

SCHEDULE 39

OPERATIONS MATTERS

1. DEFINITIONS

The following definitions shall have the following meanings:

- 1.1 “**Aggregate Actual Annual Driver Hours**” or “**AAADH**” means, in a given Contract Year, the actual number of Driver Hours required in that Contract Year for operation of the Vehicles in accordance with the then-current Operations Service Plan, as adjusted in accordance with Section 6 of this Schedule 39.
- 1.2 “**Aggregate Annual Driver Hours Target**” or “**AADHT**” means the total forecasted annual amounts of Driver Hours, set forth in the Annual Driver Hours Target Letter submitted by Project Co at Commercial Close and which has been accepted by the City, and as amended over the term of the contract, as may be required, in accordance with the terms of the Project Agreement and Section 6 of this Schedule. The AADHT shall include and account for all requirements of the Operations Service Plan, and Schedule 15 – Output Specifications of the Project Agreement.
- 1.3 “**Annual Driver Hours**” means in respect of a Contract Year, the amount of Driver Hours in that Contract Year.
- 1.4 “**Annual Driver Hours Adjustment**” or “**ADHA**” means the amount determined in accordance with Section 7 of this Schedule 39.
- 1.5 “**Annual Driver Hours Analysis Report**” has the meaning given to it in Section 4 of this Schedule 39.
- 1.6 “**Annual Driver Hours Target Letter**” means the letter submitted by Project Co at Commercial Close setting forth the AADHT for each Contract Year, as amended in accordance with the terms of this Schedule 39.
- 1.7 “**Annual Review Meeting**” means meetings between the City Representative and the Project Co Representative to be held within 90 days of completion of each anniversary of the Revenue Service Availability Date (or other date as may be agreed between the City and Project Co) to discuss Annual Driver Hours.
- 1.8 “**Driver Hours**” means the number of person-hours logged by Drivers of the Vehicles, while the Vehicles are in Revenue Service.
- 1.9 “**High Cost Measures**” means, in respect of a Contract Year, Annual Driver Hours saving measures that incur capital expenditure greater than 33% of the Annual Driver Hours savings cost.
- 1.10 “**Interactive Spreadsheet**” means the Excel spreadsheet attached as Appendix B to this Schedule 39, as amended in accordance with Section 6.

- 1.11 “**Low Cost Measures**” means, in respect of a Contract Year, Annual Driver Hours saving measures that incur capital expenditure less than 33% of the Annual Driver Hours savings cost.
- 1.12 “**No Cost Measures**” means, in respect of a Contract Year, Annual Driver Hours saving measures, involving no material additional expenditure and/or no capital expenditure to carry out.
- 1.13 “**Operational Performance Simulation**” or “**OPS**” means the simulation model developed by Project Co in accordance with the requirements of Part E to Schedule 3(1) to the RFP, and attached hereto as Appendix B.
- 1.14 “**Unit Rate Price Driver Hour**” means fifty dollars (\$50), indexed to the Inflation Index in accordance with the escalation methodology set out in Schedule 20 (Payment Mechanism).
- 1.15 “**Operating Performance Parameters**” means the inputs provided by Project Co to the Interactive Spreadsheet at the RFP Submission Date, being drivers per train, vehicle capacity (seats per car and standing room per car), cars per train at peak and off-peak periods, and terminal to terminal run time.

2. INTENT AND PURPOSE

- 2.1 The intent of this Schedule 39 (Operations Matters) is to provide a mechanism for holding Project Co accountable throughout the Maintenance Term for the design solution and the associated Operating Performance Parameters it has represented in its Response, through the annual benchmarking of the AAADH against the AADHT.
- 2.2 The Parties intend to adjust the AADHT and/or AAADH as required during the Maintenance Term, in order to account for changes in the Operations Service Plan, and other changes in operational practices or policies. The Parties shall make adjustments to the AADHT in accordance with Section 6.
- 2.3 During any adjustments to the AADHT, the Operating Performance Parameters shall at all times be held constant, unless the Parties mutually agree to change the Operations Performance Parameters.

3. ANNUAL DRIVER HOURS TARGET LETTER

- 3.1 At Commercial Close, Project Co shall deliver to the City the Annual Driver Hours Target Letter in form and substance satisfactory to the City. The Annual Driver Hours Target Letter shall reflect the development of the design, the OPS, and ridership and capacity targets over the Maintenance Term. The Annual Driver Hours Target Letter shall not differ in any material respect from the draft Annual Driver Hours Target Letter provided in Project Co’s Response, unless such variation is approved by the City.
- 3.2 Project Co shall deliver to the City for review in accordance with Schedule 10 – Review Procedure, an updated final Annual Driver Hours Target Letter together with a

supporting OPS six (6) months prior to the Revenue Service Availability Date. Any changes to the Annual Driver Hours Target Letter after Commercial Close and prior to the Revenue Service Availability Date are subject to the approval of the City and must be arising from either:

- (a) Project Co changes to the Operating Performance Parameters which have been approved by the City; or
- (b) Changes to the Operations Service Plan, and for clarity, the Operating Performance Parameters may not be changed in this circumstance unless approved by the City.

3.3 Following submission of the updated final Annual Driver Hours Target Letter, the Annual Driver Hours Target Letter may only be amended in accordance with the process set out in Section 6 of this Schedule 39.

4. PROCEDURES FOR DETERMINING ANNUAL DRIVER HOURS ADJUSTMENT

4.1 The measurement and verification of Annual Driver Hours shall be performed by Project Co and verified by the City.

4.2 No less than 30 days prior to the Revenue Service Availability Date, Project Co shall provide the City with an Annual Driver Hours Measurement and Verification Plan. All subsequent Annual Driver Hours Analysis Reports are to be based on this plan.

4.3 Project Co shall provide the City with a draft Annual Driver Hours Analysis Report within 60 days following the end of each Contract Year, which report shall include copies of all documents to fully support the draft Annual Driver Hours Analysis Report. The draft Annual Driver Hours Analysis Report shall be consistent with the format and content requirements set out in Section 5 of this Schedule 39.

4.4 As soon as practicable and in any event no later than 80 days following the end of each Contract Year, Project Co and the City shall convene an Annual Review Meeting to be attended by the Project Co Representative and the City Representative. At the Annual Review Meeting Project Co shall present the draft Annual Driver Hours Analysis Report to the City, and the City and Project Co shall discuss the AAADH and associated adjustments (in accordance with Section 6.2) for the preceding Contract Year.

4.5 Within 20 Business Days following each Annual Review Meeting, or within such period as may be otherwise agreed between the City Representative and the Project Co Representative, acting reasonably:

- (a) the City shall confirm its acceptance of all or any aspect of the Annual Driver Hours Analysis Report; and
- (b) subject to Section 6.6 of this Schedule 39, Project Co and the City shall agree to any adjustments to the AAADH; and

- (c) Project Co and the City shall agree on the quantum of any Annual Driver Hours Adjustments resulting from the agreed-upon AAADH, which shall be supported by an account prepared by the City setting out the calculations of any such Annual Driver Hours Adjustments.
- 4.6 Project Co shall assist the City Representative and afford the City Representative such information and access to the Annual Driver Hours records, and by other means as may reasonably be required for the City Representative to confirm the draft Annual Driver Hours Analysis Report provided by Project Co to determine the Aggregate Actual Annual Driver Hours for the preceding Contract Year. The City shall promptly notify Project Co of the details of any disagreement of all or any aspect of the Annual Driver Hours Analysis Report, and the Parties shall then seek to agree to any matters in dispute, but where matters cannot be resolved within the 20 Business Day review period identified in Section 4.5 (or such other period as may be otherwise agreed by the City Representative, acting reasonably) it shall be resolved in accordance with Schedule 27 – Dispute Resolution Procedure to this Project Agreement.
- 4.7 If either Project Co or the City wishes to dispute any account presented pursuant to Section 4.5(c) of this Schedule 39, it must do so by written notice to the other Party within 10 Business Days of receipt of such account. The City Representative and the Project Co Representative shall use reasonable efforts to resolve the dispute for an additional 10 Business Days. If there is no agreement within a further 10 Business Days then either Party may refer the matter to the Schedule 27 - Dispute Resolution Procedure.
- 5. CONTENT AND FORMAT OF THE ANNUAL DRIVER HOURS ANALYSIS REPORT**
- 5.1 The Annual Driver Hours Analysis Report shall present findings of Aggregate Actual Annual Driver Hours relevant to the Contract Year and shall include the following:
- (a) A summary of actual Annual Driver Hours and breakdown by dates. The summary should also highlight any exceptional changes (being changes of plus or minus 10% in Annual Driver Hours since any previous reports);
- (b) Identification of potential savings in respect to Annual Driver Hours and provide an estimate of implementation costs, along with identifying potential risks associated with each proposed measure. Project Co shall categorize these measures in the following categories: No Cost Measures, Low Cost Measures and High Cost Measures. Project Co shall also advise the City of projected Annual Driver Hours for the remaining duration of the Maintenance Term and along with trends and potential risks associated with each; and
- (c) Accurate and precise data in support of the above noted items.
- 5.2 The objectives of the Annual Driver Hours Analysis Report are to confirm the AAADH in the relevant Contract Year and to provide data to calculate any Annual Driver Hours Adjustments.

- 5.3 Consistent with the objectives set out in Section 5.2 of this Schedule 39, Project Co shall ensure that the Annual Driver Hours Analysis Report has the following components:
- (a) presentation of the AAADH;
 - (b) presentation of proposed adjustments to the AAADH used for calculating ADHA, in accordance with Section 6.6;
 - (c) outline any outstanding issues from any previous Annual Driver Hours Analysis Reports;
 - (d) any adjustments to the Aggregate Annual Driver Hours Target calculated in accordance with Section 6.2; and
 - (e) summary tables from all previous Annual Driver Hours Analysis Reports delivered by Project Co to the City.

6. PROCESS FOR AMENDING THE AADHT AND AAADH

- 6.1 In all cases, amendments to the AADHT must be consistent with the principles outlined in the OPS, and must be consistent with the Operations Performance Parameters.
- 6.2 At any time commencing after the first anniversary of the Revenue Service Availability Date, Project Co and the City shall adjust the AADHT when triggered by one of the following events:
- (a) A change in Service Level;
 - (b) Any other change in the Operations Service Plan initiated by the City that impacts Driver Hours; or
 - (c) Any other City-initiated change in operations policies or procedures which is demonstrated by Project Co to have an impact on Driver Hours.
- 6.3 The Parties shall re-run the Interactive Spreadsheet, with appropriate amendments to the operational elements which have changed, in order to determine the appropriate amendments to the AADHT. The Parties may use the OPS to assist in this process, or may use the OPS as the main point of reference in order to determine the amendments to the AADHT, if agreed by both Parties.
- 6.4 The Parties shall agree upon the appropriate amendments to the AADHT within thirty (30) days of the relevant triggering event, and shall effect the agreed-upon amendments through a revised Annual Driver Hours Target Letter. If the Parties cannot agree within the thirty (30) day period, then the Parties shall jointly retain and pay for a third party to carry out an independent OPS. The new OPS shall include a detailed analysis of the impacts to operational performance, including an analysis of Annual Driver Hours requirements. The third party shall prepare a report making a recommendation regarding amendments to the AADHT. Both the City and Project Co must agree to the amended

AADHT within 20 Business Days following receipt of such report. If there is no agreement within a further 10 Business Day period, then either Party may refer the matter to Schedule 27 - Dispute Resolution Procedure.

- 6.5 Any amendment to the AADHT shall only affect the Monthly Service Payment (as a result of any Annual Driver Hours Adjustments) from the date on which the amendment is effective and shall not, for greater certainty, have a retrospective effect on any other previous Annual Driver Hours Adjustment calculations or Monthly Service Payments, except where the Dispute Resolution procedure adjudicates in favour of Project Co whereby the payments shall be prorated to 30 days after the TTMP and third party report.
- 6.6 Project Co shall be entitled to adjust its AAADH downward in the following circumstances:
- (a) Changes in the Operations Service Plan (which have not already been reflected by amendments to the AADHT);
 - (b) Service provided in excess of the Operations Service Plan, such as additional service provided during special events or emergency situations that are not due to Project Co acts or omissions;
 - (c) The occurrence of a Non-Project Co Cause, as defined in Schedule 20 of the Project Agreement, which increases Driver Hours;
 - (d) Temporary measures imposed by the City that impact Driver Hours, which measures are not due to Project Co acts or omissions.
- 6.7 Project Co shall notify the City of any proposed adjustment to AAADH within 30 days of the event triggering the proposed adjustment.

7. CALCULATION OF ANNUAL DRIVER HOURS ADJUSTMENT

7.1 Comparing Annual Driver Hours Target

- (a) After the acceptance of the Annual Driver Hours Analysis Report described in Section 4 for each Contract Year, the AAADH, including agreed-to adjustments per Section 6.6 of this Schedule 39, shall be compared to the AADHT and:
 - (i) if the AAADH in respect to AADHT is greater than 105% of the AADHT in respect of such Annual Driver Hours then Project Co shall calculate the Annual Driver Hours Adjustment as per Section 7.2.

The table below shows the banding mechanism used for calculating the Annual Driver Hours Adjustment.

Table 7.1		
Annual Driver Hours	Period “X”	Annual Driver Hours Adjustment then equals:
If the Variance from AADHT for the purposes of calculating Annual Driver Hours Adjustment in the previous period was:	0 to 5%	0
If the Variance from AADHT for the purposes of calculating Annual Driver Hours Adjustment in the previous period was:	> 5%	100%

- (b) If Project Co is subject to an Annual Driver Hours Adjustment with respect to a Contract Year, then Project Co shall submit a detailed remediation plan within fourteen (14) days of the calculation of the Annual Driver Hours Adjustment to explain how it will reduce the AAADH such that it will not exceed the 105% threshold established in Section 7.1(a), above, for the subsequent Contract Year. If Project Co is not successful in its remediation plan such that the Annual Driver Hours Adjustment in Section 7.1(a) is applied with respect to such AAADH for the subsequent Contract Year, then the Annual Driver Hours Adjustment set out in Section 7.2 will again apply.

7.2 The formulae to calculate the Annual Driver Hours Adjustment set out in this Section 7.2 is based on Table 7.1 of this Schedule 39. For the avoidance of doubt, if the AAADH falls within a set band the relevant AADHT (i.e.: no more than 5% above the benchmark) no Annual Driver Hours Adjustment will be made for that Contract Year.

- (a) For the purposes of Section 7.2(b):

A = the AAADH during the relevant Contract Year.

B = the AADHT for the relevant Contract Year.

(b) In respect of each Contract Year following the Revenue Service Availability Date:

IF: $A > 1.05B$ then the City shall be entitled to deduct an Annual Driver Hours Adjustment where

If $A > 1.05B$ then $ADHA = (A - 1.05B) * \text{Unit Rate Price Annual Driver Hours}$

7.3 The Annual Driver Hours Adjustment, if applicable, shall be applied as a deduction to the Monthly Service Payment in accordance with the provisions of Part B, Section 1.1 of Schedule 20 (Payment Mechanism).

APPENDIX A

ANNUAL DRIVER HOURS REPORT SUBMITTAL REQUIREMENTS

Total Annual Driver Hours Summary	Annual Driver Hours Target		Actual Annual Driver Hours		Percent Variance between iv and ii	Annual Driver Hours Adjustment
	Aggregate Annual Driver Hours Target (AADHT)	Cost of Annual Driver Hours for Contract Year (calculated based on AADHT multiplied by Unit Rate Price Annual Driver Hours)	Aggregate Actual Annual Driver Hours (AAADH)	Cost of Annual Driver Hours for Contract Year (calculated based AAADH multiplied by Unit Rate Price Annual Driver Hours)		
	i	ii	iii	iv	v	vi
Contract Year 1						
Contract Year 2						
Contract Year 3						
Contract Year 4						
Contract Year 5						
Contract Year 6						
Contract Year 7						
Contract Year 8						
Contract Year 9						

Total Annual Driver Hours Summary	Annual Driver Hours Target		Actual Annual Driver Hours		Percent Variance between iv and ii	Annual Driver Hours Adjustment
	Aggregate Annual Driver Hours Target (AADHT)	Cost of Annual Driver Hours for Contract Year (calculated based on AADHT multiplied by Unit Rate Price Annual Driver Hours)	Aggregate Actual Annual Driver Hours (AAADH)	Cost of Annual Driver Hours for Contract Year (calculated based on AAADH multiplied by Unit Rate Price Annual Driver Hours)		
	i	ii	iii	iv	v	vi
Contract Year 10						
Contract Year 11						
Contract Year 12						
Contract Year 13						
Contract Year 14						
Contract Year 15						
Contract Year 16						
Contract Year 17						
Contract Year 18						
Contract Year 19						
Contract Year 20						
Contract Year 21						

Total Annual Driver Hours Summary	Annual Driver Hours Target		Actual Annual Driver Hours		Percent Variance between iv and ii	Annual Driver Hours Adjustment
	Aggregate Annual Driver Hours Target (AADHT)	Cost of Annual Driver Hours for Contract Year (calculated based on AADHT multiplied by Unit Rate Price Annual Driver Hours)	Aggregate Actual Annual Driver Hours (AAADH)	Cost of Annual Driver Hours for Contract Year (calculated based on AAADH multiplied by Unit Rate Price Annual Driver Hours)		
	i	ii	iii	iv	v	vi
Contract Year 22						
Contract Year 23						
Contract Year 24						
Contract Year 25						
Contract Year 26						
Contract Year 27						
Contract Year 28						
Contract Year 29						
Contract Year 30						