



Canadian National

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May 23, 2003

Her Majesty the Queen in right of Canada
as represented by the Minister of Transport
330 Sparks Street
Ottawa, ON
K1A 0N5

Dear Minister: **Air Rail Link between Toronto Union Station and Toronto Lester B. Pearson International Airport ("Air Rail Link")**

Canadian National Railway Company ("CN") acknowledges that Her Majesty the Queen in right of Canada ("Transport Canada") issued a 'Request for Expressions of Interest, Air Rail Link from Toronto Lester B. Pearson International Airport to Union Station' ("RFEOP") dated April 12, 2001, a copy of which was received by CN, to persons interested in financing, designing, constructing, operating and maintaining the Air Rail Link, a passenger railway service between Toronto Union Station and the Lester B. Pearson International Airport ("LBPIA").

Transport Canada has advised CN that, pursuant to the RFEOP, Transport Canada has qualified four respondents (each a "Respondent"). Transport Canada also advised CN that it proposes to issue to each Respondent a 'Request for Business Case, Air Rail Link from Toronto Lester B. Pearson International Airport to Union Station' ("RFBC"), requesting a business case response ("Response") for financing, designing, constructing, operating and maintaining the Air Rail Link. CN is a stakeholder in the proposed Air Rail Link because CN owns and is responsible for the management, operation and maintenance of the CN Track (as defined in the RFBC), and as such, the involvement of CN in the Air Rail Link is required.

Transport Canada has further advised CN that there are stakeholders ("Stakeholders") in addition to CN whose collective involvement in the Air Rail Link is required, and that they are each issuing letters to Transport Canada, with respect to the terms and conditions of their involvement in the Air Rail Link. Major Stakeholders such as CN have provided in Appendix 3 to the RFBC a form of letter agreement ("Stakeholder Agreement Letter") in favour of each Respondent which, when negotiated and settled by a Respondent with the relevant Stakeholder, will form part of the Response.

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CN understands that this letter will be annexed to the RFBC, for the information of the Respondents.

In consideration of Transport Canada acting as a facilitator of the Process (as defined in the RFBC) and for other good and valuable consideration, CN hereby agrees with Transport Canada as follows.

1. The role of Transport Canada is to facilitate the Process whereby a Respondent may be selected by Transport Canada as the successful respondent ("Successful Respondent"). Such selection will then permit the Successful Respondent to enter into Final Stakeholder Agreements with each of the Stakeholders to implement the terms and conditions of each Stakeholder Agreement Letter.
2. The Air Rail Link can only be designed, constructed, operated and maintained through agreements ("Final Stakeholder Agreements") between the Successful Respondent and each Stakeholder.
3. In order for each Respondent to submit a Response, such Respondent must have certainty as to the terms and conditions on which CN is prepared to enter into a Final Stakeholder Agreement with such Respondent, should it be selected as the Successful Respondent.
4. The form of Stakeholder Agreement Letter of CN is annexed as Appendix 3 to the RFBC. Such Stakeholder Agreement Letter contains mandatory, negotiable and optional provisions. CN agrees that it shall negotiate the negotiable terms and, as the case may be, the optional provisions with each Respondent in good faith. CN agrees to execute and deliver a Stakeholder Agreement Letter with such Respondent substantially in the form annexed in Appendix 3 to the RFBC.
5. As part of the Final Stakeholder Agreement and subject to the terms thereof, CN shall grant the Successful Respondent the right of access to the CN Track, but only to the extent all Infrastructure Works have been completed to CN's satisfaction and entirely paid for.
6. CN shall be entitled to demand that GO provide security for the performance of any obligation of GO (including the payment of any amount owing to CN) in the form, amount and term reasonably specified by CN, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to CN or performance bond or guarantee by an entity acceptable to CN.
7. The Final Stakeholder Agreement will incorporate common commercial and legal terms and conditions, including default, remedies, risk allocation and insurance requirements, bankruptcy and insolvency protection, indemnities, restrictions on the Successful Respondent's ability to assign and transfer its rights, title and interest in the Final Stakeholder Agreement, termination rights, and such other

terms and conditions as the parties acting in good faith shall negotiate. CN agrees to negotiate the Final Stakeholder Agreement with the Successful Respondent with a view of settling, executing and delivering the Final Stakeholder Agreement within the time periods described in the Stakeholder Agreement Letter.

8. CN shall undertake a rail simulation study ("Study"), the cost of which shall be assumed by GO Transit ("GO"), in accordance with the report "Air Rail Link between Lester B. Pearson International Airport and Union Station, Infrastructure Requirement on CN Corridor, Final Report (CN, July 2002)" to confirm capital improvements required for a 15 minute headway Air Rail Link service. The Study will cover the entire Air Rail Link service from T1 New Station (as defined in the RFBC) to Union Station. Transport Canada, GO and CN will determine the terms of reference, the scope and timeline for this Study.
9. CN will design and build, (or cause to be designed and built) and, except as hereinafter set forth, own, all the infrastructure works located on the CN Track (the "Infrastructure Works") and required to enable the Air Rail Link to operate at a 15 minute headway schedule along the CN Track, it being understood that the cost of the Infrastructure Works shall be assumed by GO. For greater clarity, references herein to "Infrastructure Works" shall not include infrastructure works required in connection with the Air Rail Link service, but located outside the CN Track. The CN GO Master Construction Agreement in effect will govern the roles and responsibilities of CN and GO in connection with the Infrastructure Works. These improvements are generally for, and not limited to:
 - (a) all track, signal, communications and other ancillary track works;
 - (b) the removal of all existing level crossings from the CN Track by either closing the crossing road or by providing a road / rail grade separation;
 - (c) the West Toronto Diamond rail/rail grade separation between the CN Track and the Canadian Pacific Railway North Toronto Subdivision;
 - (d) all works required to connect the Spur Line to the CN Track including, without limitation, the cost to build the interlocking plant on the CN Track, together with any and all signals related thereto.
 - (e) as required, widen or replace the decks of existing structures or provide new structures, to meet infrastructure requirements associated with the 15 minute Air Rail Link headway schedule; and
 - (f) all works required to mitigate environmental impacts as identified through the Federal Environmental process.
10. GO shall obtain, at its own costs, and CN shall cooperate with GO in obtaining, all regulatory approvals required in connection with the Infrastructure Works.

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11. GO shall carry out, at its own costs, and CN shall assist GO in carrying out, an environmental assessment ("EA") for the Air Rail Link, it being understood that EA for the Air Rail Link might be part of a broader EA for improvements to GO's rail network and that CN's undertaking to assist shall be limited to such improvements located on CN's property including, without limitation, the CN Track. GO shall assume proponentcy for the EA. CN acknowledges and agrees that Transport Canada shall use its best efforts to facilitate a prompt and efficient EA process.
12. Access Control Devices/Noise Barriers – It is understood and agreed that all access control devices including, without limitation, fences, as well as all noise barriers shall be built by GO and paid for by GO and maintained by GO at GO's costs and shall be erected outside the limits of the CN Track.
13. CN shall perform all maintenance associated with the Infrastructure Works whose ownership shall be vested in CN (as provided under Section 14 below), it being understood and agreed that, except as hereinafter provided, maintenance, replacement and/or reconstruction of the Infrastructure Works whose ownership shall not be vested in CN shall be performed by the owner thereof. The parties hereto acknowledge and agree that the cost of the operating maintenance of the Infrastructure Works is built-in the Access Fee. Maintenance of a capital nature shall be performed by CN, at Respondent's sole costs and expenses. For the purposes hereof, operating maintenance shall refer to day-to-day maintenance as recorded by CN in its expense account in accordance with its accounting standards and procedures; and capital maintenance shall refer to replacement or additions to the Infrastructure Works, generally on a programmed basis, as recorded by CN in its capital account in accordance with its accounting standards and procedures.

Notwithstanding the foregoing, maintenance of rail carrying structures over roads shall be performed by CN and paid for by GO.

14. Ownership of the Infrastructure Works – CN shall be the sole owner of all Infrastructure Works, other than (i) the West Toronto Diamond rail/rail grade separation rail carrying structure (which for greater clarity does not include tracks and signals) between the CN Track and the Canadian Pacific Railway North Toronto Subdivision, which shall be the property of Canadian Pacific Railway; and (ii) all road/rail grade separations rail carrying structure which shall be the property of the City of Toronto.
15. For the duration of the Process, CN shall negotiate exclusively with the Respondents and then the Successful Respondent in connection with the Air Rail Link and shall not, directly or indirectly,
 - (a) solicit, facilitate, initiate contact with or solicit or encourage in any manner, any inquiries or proposals or offers from,

- (b) participate in any discussions or negotiations with,
- (c) furnish or cause to be furnished, any information to,
- (d) afford any access to its properties, books or records to, or
- (e) otherwise assist, facilitate or encourage,

any individual, person or entity, other than the Respondents or their representatives, in connection with the Air Rail Link or any passenger rail service which would be competitive with the Air Rail Link. CN shall forthwith notify Transport Canada upon execution and delivery of the Final Stakeholder Agreement between CN and the Successful Respondent.

16. CN shall cooperate with Transport Canada, the Stakeholders, and the Respondents in order to facilitate the creation of the Air Rail Link.
17. Any information and data requested by a Respondent from CN and that CN acting reasonably considers to be required in connection with the Process shall be submitted to Transport Canada who, subject to section 18 hereof, will provide CN information and data to such Respondent, provided that the Respondent has executed a confidentiality agreement in a form acceptable to CN and Transport Canada. The costs incurred by CN for providing such information shall be paid for by the Respondent.
18. Transport Canada undertakes and agrees to enter into a confidentiality agreement with CN to protect CN's Confidential Information by using the same degree of care, but not less than a reasonable degree of care, to prevent unauthorized disclosure or use as Transport Canada uses to protect its own confidential information of like nature. Transport Canada agrees to maintain Confidential Information received from CN in confidence and neither use nor disclose such Confidential Information without the prior written approval of CN. Confidential Information shall be disclosed only on a need-to-know basis and only to (i) Transport Canada's employees, agents and representatives who have a need to know in connection with the Process and who agree to abide by non-disclosure terms at least as comprehensive as those set forth herein; provided that Transport Canada will be liable for breach by any such employee; and, subject to the terms and conditions set out under section 5 hereof, to a (ii) Respondent, subject to non-disclosure terms at least as comprehensive as those set forth herein.

If Transport Canada is compelled pursuant to applicable laws (including, without limitation, the Access to Information Act) or legal process to disclose any Confidential Information, Transport Canada shall provide CN with prompt notice of such request or requirement.

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Transport Canada shall use reasonable efforts to ensure that only that portion of the Confidential Information required to be disclosed is disclosed and that the Confidential Information disclosed will be given confidential treatment.

For the purposes hereof, "Confidential Information" means all information concerning CN and its respective properties, businesses and affairs provided by CN in connection with the Air Rail Link (including for the purpose of preparing the RFBC), whether oral or written or in any other form or media, and all analyses, compilations or other documents prepared by the recipient or any of its representatives containing or based upon any such information, except for information, analyses, compilations or other documents that:

- (a) are or become publicly available, other than through a breach of the confidentiality agreement or any other confidentiality obligation owed to CN;
- (b) are subsequently lawfully and in good faith obtained by the recipient from an independent third party without breach of of the confidentiality agreement and without breach of a confidentiality obligation that the third party owed to CN or its affiliates or representatives;
- (c) were in the recipient's possession on a non-confidential basis prior to being disclosed under of the confidentiality agreement as reasonably demonstrated by written records of the recipient; or
- (d) have been independently acquired or developed by the recipient or its representatives without breach of the confidentiality agreement or any other confidentiality obligation owed to CN by any person;

19. CN acknowledges and agrees that:

- (a) Transport Canada shall not be a part of or involved in any negotiations between any Respondent and CN;
- (b) Except as otherwise specifically provided herein, Transport Canada shall have no obligation or responsibilities with respect to financing, designing, constructing, operating or maintaining the Air Rail Link;
- (c) Except as otherwise specifically provided herein, Transport Canada is not obligated pursuant to the Process, to provide any funding to CN or the Successful Respondent with respect to or in connection with the Air Rail Link; and
- (d) Nothing contained in this letter nor any acts of CN or Transport Canada shall constitute or be deemed to constitute CN and Transport Canada as partners, joint venturers or principal and agent in any way or for any

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purpose. CN shall not represent or hold itself out to be an agent of Transport Canada.

20. Whenever this letter contemplates an undertaking by Transport Canada or a third party, it is understood and agreed that it shall be a condition of CN's undertaking hereunder that Transport Canada and such third party agrees in writing to be bound by the terms hereof or, as the case may be, restates such undertaking in writing for the benefit of CN, failing which CN's undertaking hereunder shall be considered null and void. This condition is included for the exclusive benefit of CN and may be waived at any time, in whole or in part, in writing by CN.
21. Whenever this letter contemplates that a third party is responsible for certain costs and expenses, nothing herein shall be construed as a limitation on such third party's ability to share these costs with a third party other than CN, it being understood that the party responsible to CN hereunder shall continue to be primarily responsible towards CN, such sharing agreement notwithstanding.
22. Transport Canada acknowledges and agrees that the Air Rail Link is a unique undertaking and that any decisions made or actions taken by CN in connection therewith shall not create a precedent for any other projects.
23. This letter is a binding undertaking of CN in favour of Transport Canada, it shall be governed by and construed in accordance with the laws of the Province of Ontario and it shall enure to the benefit of Transport Canada and its successors and assigns and shall be binding upon CN and its successors.

Yours very truly,

CANADIAN NATIONAL RAILWAY COMPANY

By: _____

Keith Heller, Senior Vice President, Eastern Canada Division

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