

**SCHEDULE 38
EXTENSION AND ADDITIONAL PHASES****ARTICLE I
DEFINITIONS****1.1 Definitions**

In this Schedule 38, unless the context otherwise requires:

- (a) “**Additional Vehicles**” has the meaning given in Schedule 35 – Additional Vehicles.
- (b) “**City Extension Requirements**” means the proposal delivered by the City pursuant to Section 2.2(c).
- (c) “**Extension Contractor**” means a Person engaged by the City to perform any part of a System Extension, which Person may or may not be Project Co.
- (d) “**Extension Lenders**” means any Person or Persons who provide financing to an Extension Contractor or to Project Co in respect of a System Extension, and, where the context so permits, prospective financiers or lenders.
- (e) “**Extension Maintenance Services**” means the maintenance and other work to be performed and services to be provided in respect of a System Extension as set out in the City Extension Requirements.
- (f) “**Extension Notice Response**” means the response delivered by the Project Co pursuant to Section 2.2(b).
- (g) “**Extension Permits, Licences and Approvals**” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations needed to complete a System Extension described in the City Extension Requirements in accordance with Applicable Law.
- (h) “**Extension Work**” means the design, construction, installation, testing, commissioning and completion of a System Extension, including rectification of any Extension Work Minor Deficiencies, and any other activities required to enable or facilitate the commencement of the Extension Maintenance Services.
- (i) “**Extension Work Minor Deficiencies**” means any defects, deficiencies and items of outstanding work which would not materially impair the City’s use and enjoyment of the System Extension.
- (j) “**Integrated System Extension**” means the development, testing, commissioning and certification (including safety recertification in order to satisfy the Safety Management Plan) of additional facilities, Infrastructure, electrical and mechanical equipment, computer hardware and systems, including communication and control systems, in order to connect with the System such that the Vehicles and all other components of the

System, as extended by the Integrated System Extension, function together as one coherent fully integrated system.

- (k) **“Notice of Extension”** means the notice delivered by the City pursuant to Section 2.2(a).
- (l) **“Non-Integrated System Extension”** means the development, testing, commissioning and certification (including safety recertification in order to satisfy the Safety Management Plan) of additional facilities, Infrastructure, electrical and mechanical equipment, computer hardware and systems, including communication and control systems, in order to form a transit system that connects with the System at a single interchange point such that the Vehicles and other components of the System do not form part of a coherent integrated system with the extended transit system.
- (m) **“Option Term”** has the meaning given in Schedule 35 – Additional Vehicles.
- (n) **“Project Co Extension Proposal”** means the proposal delivered by Project Co pursuant to Section 2.2(d).
- (o) **“Reciprocal Agreement”** means the agreement to be executed in the event of a Non-Integrated System Extension as described in further detail in Section 3.1(e).
- (p) **“System Extension”** means either an Integrated System Extension or a Non-Integrated System Extension.

ARTICLE II SYSTEM EXTENSION

2.1 System Extension

- (a) The City and Project Co acknowledge that the City may, in its Discretion, elect to pursue one or more System Extensions during the Project Term. The City may pursue any System Extension through an Extension Contractor or through a negotiated agreement with Project Co in accordance with this Schedule 38. In the event the City elects to engage an Extension Contractor, the City may decide which Persons are eligible for consideration, and such Persons may or may not include Project Co or any of the Contractors, in the City’s Discretion, and the City may use any form of competitive procurement, sole-source contract, lease or transaction structure that the City in its Discretion decides. If the City elects to negotiate an agreement with Project Co, the Parties shall follow the process set out in Section 2.2.
- (b) The City may in its Discretion elect to implement a System Extension by way of a Variation in which case Section 39.1 of the Project Agreement and the provisions of Schedule 22 – Variation Procedure shall apply in respect of such System Extension.
- (c) The City may in its Discretion elect to procure or negotiate, as the case may be, the performance of Extension Work and Extension Maintenance Services in

respect of a System Extension through consolidated or separate procurements or negotiations.

- (d) For clarity, the City may pursue a System Extension at any time or times pursuant to any of the alternatives set out in this Section 2.1 in its Discretion. In the event the City has elected to pursue a System Extension in accordance with this Section 2.1, the City may, at any time prior to entering into a binding agreement in respect of the System Extension, in its Discretion, elect to cease pursuing the System Extension under the chosen alternative and pursue the same System Extension under a different alternative process.

2.2 Negotiation between the City and Project Co of Extension Work and/or Extension Maintenance Services

- (a) If the City notifies Project Co that it wishes to negotiate with Project Co to perform Extension Work and/or Extension Maintenance Services, the City shall provide Project Co with a Notice of Extension which will include information respecting the project, including:
 - (i) a description of the scope of the Extension Work and/or the Extension Maintenance Services, as applicable;
 - (ii) preliminary “term sheet level” output specifications for the Extension Work and/or the Extension Maintenance Services, as applicable, including: details with respect to alignment, number of stations, length of track (in kilometres), modelling results and performance expectations with respect to the System Extension, as-builts for Existing Infrastructure and utilities, condition reports, results of environmental assessments, development plans, stakeholder engagement information, E&M requirements specific to the System Extension, location and capacity requirements of any maintenance and storage facilities, and
 - (iii) a preliminary schedule and required timelines for completion of the Extension Work and/or the Extension Maintenance Services, as applicable.
- (b) Within a period of 30 days after the date of receipt of the Notice of Extension, Project Co shall deliver to the City its Extension Notice Response advising the City whether or not Project Co desires to proceed to the next stage of negotiation with the City in respect of the System Extension. In the event Project Co desires to proceed, Project Co shall, within a period of 60 days after the delivery of its Extension Notice Response, deliver to the City a preliminary cost estimate and schedule for the Extension Work and/or the Extension Maintenance Services, as applicable.
- (c) If the City elects, in its Discretion, to continue to consider Project Co for the Extension Work and/or the Extension Maintenance Services, as applicable, the City shall within a period of 120 days after the date of receipt of Project Co’s

Extension Notice Response, deliver its City Extension Requirements. The City Extension Requirements (which shall be non-binding on the City) shall include:

- (i) a draft heads of terms agreement for the Extension Work and/or the Extension Maintenance Services, as applicable;
 - (ii) draft output specifications and commissioning processes for the System Extension;
 - (iii) draft “term sheet level” parameters of the payment mechanism to be used in respect of the Extension Work and/or the Extension Maintenance Services; and
 - (iv) guidelines with respect to the structure of construction or permanent financing to be secured by Project Co;
- (d) Within a period of 150 days after the date of receipt of the City Extension Requirements, Project Co shall deliver to the City the Project Co Extension Proposal which shall be non-binding on Project Co. The Project Co Extension Proposal shall include:
- (i) a detailed cost estimate and construction schedule in respect of the Extension Work and/or the Extension Maintenance Services, as applicable;
 - (ii) any impact the Extension Work and/or the Extension Maintenance Services, as applicable, would have on Project Co’s activities under the Project Agreement, including, if applicable, any schedule impact on the provision of the System or the Highway, and completion of the Design and Construction Works or the Highway Work;
 - (iii) any impact on expected usage of utilities, including those identified in Schedule 20 – Payment Mechanism, for the current Contract Year and subsequent Contract Years;
 - (iv) any contemplated amendments to the Project Agreement to coordinate the Extension Work and/or the Extension Maintenance Services, as applicable, with Project Co’s obligations in respect of the Project Scope;
 - (v) the expected Direct Costs of Project Co and each Subcontractor that will be incurred in respect of the Extension Work and/or the Extension Maintenance Services, as applicable, including:
 - (A) any Capital Expenditure that will be incurred; and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co’s cash flows from incurring, reducing or avoiding such costs;

- (vi) preliminary terms of the financing structure specified in the City Extension Requirements;
- (vii) Project Co's confirmation that the projected internal rate of return on any equity capital required in respect of the Extension Work and/or the Extension Maintenance Services, as applicable, will be the Base Case Equity IRR;
- (viii) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the Extension Work and/or the Extension Maintenance Services, as applicable; and
- (ix) any Extension Permits, Licences and Approvals that must be obtained or any Permits, Licences and Approvals amended for the Extension Work and/or the Extension Maintenance Services, as applicable, to be implemented;

in each case, together with such supporting information and justification as is reasonably required.

- (e) In preparing the Project Co Extension Proposal, Project Co shall include sufficient information to demonstrate to the City's satisfaction, acting reasonably, that:
 - (i) Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders to minimize costs in respect of the System Extension;
 - (ii) except as otherwise set out herein, all costs of Project Co and each Subcontractor are limited to Direct Costs;
 - (iii) Project Co and any Subcontractor shall charge only the margins for overhead and profit as set out in Appendix B to Schedule 22 – Variation Procedure (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co or any Subcontractor is calculated on any other margin under the Project Agreement of Project Co or any Subcontractor), and no other margins or mark ups;
 - (iv) the margins for overheads and profit as set out in Appendix B to Schedule 22 – Variation Procedure as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by any Subcontractors;
 - (v) all costs of completing the Extension Work and/or the Extension Maintenance Services, as applicable, including Capital Expenditures,

reflect labour rates applying in the open market to providers of services similar to those required for the Extension Work and/or the Extension Maintenance Services, as applicable;

- (vi) Project Co has mitigated or will mitigate the impact of the Extension Work and/or the Extension Maintenance Services, as applicable, including on the Works Schedule, the Highway Construction Schedule, the performance of the activities within the Project Scope, the expected usage of utilities, and the Direct Costs to be incurred; and
 - (vii) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required in respect of the Extension Work and/or the Extension Maintenance Services, as applicable, and will comply with all Good Industry Practice (Works) in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to the City, including using commercially reasonable efforts to mitigate such costs.
- (f) Subject to Section 2.2(g), as soon as practicable after the receipt of the Project Co Extension Proposal, the City and Project Co shall, in good faith and acting reasonably, negotiate the terms of the binding agreement for the performance of the Extension Work and/or Extension Maintenance Services as applicable, as well as any necessary amendments to the Project Agreement, based on the contents of the City Extension Requirements and the Project Co Extension Proposal.
- (g) Notwithstanding anything contained in this Schedule 38, except as may be the subject matter of a competitive procurement process, no agreement relating to the subject matter of this Schedule 38 shall be effective unless entered into in writing by each of the Parties and the entering into of same shall be subject to each Party's Discretion. Either Party may in its Discretion elect to cease negotiations at any time in the process set out in this Section 2.2 prior to the signing of such written agreement.

2.3 System Extension during Option Term

- (a) If the City elects to proceed with a System Extension during the Option Term, the provisions of Schedule 35 – Additional Vehicles shall apply with respect to any Additional Vehicles that are required as a result of the System Extension.

ARTICLE III PROJECT CO COOPERATION

3.1 Project Co Cooperation with the City and Interface with an Extension Contractor

- (a) In the event the City pursues a System Extension with an Extension Contractor, Project Co shall use commercially reasonable best efforts to provide such

assistance to the City as the City may request, acting reasonably. Such assistance shall include but is not limited to:

- (i) the development of technical specifications in respect to the Extension Work or the Extension Maintenance Services, as applicable, and the evaluation of designs proposed by prospective Extension Contractors to ensure compatibility with the Fixed Facilities, E&M, MSF, Vehicles and any Additional Vehicles already supplied, and other items as specified by the City;
- (ii) permitting the City access to relevant information respecting Fixed Facilities, E&M, MSF, Vehicles and any Additional Vehicles already supplied, and other items as specified by the City;
- (iii) advising the City on potential modifications to the Extension Work or the Extension Maintenance Services, as applicable, that could result in cost savings or other benefits to the City (If Project Co identifies any cost savings to the Maintenance Services or the Extension Maintenance Services, such savings shall be shared equally by the City and Project Co by way of an adjustment to the Monthly Service Payments); and
- (iv) the development of an interface protocol between the City, Project Co and the Extension Contractor.

The City and Project Co's obligations under this Section 3.1(a) shall be subject to and in accordance with the provisions of Schedule 41 – Intellectual Property.

- (b) The City shall pay Project Co reasonable consulting fees in respect of the assistance Project Co provides pursuant to this Section 3.1. Such consulting fees shall be paid within 30 days of receipt of an invoice from Project Co. Each Project Co invoice shall set out in reasonable detail, the nature of assistance provided in the invoice period, the personnel involved and the time committed by Project Co personnel in respect of such assistance.
- (c) As soon as practicable after the City provides notice to Project Co that the City has reached a binding agreement with an Extension Contractor, the City and Project Co shall meet with the Extension Contractor and, in good faith and acting reasonably, negotiate and execute an interface agreement and/or construction procedures agreement to govern matters relating to the coordination of Project Co's activities in respect of the Project Scope and the Extension Contractor's activities relating to the Extension Work and/or the Extension Maintenance Services as applicable. The City shall also include, in its agreement with any Extension Contractor, an obligation on the Extension Contractor to negotiate with the City and Project Co in the terms of the interface agreement and/or construction procedures agreement in good faith and acting reasonably.

- (d) In the event of an Integrated System Extension, the agreement to be negotiated between the City, Project Co and the Extension Contractor pursuant to Section 3.1(c) shall include provisions related to:
- (i) the rights and obligations of the City, Project Co and the Extension Contractor in respect of the physical linking, testing and commissioning, safety and system certification of the System and the Integrated System Extension;
 - (ii) commissioning requirements with respect to Additional Vehicles and the extended lines;
 - (iii) a protocol with respect to the testing of the entire System and Integrated System Extension to ensure integration and ability for the operation of the entire line as contemplated in the Output Specifications and the final output specifications developed in respect of the Integrated System Extension; and
 - (iv) provision for the sharing of the MSF if the City so requires in which case Project Co shall be entitled to a reasonable fee as negotiated between the parties in good faith and acting reasonably.
- (e) In the event of a Non-Integrated System Extension, the City, Project Co, the Lenders, the Extension Contractor, and the Extension Lenders shall execute a reciprocal agreement in a form to be agreed to between the parties acting reasonably and negotiating in good faith (the “**Reciprocal Agreement**”). The Reciprocal Agreement shall govern the rights of the parties in respect of the station, Infrastructure or other location on the System which has an interchange point with the Non-Integrated System Extension and shall govern matters such as:
- (i) reciprocal easements or other rights-of-access;
 - (ii) appropriate cost sharing arrangements;
 - (iii) sharing of information;
 - (iv) decision making process regarding matters affecting the interchange between the System and the Non-Integrated System Extension; and
 - (v) mutual repair obligations of structural or other elements in common between the System and the Non-Integrated System Extension.