
Project Agreement – Execution Version
Schedule 27 – Expansion Protocols
Date: February 8, 2016***

SCHEDULE 27
EXPANSION PROTOCOLS
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SCHEDULE 27

EXPANSION PROTOCOLS

1. Background

- (a) The purpose of this Schedule 27 [*Expansion Protocols*] is to set out a framework of protocols to be followed by the City and Project Co in addressing and accommodating a New Line that the City may decide to undertake in circumstances where the New Line may interconnect or interface with the Project in a material manner at some time during the Term.
- (b) The contractor work for a New Line is deemed to be out of scope of this Agreement unless the City and Project Co mutually agree otherwise at the time of the City's decision to proceed with the New Line project.
- (c) Project Co and the City do however have certain notification, integration and interface obligations in relation to a potential New Line as set out in this Schedule 27 [*Expansion Protocols*].

2. New Line Decision Making

- (a) The City makes no representations and provides no assurances whatsoever about the possibility of, or its plans for, any New Line, including Valley Line Stage 2.
- (b) Project Co acknowledges that it has no preferential rights of any kind, whether in the nature of an option or first opportunity to submit a bid or a proposal or to express interest in providing services, equipment or supplies, or to otherwise undertake any work in respect of a New Line except as set out in this Schedule 27 [*Expansion Protocols*].
- (c) Any decisions regarding a New Line, including all aspects of the interfacing and integration with the Infrastructure or System, will be made solely by the City in its discretion.

3. Notifications and Consultations

- (a) Subject to any applicable confidentiality constraints, the City will endeavour to keep Project Co reasonably informed in a timely manner of City plans for a New Line that may have a material impact on the Infrastructure or System through required interfacing, integration of operations or otherwise.
- (b) The City will set out in its notifications the proposed scope and timing of the planned New Line and its expected impact on and planned integration and interfacing with the Infrastructure or System.
- (c) Within 21 days of receipt of the aforesaid City notification Project Co will organize a meeting between the City's Representative and Project Co's Representative (or their

designates) for the purpose of engaging in meaningful discussions regarding: (i) possible Project Co, Project Contractor or other Team Member (as such term is defined in the RFP), interest in undertaking some or all of the work for the New Line; (ii) the status of City procurement plans, if any, for the New Line; and (iii) the scope and nature of the integration and interfacing impacts and requirements of the New Line in relation to the Infrastructure and System.

- (d) Subject to applicable procurement laws, policies, guidelines or required process protocols of, either Party that may apply, the time frames and scope of consultation required to be carried out by Project Co will be a function of the scope and timing of the planned interfacing and integration impacts, and the City and Project Co are each required to use reasonable commercial efforts to diligently engage in meaningful and timely discussion and consultation to prudently assess and plan for the integration and interfacing of the New Line with the Infrastructure and System.
- (e) The foregoing preliminary consultation activity (not to exceed in aggregate 250 hours of Key Individual time, including review, preparation and consultation time) is deemed to be in-scope Project Work under this Agreement, but any City request to Project Co to prepare and deliver interface or integration plans or drawings or related work will be considered a Change, unless otherwise agreed by the City and Project Co;

4. Alternative Procurements for the New Line

- (a) Project Co acknowledges that the City has not made any decisions at this time to proceed with any New Line anywhere in the City and that in respect of Valley Line Stage 2, only a preliminary reference and concept plan has been considered and approved for further planning and investigation purposes.
- (b) Project Co acknowledges that the City has the sole discretion to proceed or not with a New Line that may interface with the System, and if the City decides to proceed according to whatever procurement alternative the City may decide is in the best interests of the City at the time and that these options may include:
 - (i) an open competitive procurement for any or all aspects of the New Line;
 - (ii) the consideration of different procurement models ranging from a public private partnership model similar to this Project to a traditional design bid build procurement for some or all components of the required work and other models or variations;
 - (iii) a possible sole sourcing on negotiated terms for all or certain aspects of the New Line work;
 - (iv) a possible open competitive procurement for all material work and services in relation to an integrated combined operation involving both the System and the New Line;

- (v) a possible open competitive procurement for a combination of certain components of the System and the New Line project (an example could be combining the Services activities and performance requirements); or
 - (vi) possible procurement of Project Co, a Project Contractor or other Team Member, to lead, manage or support the City's procurement of specified components of the New Line.
- (c) The City has the right in its discretion to terminate in whole or part the Agreement to accommodate and facilitate the procurement option it may choose for the New Line work or components of it. The City will be obligated to compensate Project Co in respect such early terminations in accordance with Section 18 [*Termination Payments*] of the Agreement, with such adjustments to the Termination Payment amounts as are fair and equitable to Project Co having regard to the scope of termination.
- (d) Project Co acknowledges that the City may have to designate that Project Co, a Project Contractor or other Team Member (as defined in the RFP), be a restricted party that is not permitted to bid or otherwise participate in an open competitive procurement – for all or certain components of a New Line project in order to establish a fair and properly competitive procurement in the best interests of the City. For clarity, it is not the City's intent to exclude from a competitive procurement a Team Member who is a relatively passive equity investor in Project Co, or to exclude a Subcontractor, with a relatively minor or limited scope of active participation in the Project. In making its determination as to which Team Member or Subcontractor should be restricted, the City will be substantially guided by their assessment of each Team Member's or Subcontractor's scope of access to confidential information in relation to the Project Work.

5. Possible Procurement of Project Co for a New Line Project

- (a) As contemplated by Section 4 [*Alternative Procurements for the New Line*] above, the City may in its discretion determine that it is in the overall best interests of the City to investigate and possibly proceed with a sole source procurement option with Project Co or certain Project Contractors for all or certain components of the New Line project.
- (b) If the City decides to proceed on this basis the City would be compelled to establish a business case demonstrating positive value to the City in support of this procurement approach and Project Co would likely be requested to provide a proposal to the City with this objective in mind. In this context, positive value to the City would include factors such as cost, schedule, overall system integration, passenger experience, service performance and such other factors as the City, in its discretion, considers appropriate.
- (c) If the City decides to proceed on this basis and Project Co or one or more Project Contractors or other Team Members, is interested in pursuing this opportunity, these interested parties will proceed to diligently work cooperatively together to establish time frames and protocols for the purpose of organizing and facilitating Project Co (or

designated Project Contractors or other Team Members) submitting and the City considering proposals in relation to the New Line.

- (d) The City and Project Co will discuss and negotiate the Project Co. or Project Contractor, proposal for a set period of time not to exceed 90 days and the City will then make a decision about whether and how to proceed.
- (e) The City is not bound in any way to accept any proposal or to compensate Project Co for preparing any proposal and the Schedule 13 [*Changes*] provisions do not apply to this possible discussion, negotiation or request for proposal for this out of scope New Line work.

6. Interface and Integration Obligations

- (a) In addition to the preliminary consultation described in Section 3(e), Project Co is obligated to use reasonable commercial efforts to work cooperatively with the City and any new contractor or supplier who may be engaged by the City in respect of a New Line (in this Schedule a "**New Contractor**"), which New Contractor would be an Other Contractor for the purposes of this Agreement, to facilitate and support the proper interfacing and integration of the Project with the New Line project and operations;
- (b) This Project Co support shall include City requested consultation, instruction and training from designated Project Co Persons, including Project Co and Subcontractor personnel, in respect of engineering designs, IT systems operating plans, integration plans, operations/maintenance coordination and interface requirements and such other similar support as may be reasonably required by the City.
- (c) Project Co will be paid on a time and materials basis for integration and interface support work to be mutually agreed to at the time between the City and Project and according to the principles and protocols of Schedule 13 [*Changes*].
- (d) The Licenses granted by Project Co to City pursuant to Schedule 8 [*Intellectual Property*] provide the City the right to use the System components (including technology and Intellectual Property encompassed therein) to the extent necessary to ensure that the New Line project properly interfaces and inter-operates with the Project so that they operate together as one, unified system. Elements of the License are as follows:
 - (i) the license includes the right to do virtually anything with a System component that the owner of that System component and the Intellectual Property Rights therein could do, including the right to use, modify, adapt, integrate, create interfaces and derivative works, and do other things, as long as all such things are done for the purpose of integrating the System and the New Line project.
 - (ii) the Licenses require Project Co to provide all documentation and information necessary to permit the City to exercise these rights.

7. Relief Event

- (a) Subject to Section 3(e) and Section 6(c) of this Schedule, to the extent, and for so long as, a New Line prevents, hinders or delays Project Co's performance of the Project Work (including the Services) Project Co may claim a Relief Event in accordance with Section 13.4 [*Procedure on Relief Event*] of the Agreement.