

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

Schedule 22

Collateral Agreements

***Edmonton Valley Line LRT – Stage 1
Project Agreement – Execution Version
Schedule 22 – Collateral Agreements
Date: February 8, 2016***

SCHEDULE 22

COLLATERAL AGREEMENTS

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SCHEDULE 22

COLLATERAL AGREEMENTS

[PROJECT CONTRACTOR] COLLATERAL AGREEMENT

THIS AGREEMENT is dated as of ▼.

AMONG:

▼

(the "**Project Contractor**")

AND:

THE CITY OF EDMONTON

("City ")

AND:

TRANSED PARTNERS GENERAL PARTNERSHIP

("Project Co")

WHEREAS:

A. The City and Project Co have entered into an agreement dated as of February 8, 2016 (the "**Project Agreement**") whereby Project Co has agreed to design, build, finance and, for a term thereafter, operate, maintain, and rehabilitate, the Infrastructure (the "**Project**"), all as more particularly described in the Project Agreement;

B. Project Co and the Project Contractor have entered into an agreement dated as of February 8, 2016 (the "**Project Contract**") whereby the Project Contractor has agreed to [**carry out the Design and Construction, including the LRV Supply obligations set out therein/the Services**]; and

C. It is a condition of the Project Contract that the Project Contractor enter into this Agreement with the City and Project Co.

NOW THEREFORE in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

*Edmonton Valley Line LRT – Stage 1
Project Agreement – Execution Version
Schedule 22 – Collateral Agreements
Date: February 8, 2016*

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meaning given to such terms in the Project Agreement, and:

"**No Suspension Period**" has the meaning set out in Section 2.3;

"**Parties**" means the City, Project Co and the Project Contractor;

"**Project**" has the meaning set out in Recital A;

"**Project Agreement**" has the meaning set out in Recital A;

"**Project Contract**" has the meaning set out in Recital B;

"**Proposed Transfer Date**" has the meaning set out in Section 4.1;

"**Proposed Transfer Notice**" has the meaning set out in Section 4.1;

"**Proposed Step-in Date**" has the meaning set out in Section 3.1;

"**Proposed Substitute**" has the meaning set out in Section 4.1;

"**Step-in Date**" means the date the City delivers the Step-in Undertaking;

"**Step-in Notice**" has the meaning set out in Section 3.1;

"**Step-in Period**" means the period commencing on the Step-in Date and ending on the earliest of:

- (a) the Step-out Date;
- (b) the Transfer Effective Date; and
- (c) the termination date of the Project Contract as permitted under Section 3.8.

"**Step-in Undertaking**" has the meaning set out in Section 3.5;

"**Step-out Date**" has the meaning set out in Section 3.9;

"**Suspension Notice**" has the meaning set out in Section 2.3(a);

"**Termination Notice**" has the meaning set out in Section 2.1;

"**Transfer Agreement**" has the meaning set out in Section 4.5(b); and

"**Transfer Effective Date**" means the effective date of the Transfer Agreement.

1.2 Construction and Interpretation

Unless otherwise defined in this Agreement or to the extent the context requires, this Agreement will be interpreted according to the provisions set out in Schedule 1 [*Definitions and Interpretation*] to the Project Agreement, except that references in such Section to Project Co will be also deemed to be references to the Project Contractor.

1.3 Governing Law

This Agreement will be deemed to be made pursuant to the laws of the Province of Alberta and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.

1.4 Attornment

For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of Alberta and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. TERMINATION NOTICE AND THE CITY TERMINATION

2.1 Termination Notice

The Project Contractor will not terminate the Project Contract without first giving the City at least ▼ **[NTD: insert same notice period required under the Project Contract]** Business Days' notice specifying the grounds for such termination (the "**Termination Notice**").

2.2 Survival of Project Contract

Notwithstanding any provision of the Project Contract to the contrary, on termination of the Project Agreement by the City, the parties agree that the Project Contract will not come to an end except in accordance with the terms of this Agreement.

2.3 Suspension Notice

[NTD: To be included only in the DBA Collateral Agreement, if such agreement contains rights for the Design Builder to suspend its performance thereof.] The Project Contractor will not exercise any right it may have under the Project Contract to temporarily suspend its performance thereunder, unless:

- (a) the Project Contractor first delivers a notice (a "**Suspension Notice**") to the City detailing the event that has occurred that entitles it to exercise such right and stating that it intends to exercise such right, together with details of any sums which are due and payable but unpaid by Project Co and of any other material obligations or liabilities which should have been performed or discharged by Project Co under the Project Contract, in each case as at the date of such Suspension Notice; and
- (b) both:

- (i) the Project Contractor has confirmed in writing to the City that the Senior Lenders have not agreed to pay the Project Contractor in accordance with the Project Contract for work performed by it during the period commencing on the date (the "**Suspension Date**") when it, but for the provisions of this Section, would have been entitled to suspend its performance under the Project Contract; and
- (ii) within 5 Business Days of receipt of confirmation from the Project Contractor pursuant to Section 2.3(b)(i), the City has not agreed, by written notice to the Project Contractor, to pay the Project Contractor in accordance with the Project Contract for work performed by it during the period (the "**No Suspension Period**") commencing on the Suspension Date and ending on the earliest to occur of:
 - (A) the date on which the Security Trustee exercises any of its step-in or transfer rights pursuant to and in accordance with, respectively, Section 2.8 [*Lender's Step-In Rights*] or Section 2.9 [*Suitable Substitute Contractor*] of the Direct Lender Agreement;
 - (B) the date from which the Senior Lenders agree to pay the Project Contractor as contemplated under Section 2.3(b)(i); and
 - (C) the Step-in Date.

except that, if the City provides a written notice to the Project Contractor pursuant to Section 2.3(b)(ii) and thereafter fails to make payment to the Project Contractor of any undisputed amount payable pursuant to and in accordance with the Project Contract for work performed by the Project Contractor during the No Suspension Period, the No Suspension Period will terminate and the Project Contractor may thereafter exercise any right it may have to temporarily suspend its performance under the Project Contract.

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

Subject to Section 3.2, if the City has terminated the Project Agreement in accordance with its terms or if the City has received a Termination Notice, the City may give notice to the Project Contractor (a "**Step-in Notice**") of the intention of the City to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such Proposed Step-in Date is:

- (a) no later than 10 Business Days after termination of the Project Agreement if the Project Agreement was terminated by the City; and
- (b) no later than 10 Business Days after delivery of the Termination Notice to the City.

3.2 Lenders' Step-in Rights

The City will not issue a Step-In Notice at any time that the Security Trustee or a Senior Lender, as the case may be, is validly exercising any step-in rights with respect to the Project under:

- (a) the Direct Lender Agreement;
- (b) any Senior Financing Agreement; or
- (c) any direct agreement entered into between the Project Contractor and the Security Trustee with respect to the Project Contract,

and the running of all notice periods and timelines set out in Section 3.1 will be suspended until such time as the Security Trustee or a Senior Lender, as applicable, is no longer exercising, or are no longer permitted to exercise, such rights under the Direct Lender Agreement, any Senior Financing Agreement or any such direct agreement. The Project Contractor will provide copies of all relevant notices delivered by it to, or to it by, the Security Trustee or any Senior Lender in respect of the exercise of such rights so as to enable the City and the Project Contractor to determine, in accordance with this Section 3.2 the notice periods and timelines set out in Section 3.1.

3.3 Notice of Obligations and Step-In Undertaking

Not less than five Business Days prior to the Proposed Step-in Date, the Project Contractor will give notice to the City of any sums which are due and payable but unpaid by Project Co and of any other material obligations or liabilities, which should have been performed or discharged by Project Co under the Project Contract, in each case, as at the date of the Step-in Notice.

3.4 Update of Obligations

Not less than two Business Days prior to the Proposed Step-in Date, the Project Contractor will give notice to the City of any change in such sums, obligations or liabilities referred to in Section 3.3.

3.5 Delivery of Step-In Undertaking

On or before the Proposed Step-in Date, the City may deliver to the Project Contractor a written undertaking to the Project Contractor (the "**Step-in Undertaking**") undertaking to the Project Contractor to:

- (a) pay or procure the payment to the Project Contractor, within 15 Business Days of demand by the Project Contractor, of any sum due and payable or accruing due and payable but unpaid by Project Co to the Project Contractor under the Project Contract before the Step-in Date provided such amounts have been notified by the Project Contractor to the City in accordance with Sections 3.3 and 3.4;
- (b) perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Project Co under the Project Contract which will have fallen due for performance or discharge before the Step-in Date and which have been notified by the Project Contractor to the City in accordance with Sections 3.3 and 3.4;
- (c) pay or procure the payment of any sum due and payable by Project Co under the Project Contract as a result of either any work or services performed during the Step-in Period or

any act or omission occurring during the Step-in Period which arises from any act or omission occurring after the Step-in Date; and

- (d) perform or discharge or procure the performance or discharge of any obligations of Project Co under the Project Contract as a result of any act or omission occurring during the Step-in Period which arises from any act or omission occurring after the Step-in Date.

3.6 Limits on the City's Liability on Step-In

The City will not be required to assume any liability under a Step-in Undertaking for any outstanding obligations or liabilities of Project Co to the Project Contractor which:

- (a) existed as at the Step-In Date; and
- (b) are not notified to the City pursuant to Sections 3.3 and 3.4.

3.7 Non-Delivery of the Step-In Undertaking

If the City does not deliver the Step-in Undertaking on or before the Proposed Step-in Date, the Step-in Notice will be deemed to have been withdrawn and the rights and obligations of the parties will be construed as if the Step-in Notice had not been given.

3.8 Effect of Step-In Undertaking

During any Step-in Period, the Project Contractor will continue to observe and perform its duties and obligations under the Project Contract (subject to the terms thereof, including any maximum liability provisions contained therein) and will only be entitled to exercise its rights of termination under the Project Contract:

- (a) by reference to a default under the Project Contract arising during the Step-in Period (other than to the extent that an event described in Section 16.7(a), (b), (c) or (d) of the Project Agreement constitutes such a default) provided that no event of default by Project Co under the Project Agreement will entitle the Project Contractor to exercise such rights of termination during the Step-in Period;
- (b) if the City fails to pay when due any amount owed to the Project Contractor or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking; or
- (c) if such rights of termination arise in circumstances where there is no default under the Project Contract by the City or the Project Contractor.

3.9 Step-Out

The City may, at any time, terminate the Step-in Period by giving the Project Contractor at least 30 days' notice specifying the date on which the Step-in Period will terminate (the "**Step-out Date**").

3.10 Effect of Step-Out

The City will be released from the Step-in Undertaking on the expiry or termination of the Step-in Period, provided that the City has performed and discharged in full or procured the performance and discharge in full of any of the City's obligations under the Step-in Undertaking arising on or before the expiry or termination of the Step-in Period.

3.11 Payment by Project Co

Project Co will pay to the City on demand any due and payable amounts that are not being disputed in good faith and as notified by the Project Contractor to the City pursuant to Sections 3.3 and 3.4 and paid by the City or a Proposed Substitute to the Project Contractor pursuant to this Agreement, and any such amounts will constitute amounts due and payable by Project Co to the City under the Project Agreement, and the City will have all the same rights and remedies under the Project Agreement (including any rights of set-off) in respect of payment or non-payment of any such amounts as the City would have for any payment or non-payment by Project Co of any other amounts that are due and payable by it to the City under the Project Agreement.

4. TRANSFER

4.1 Proposed Substitute

At any time that the City is entitled to give a Step-in Notice pursuant to Section 3.1 or at any time during the Step-in Period, the City may give notice (a "**Proposed Transfer Notice**") to the Project Contractor that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, assignment, transfer or other disposal, the rights and obligations of Project Co under the Project Contract and specifying a date (the "**Proposed Transfer Date**"):

- (a) if the City has terminated the Project Agreement but has not given a Step-in Notice, no later than 15 Business Days after termination of the Project Agreement;
- (b) if the Project Contractor has given a Termination Notice but the City has not given a Step-in Notice, no later than expiry of the Termination Notice; and
- (c) if the City has given a Step-in Notice (whether or not the Step-in Period has commenced), no later than 30 days after the date of the Proposed Transfer Notice.

Subject to Section 3, the Project Contractor will not be entitled to terminate the Project Contract during the notice period specified in a Proposed Transfer Notice.

4.2 Consent to Transfer

If the Proposed Transfer Notice specifies the City as the Proposed Substitute, the Project Contractor's consent to the transfer will be deemed to have been given. If the Proposed Substitute is not the City, a transfer in accordance with a Proposed Transfer Notice will only be effective if the Project Contractor consents to that transfer in writing in accordance with Section 4.3 and the City will (as soon as practicable) supply the Project Contractor with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- (c) the names of the directors and the secretary of the Proposed Substitute;
- (d) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- (e) details of the technical competence of the Proposed Substitute and the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Project Contract.

4.3 Grant of Consent

The Project Contractor may withhold or delay consent to a transfer only if the Proposed Substitute is not the City and the City has failed to show to the Project Contractor's satisfaction (acting reasonably) that:

- (a) the Proposed Substitute has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Project Contract; and
- (b) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are sufficient to perform the obligations of Project Co under the Project Contract.

Within five Business Days of the receipt of a Proposed Transfer Notice and all information required under Section 4.2, the Project Contractor will notify the City in writing that it has consented to the transfer and if the Project Contractor has not consented, an explanation of its reasons to withhold its consent.

4.4 Consent Withheld

If the Project Contractor withholds its consent to a Proposed Transfer Notice, the City may give one or more subsequent Proposed Transfer Notices, pursuant to the provisions of Section 4.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which the City reasonably believes would fulfil the requirements of Sections 4.3, provided that only one Proposed Transfer Notice may be outstanding at any one time, and provided further that:

- (a) if a Step-in-Notice has not been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(a) or 4.1(b), as the case may be; and
- (b) if a Step-in Notice has been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(c).

4.5 Implementation of Transfer

If the Project Contractor consents or is deemed to have consented to a transfer pursuant to a Proposed Transfer Notice, then on the Proposed Transfer Date:

- (a) the Proposed Substitute will become a party to the Project Contract in place of Project Co and, thereafter, will be treated as if it was and had always been named as a party to the Project Contract in place of Project Co; and
- (b) the Project Contractor, Project Co and the Proposed Substitute will enter into a transfer agreement (the "**Transfer Agreement**") and any other requisite agreements, in form and substance satisfactory to the Project Contractor, acting reasonably, pursuant to which:
 - (i) the Proposed Substitute will be granted all of the rights of Project Co under the Project Contract; and
 - (ii) the Proposed Substitute will assume all of the obligations and liabilities of Project Co under the Project Contract.

4.6 Effect of Transfer

On and after the Transfer Effective Date:

- (a) the Project Contractor will owe its obligations under the Project Contract whether arising before, on or after such date, to the Proposed Substitute;
- (b) if the City has entered into a Step-in Undertaking, the City will be released from the Step-in Undertaking, provided that all obligations of the City under the Step-in Undertaking which have accrued up to the Transfer Effective Date have been fully and unconditionally discharged; and
- (c) notwithstanding the terms of the transfer or assignment agreement or the other terms of this Collateral Agreement the Project Contractor (as transferor or assignor) shall not be released from and shall remain responsible and liable to Project Co and the City in respect of all Direct Losses that may be attributable to the Project Contractor under or in relation to the Project Contract or this Collateral Agreement in respect of the period prior to the Transfer Effective Date, subject to the terms of the Project Contract including any maximum liability provisions contained therein.

The City and the Project Contractor will use reasonable efforts to agree to any amendments to the Project Contract reasonably necessary to reflect the fact that the Project Agreement may have terminated at the time of the Transfer Effective Date.

4.7 Termination After Transfer

After the Transfer Effective Date, the Project Contractor will only be entitled to exercise its rights of termination under the Project Contract:

- (a) in respect of any Termination Event arising after that date in accordance with the Project Contract; or
- (b) if the Proposed Substitute does not discharge the obligations and liabilities referred to in Section 4.5(b)(ii) assumed by it under the Transfer Agreement which relate to matters arising prior to the end of any Step-in Period within 15 Business Days following the Transfer Effective Date.

5. RIGHTS AND OBLIGATIONS UNDER THE PROJECT CONTRACT

5.1 Rights of Termination

If:

- (a) no Step-in Notice or Proposed Transfer Notice is given before a Termination Notice expires or within 15 Business Days after termination of the Project Agreement by the City;
- (b) a Step-in Undertaking is not issued on or before the Proposed Step-in Date;
- (c) the Step-in Notice is withdrawn or, pursuant to Section 3.7, is deemed to have been withdrawn;
- (d) the Step-in Period ends before the occurrence of the Transfer Effective Date;
- (e) in the absence of a Step-in Undertaking, the Project Contractor reasonably withholds its consent to a transfer pursuant to a Proposed Transfer Notice, in accordance with Section 4.3, and does not subsequently grant consent to a transfer in accordance with Section 4.4 on or before the Proposed Transfer Date;
- (f) in the absence of a Step-in Undertaking, a Transfer Agreement is not entered into on the Proposed Transfer Date;
- (g) the Project Contractor is entitled to terminate the Project Contract under Section 3.8 or 4.7; or
- (h) the City exercises its right to step-out under Section 3.9, then on the Step-out Date,

the Project Contractor may:

- (i) exercise all of its rights under the Project Contract and act upon any and all grounds for termination available to it in relation to the Project Contract whenever occurring; and
- (j) pursue any and all claims and exercise any and all rights and remedies against Project Co.

5.2 Project Co's Obligations to Continue

Until completion of a transfer pursuant to Section 4.5, Project Co will continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Project Contract notwithstanding:

- (a) the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking;
- (b) the service of a Proposed Transfer Notice; or
- (c) any other provision of this Agreement.

6. REVOCATION OF NOTICES

A Termination Notice and a Step-in Notice may each be revoked (in writing to the recipient) by the party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the parties will be construed as if the relevant notice had not been given.

7. ASSIGNMENT

7.1 Binding on Successors and Assigns

This Agreement will be binding on and will enure to the benefit of the parties and their respective successors and permitted assigns.

7.2 Restriction on Assignment

No party will assign or transfer any part of its respective rights or obligations under this Agreement without the prior consent of the others (such consent not to be unreasonably withheld or delayed), provided that:

- (a) the City will be entitled, without the consent of any other party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with the Project Agreement; and
- (b) the Project Contractor will assign or transfer all its rights and obligations under, this Agreement to any person to whom it, respectively, assigns, or transfers all its rights and obligations under, the Project Contract in accordance with the terms of the Project Contract and the Project Agreement.

8. LRV SUPPLY MATTERS

[NTD: To be included only in the DBA Collateral Agreement]

- (a) For purposes of this Section 8, an "**LRV Collateral Rights Event**" means the occurrence of either one of the following:
 - (i) (A) the termination of the Project Agreement during the Construction Period by reason of a Project Co Termination Event that was not caused directly or

indirectly by a DB Termination Event under (and as defined in) the Design-Build Agreement, (B) the Security Trustee has not cured the Default or the subsisting grounds that gave rise to the applicable Termination Event pursuant to Section 2.11 of the Direct Lender Agreement or did not issue a Step-in Notice prior to the expiry of the applicable period referred to in Section 2.11 of the Direct Lender Agreement, (C) the Notice Period under the Direct Lender Agreement has expired without the delivery by the Security Trustee of a Step-In Notice thereunder or the Security Trustee issued a Step-In Notice within the Notice Period and the Step-In Period has expired without the Default being cured or without an assignment to a Suitable Substitute Contractor being effected pursuant to Section 2.10 of the Direct Lender Agreement, (D) the Security Trustee has not requested a New Project Agreement within the time period set out in Section 2.12 of the Direct Lender Agreement, (E) the terms of Section 18 of the Project Agreement have been observed, and (F) the City has exercised its rights under the DBA Collateral Agreement to step into the Design-Build Agreement and, following the exercise of such rights, the City terminates the Design-Build Agreement by reason of a Design Builder Termination Event under the Design-Build Agreement that was not solely or substantially caused by a failure to perform which is associated with the LRV Supply; or

(ii) (A) the termination of the Project Agreement during the Construction Period by reason of a Project Co Termination Event that was caused directly or indirectly by a DB Termination Event under (and as defined in) the Design-Build Agreement; (B) the DB Termination Event referred to in the immediately preceding clause (a)(ii)(A) was not solely or substantially caused by a failure to perform which is associated with the LRV Supply, (C) the Security Trustee has not cured the Default or the subsisting grounds that gave rise to the applicable Termination Event pursuant to Section 2.11 of the Direct Lender Agreement or did not issue a Step-in Notice prior to the expiry of the applicable period referred to in Section 2.11 of the Direct Lender Agreement, (D) the Notice Period under the Direct Lender Agreement has expired without the delivery by the Security Trustee of a Step-In Notice thereunder or the Security Trustee issued a Step-In Notice within the Notice Period and the Step-In Period has expired without the Default being cured or without an assignment to a Suitable Substitute Contractor being effected pursuant to Section 2.10 of the Direct Lender Agreement, (E) the Security Trustee has not requested a New Project Agreement within the time period set out in Section 2.12 of the Direct Lender Agreement, and (F) the terms of Section 18 of the Project Agreement have been observed.

(b) Contemporaneously with or at any time after the delivery by the City of a Step-In Notice pursuant to Section 3.1 of this Agreement, either the City or the LRV Supplier may elect upon written notice to the other to require by negotiation that: (i) the LRV Supply scope be further defined in greater detail, and (ii) further terms and conditions of LRV Supply be established and included as an appendix to the DBA Collateral Agreement according to the protocol described below. If an LRV Collateral Rights Event referred to in Section

8(a)(i) of this Agreement occurs prior to the negotiation notice referred to in this Section 8(b) being delivered by the City to the LRV Supplier (or *vice versa*), then either the City or the LRV Supplier shall have a period of 30 days after the occurrence of an LRV Collateral Rights Event referred to in Section 8(a)(i) of this Agreement to deliver such negotiation notice. Failure for such notice to be delivered within such 30-day period shall render the rights of either of the City or the LRV Supplier under this Section 8 null and void and of no further force and effect.

- (c) Upon the occurrence of an LRV Collateral Rights Event referred to in Section 8(a)(ii) of this Agreement, the City may deliver written notice (an "**LRV Step-In Notice**") to the LRV Supplier that the City wishes to enter into an LRV Supply contract with the LRV Supplier. The failure by the City to deliver an LRV Event Step-In Notice within 30 days after the occurrence of an LRV Collateral Rights Event referred to in Section 8(a)(ii) of this Agreement shall render the rights of the City under this Section 8 null and void and of no further force and effect.
- (d) The further LRV Supply Terms (including possible modifications to the scope of LRV Supply) to be settled by the City and the LRV Supplier following the delivery of a Step-In Notice or an LRV Step-in Notice shall be based on the following principles and guidelines:
 - (i) obligation of the parties to use reasonable commercial efforts to diligently negotiate in good faith;
 - (ii) the further LRV Supply Terms should be "*fairly and equitably*" balanced having regard to the interests of the City and the LRV Supplier;
 - (iii) fair and equitable terms shall take into account: (1) the LRV Scope and LRV Supply Terms as of the Effective Date; (2) the Final Proposal as it related to the LRV Supply, it being understood that the pricing information provided as the LRV price in the Financial Proposal does not contain the full costs associated with the scope of LRV Supply included in Part A of Exhibit A hereto; (3) the economic and risk exposure position the LRV Supplier would have been in in respect of the LRV Supply had the Project Agreement and Design-Build Agreement not been terminated; (4) the economic and risk exposure position of an LRV supplier for the same scope of work/supply should the LRV Supply have been performed under a standalone subcontract with either Project Co or the Design Builder; (5) the compensation on termination payment determinations applicable to the Project Agreement and Design Build Agreement termination circumstances; (6) the scope of LRV Supply already performed by the LRV Supplier and the compensation received by the LRV Supplier from Project Co, the Lenders or the City prior to the execution of the LRV Supply contract, including for any incremental costs associated to perform the LRV Supply which are due to the above circumstances; and (7) prevalent market practices and terms and conditions of LRV supply with a similar scope to the LRV Supply (with reference

to the industry standard terms and conditions for an LRV supply contract, such as the APTA LRV standards).

- (e) If the parties settle the further LRV Supply Terms within 45 days of the City issuing a Step-In Notice or an LRV Step-In Notice, then (i) in the case of an LRV Collateral Rights Event referred to in Section 8(a)(ii) of this Agreement, the City and the LRV Supplier shall enter into the settled form of LRV Supply contract, or (ii) in all other cases, the settled form of LRV Supply contract shall be appended to the DBA Collateral Agreement and entered into by the City and the LRV Supplier if the LRV Collateral Rights Event referred to in Section 8(a)(i) of this Agreement occurs and the City delivers notice to the LRV Supplier within 30 days after the occurrence thereof that the City wishes to enter into the LRV Supply contract with the LRV Supplier.
- (f) If the parties are not able to settle the further LRV Supply Terms within 45 days of the City issuing a Step-In Notice or an LRV Step-In Notice, then either of the City or the LRV Supplier may refer the matter to the Commercial Referee pursuant to Schedule 20 of the Design-Build Agreement for final and binding resolution based on a BAFO submission from each of the City and the LRV Supplier. The Commercial Referee will be required to assess which of the two BAFO submissions is the most "fair and equitable" submission having regard to the foregoing principles and guidelines and render a decision within 30 days of receipt of the BAFO submission. Each BAFO submission shall contain an executable form of the LRV supply contract based on that party's BAFO submission. The decision of the Commercial Referee shall be final and binding on both of the City and the LRV Supplier and each such party shall execute and deliver to the other party the form of LRV supply contract that is appended to the BAFO submission that is chosen by the Commercial Referee within 15 Business Days after the delivery to such party of the Commercial Referee's decision.
- (g) If neither the City nor the LRV Supplier refer the matter to the Commercial Referee pursuant to Schedule 20 of the Design-Build Agreement within a period of 30 days after the expiry of the 45-day period referred to in Section 8(f) of this Agreement, then the rights of the City and the LRV Supplier under this Section 8 shall be null and void and of no further force and effect.

9. GENERAL

9.1 Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address or fax number of each party set out below:

if to the City:

LRT Design & Construction, Integrated Infrastructure Services, City of Edmonton
1200, MNP Tower 10235 - 101 Street
Edmonton, Alberta T5J 3E9

Attention: Brad Smid, Valley Line Project Director
Fax: 780 496 2803
Email: brad.smid@edmonton.ca

With a copy to:

Law Branch, Corporate Services Department, City of Edmonton
9th Floor, Chancery Hall, #3 Sir Winston Churchill Square
Edmonton, Alberta T5J 2C3
Attention: Claudia Pooli, Barrister & Solicitor
Fax: 780 496 7267
Email: claudia.pooli@edmonton.ca

if to the Project Contractor:

▼
Attention: ▼
Fax: ▼
Email: ▼

if to Project Co:

TransEd Partners General Partnership
#220, 8616-51 Avenue
Edmonton, AB T6E 6E6
Attention: George Morschauser, Project Co's Representative
Fax: 780 468 6566
Email: gbmorsch@bechtel.com

With a copy to:

TransEd Partners General Partnership
c/o Fengate Infrastructure SPV Services Inc.
2275 Upper Middle Road E., Suite 700
Oakville, Ontario L6H 0C3
Email: fengatenotice@fengate.com

or to such other address or electronic mail address or fax number as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and

- (b) if delivered by electronic mail or facsimile during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (i) the receiving party has, by electronic mail or facsimile or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

9.2 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

9.3 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

9.4 No Partnership or Agency

Nothing in this Agreement will be construed as creating a partnership or as constituting the Project Contractor as an agent of the City. The Project Contractor will not hold itself out as having any authority or power to bind the City in any way.

9.5 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

9.6 Remedies Cumulative

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.7 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

9.8 Delivery by Fax or PDF

Any party may deliver an executed copy of this Agreement by fax or by Portable Document Format (PDF) but that party will immediately dispatch by delivery in person to the other parties an originally executed copy of this Agreement.

9.9 Joint and Several

If the Project Contractor is comprised of more than one legal entity, the obligations and liabilities of the Project Contractor under this Agreement will be the obligations and liabilities of each legal entity comprising the Project Contractor, jointly and severally with each other such legal entity.

9.10 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Agreement or any disagreement between any of the parties with respect to any matter that, by the express terms of this Agreement, is to be agreed upon by the parties will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure, provided that, for greater certainty, the parties acknowledge that, during a Step-in Period or after the Transfer Effective Date, any dispute with respect to any of the subject matters of the Project Contract will be resolved in accordance with the applicable dispute resolution procedure thereunder.

9.11 Choice of Language

It is the express wish of the parties that this document and any related documents be drawn up and executed in English. Les parties aux présentes ont expressément demandé que ce document et tous les documents s'y rattachant soient rédigés et signés en anglais.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

[PROJECT CONTRACTOR]

Per: _____
Authorized Signatory

Signed for the City:

CITY OF EDMONTON

Legally Reviewed and
Approved as to Form:

Law Branch – C. Pooli

Approved as to Content:

LRT Design & Construction – B. Smid

Per: _____

As represented by Linda Cochrane,
Acting City Manager

Date: _____

*Edmonton Valley Line LRT – Stage 1
Project Agreement – Execution Version
Schedule 22 – Collateral Agreements
Date: February 8, 2016*

TRANSED PARTNERS GENERAL PARTNERSHIP, by its partners:

FENGATE (TRANSED) GP INC., in its capacity as general partner of **FENGATE (TRANSED) LP**

by: _____
Name:
Title:

BDC TRANSED (NOVA SCOTIA) CO.

by: _____
Name:
Title:

ELLISDON TRANSED HOLDINGS INC., in its capacity as general partner of **ELLISDON TRANSED HOLDINGS LIMITED PARTNERSHIP**, in its capacity as managing partner of **ELLISDON TRANSED GENERAL PARTNERSHIP**

by: _____
Name:
Title:

BOMBARDIER TRANSED GP INC., in its capacity as general partner of **BOMBARDIER TRANSED HOLDINGS LP**

by _____
Name:
Title:

Name:
Title:

[NTD: To be included only in the DBA Collateral Agreement]

Exhibit A
Scope of LRV Supply

Part A – Included Scope Items

- (a) Performance of the design, manufacture, quality assurance, supply, delivery and commissioning of the LRVs.
- (b) Acceptance of prototype LRV and associated mock-ups.
- (c) Provision in the design of the LRVs for onboard signaling and installation of the onboard signaling in the LRVs.
- (d) Performing the warranty obligations in relation to the LRVs.
- (e) Operation manuals for the LRVs.
- (f) Maintenance manuals for the LRVs.
- (g) Training associated with the operation and maintenance on the LRVs.
- (h) Spare Parts and Capital Spares associated with the LRVs.
- (i) Special tools and bench test equipment associated with the LRVs.
- (j) Maintenance of LRVs up to a handover date established jointly between the City and the LRV Supplier (at the option of the City, maintenance of the LRVs could also be the City's responsibility).
- (k) Workshop equipment associated with the LRVs (wheel truing machine, automatic vehicle inspection system). [Note: Such workshop equipment could be exercised as an option by the City should the LRV Collateral Agreement be entered into, as such equipment is not necessary for the maintenance of the LRVs, but would typically be used in order to have efficient maintenance practices]
- (l) Achieving the specific LRV performance requirements as they will be set out in the LRV Collateral Agreement terms, including any testing, reliability commitments, liquidated damages, noise and EMI/EMC associated with the LRVs.

Part B – Excluded Items

All other scope included in the Project Agreement, including, but not limited to, civil infrastructure, signalling (including the supply and the design of the onboard signalling system, power supply and interface obligations).