

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

Schedule 21

Direct Lender Agreement

***Edmonton Valley Line LRT – Stage 1
Project Agreement – Execution Version
Schedule 21 – Direct Lender Agreement
Date: February 8, 2016***

SCHEDULE 21
DIRECT LENDER AGREEMENT
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SCHEDULE 21

DIRECT LENDER AGREEMENT

made the ___ day of ___, 20__

BETWEEN:

The City of Edmonton

(the "City")

AND:

Computershare Trust Company of Canada, as security trustee for and
on behalf of the Senior Lenders

(the "Security Trustee")

AND:

TransEd Partners General Partnership

("Project Co")

PREAMBLE:

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, all as more particularly described in the Project Agreement.

Pursuant to the Project Agreement, the City and Project Co have agreed to enter into this Agreement with the Security Trustee.

The City, Project Co and the Security Trustee therefore agree as follows:

1. INTERPRETATION

1.1 Definitions

Capitalized terms used in this Agreement have the definitions set out in the Project Agreement, unless expressed otherwise, and:

- (a) "**Affiliate**" has the meaning given to "**affiliate**" in the *Business Corporations Act* (Alberta);
- (b) "**Agreement**" means this agreement, as amended or supplemented from time to time;

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- (c) **“Confidential Information”** has the meaning set out in Section 3.3;
- (d) **“Default Notice”** means a notice given and delivered by the City to the Security Trustee in accordance with this Agreement upon a Default by Project Co or upon the occurrence of a Termination Event under the Project Agreement;
- (e) **“Exercise Date”** has the meaning set out in Section 2.19;
- (f) **“New Project Agreement”** has the meaning set out in Section 2.12;
- (g) **“Notice Period”** means the period starting on the date of delivery of a Default Notice pursuant to Section 3.1 and ending 90 days later;
- (h) **“Representative”** means the representative named by the Security Trustee in a Step-In Notice given by the Security Trustee to the City pursuant to Section 2.8(a) or a notice under Section 2.12 requiring the City to enter into a New Project Agreement, which representative may be:
 - (i) the Security Trustee, a Senior Lender or any of its or their respective Affiliates;
 - (ii) in the case of a Step-In Notice only, a receiver or receiver and manager of Project Co appointed under an agreement between Project Co and the Security Trustee or appointed by a Court on application by the Security Trustee or any one or more Senior Lenders;
 - (iii) a person directly or indirectly owned or controlled by the Security Trustee or a Senior Lender; or
 - (iv) any other person selected by the Security Trustee and approved by the City acting reasonably;
- (i) **“Step-In Date”** means the date on which the Security Trustee gives the City a Step-In Notice;
- (j) **“Step-In Notice”** means the notice given by the Security Trustee to the City pursuant to Section 2.8(a) stating that the Security Trustee is exercising the step-in rights under this Agreement and identifying the Representative;
- (k) **“Step-In Period”** means the period from the Step-In Date up to and including the earlier of:
 - (i) the Step-Out Date;
 - (ii) the date that a transfer to a Suitable Substitute Contractor becomes effective pursuant to Section 2.9;
 - (iii) the date of termination of the Project Agreement;

- (iv) if the Step-In Date occurs prior to Service Commencement, the later of: (A) the Long Stop Date, or (B) the first anniversary of the Step-In Date; or
- (v) the expiry of the Term;
- (l) **“Step-Out Date”** means the date that is 20 Business Days after the date of a Step-Out Notice;
- (m) **“Step-Out Notice”** means a notice from the Security Trustee or the Representative to the City pursuant to Section 2.10; and
- (n) **“Suitable Substitute Contractor”** means a person approved by the City in accordance with this Agreement to replace Project Co under the Project Agreement or to enter into the New Project Agreement, which:
 - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Project Agreement and all other documents to which both the City and Project Co are parties pursuant to or in connection with the Project Agreement; and
 - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the Project Agreement and all other documents to which both the City and Project Co are parties pursuant to or in connection with the Project Agreement.

1.2 Order of Precedence

In the event of any conflict or inconsistency between the provisions in the body of this Agreement and the provisions of the Project Agreement, provisions in the body of this Agreement shall govern.

1.3 Termination of Agreement

This Agreement shall terminate automatically on the earliest of:

- (a) the date on which all amounts which may be or become owing to the Security Trustee, and other credit support providers expressly provided for in or contemplated by the Senior Financing Agreements, have been irrevocably paid in full;
- (b) upon the expiry of the 45 day period contemplated in the last paragraph of Section 2.12 following termination of the Project Agreement; and
- (c) the date that a New Project Agreement and Direct Lender Agreement entered into under Section 3.4 of the New Project Agreement are executed and delivered by the parties thereto.

Within 30 days following its occurrence, the Security Trustee shall provide notice to the City of the date

referred to in Section 1.3(a).

1.4 Acknowledgement

Project Co acknowledges and consents to the arrangements set out in this Agreement, and agrees not to do or omit to do anything that may prevent any other party from enforcing its rights under this Agreement.

2. GENERAL

2.1 Consent to Security

The City hereby:

- (a) consents to the granting by Project Co to the Security Trustee of a security interest in the Payment and any Termination Payment or other payment becoming due by the City to Project Co under the Project Agreement; and
- (b) acknowledges that, except for the consent referred to in Section 2.1(a) above, no consent of the City is required for the granting by Project Co to the Security Trustee of any further security in the Project Agreement or in respect of the form or terms of any documents, instruments or letters of credit contemplated in or arising out of the Project Agreement, or to the perfection of such security interests or, subject to the restrictions on assignment in Section 23.1 [*Limitations on Assignment of Agreement*] of the Project Agreement and to Sections 2.14 and 2.15 below, the enforcement of any such security by the Security Trustee.

2.2 Payment to Security Trustee

The Payment, any Termination Payment, and all other sums that become payable by the City to Project Co under the Project Agreement shall be paid only:

- (a) subsequent to the delivery by the City of a Default Notice or during the Step-In Period, to the Security Trustee, in which case any such payment to the Security Trustee shall be deemed payment to Project Co for the purposes of the Project Agreement; or
- (b) subject to Section 2.2(a), to any account or accounts of Project Co at any time jointly designated by Project Co and the Security Trustee and in the absence of such designation, to Project Co, in either case, for the purpose of calculating a Termination Payment under section 18.8 or 18.9 of the Project Agreement, all payments to such account or accounts or to Project Co that were required by the terms of the relevant Senior Financing Agreements to have been applied towards repayment of the Senior Debt Financing shall be deemed to have been so applied.

2.3 No Guarantee

Nothing in this Agreement shall in any way constitute the City as a guarantor of the Senior Debt Financing or the Senior Financing Agreements.

2.4 City's Step-in Rights

The rights of the Security Trustee hereunder shall be subject to, and shall not derogate from or interfere with, the City's step-in rights under section 16.6 [*City's Remedial Rights*] of the Project Agreement, provided the City delivers written notice to the Security Trustee of the exercise by the City of such step-in rights concurrently with the notice thereof delivered by the City to Project Co. At any time during which the City is exercising its step-in rights under section 16.6 [*City's Remedial Rights*] of the Project Agreement, the Security Trustee may put forward a remedial plan for consideration by the City, and in that event the City shall give consideration, acting reasonably, to such remedial plan. The Security Trustee shall not, by reason of putting forward of such remedial plan, be deemed to have assumed any obligation or liability of Project Co.

2.5 Amendment to Agreements

- (a) The City and Project Co agree with the Security Trustee not to:
 - (i) materially amend or waive any provision of the Project Agreement in any way that is:
 - (a) potentially material to the rights of the Security Trustee hereunder or under any agreement between the Security Trustee and Project Co; or
 - (b) that will have the effect of increasing any liability of Project Co under the Project Agreement,without the prior written consent of the Security Trustee, not to be unreasonably withheld or delayed; and
 - (ii) subject to the terms of this Agreement, terminate the Project Agreement other than in accordance with its terms.
- (b) Project Co, the Security Trustee and the Senior Lenders shall not amend or modify the Senior Financing Agreements, except where Project Co is permitted to do so pursuant to the Project Agreement.

2.6 Right to Notice and Information

The City agrees with the Security Trustee to provide to the Security Trustee a copy of:

- (a) each calculation of the Payment pursuant to Schedule 16 [*Payment Mechanism*] of the Project Agreement;
- (b) any Default Notice given to Project Co or any notice under Section 17.2 [*Termination by City*] or 17.4 [*Termination Upon Force Majeure*] of the Project Agreement;
- (c) any notice of set-off given to Project Co under Section 9.5 [*Set-off*] of the Project Agreement;

- (d) any notice of Force Majeure Event given to Project Co under Section 12.3 [*Procedure on Force Majeure Event*] of the Project Agreement;
- (e) any notice of the City's step-in rights given to Project Co under Section 16.6 [*City's Remedial Rights*] of the Project Agreement; and
- (f) any notice of Termination Payment given to Project Co under Section 18.3 [*Operating Period Termination*] of the Project Agreement.

In addition, the City will provide reasonable cooperation to the Security Trustee in furnishing information reasonably requested by the Security Trustee in relation to any remedial plan being considered by the Security Trustee in accordance with this Agreement or, in the event of termination of the Project Agreement, in relation to the process under Section 18.2, 18.3, 18.4 or 18.5 of the Project Agreement.

The Security Trustee shall, concurrently with Project Co, notify the City of any event of default, any notice from the Security Trustee or the Senior Lenders to Project Co accelerating or threatening to accelerate the maturity of any amounts owing by Project Co to the Security Trustee or the Senior Lenders under the Senior Financing Agreements or any notice from the Security Trustee or the Senior Lenders to Project Co demanding or threatening to demand repayment of any amounts owing by Project Co to the Security Trustee or the Senior Lenders under the Senior Financing Agreements.

2.7 Security Trustee's Right to Cure

The Security Trustee has the right but not the obligation to cure or cause to be cured any Default by Project Co under the Project Agreement, and performance by the Security Trustee or any person authorized by the Security Trustee for that purpose by notice to the City of any obligation of Project Co under the Project Agreement shall constitute due performance of that obligation. The Security Trustee shall not, by reason only of the performance by the Security Trustee or any person authorized by it of any obligation of Project Co, be deemed to have assumed any obligation or liability of Project Co.

2.8 Security Trustee's Step-In Rights

- (a) Without prejudice to the rights of the Security Trustee and the Senior Lenders under the Senior Financing Agreements, the Security Trustee may give the City a Step-In Notice at any time:
 - (i) during which a Default is subsisting, whether or not a Default Notice has been served;
 - (ii) during the Notice Period; or
 - (iii) if the Security Trustee delivers a notice to the City stating that an event has occurred and is continuing which, under the Senior Financing Agreements, entitles the Security Trustee to give a Step-In Notice.
- (b) The Security Trustee or the Representative may at any time during the Step-In Period, but not more often than is reasonably required for the purposes of any remedial plan being considered by the Security Trustee, require the City to provide current information

regarding the liabilities and obligations of Project Co under the Project Agreement (and information relating to the Default under the Project Agreement), in which event the City shall as soon as practicable supply to the Security Trustee all such information that is known by or reasonably available to the City. The City shall not incur any liability or obligation to the Security Trustee in respect of information supplied, except to the extent that the City knew or ought to have known that the information supplied was materially incorrect or misleading.

- (c) Upon the issuance of the Step-In Notice and until the end of the Step-In Period:
 - (i) the Security Trustee or the Representative may exercise the rights and perform the obligations of Project Co under the Project Agreement and all other documents to which both the City and Project Co are parties pursuant to or in connection with the Project Agreement; and
 - (ii) the Security Trustee or the Representative shall be the exclusive agent of Project Co for all matters relating to the Project Agreement and all other documents to which both the City and Project Co are parties pursuant to or in connection with the Project Agreement, including but not limited to the giving and receiving of all notices and communications under the Project Agreement.
- (d) During any Step-In Period, the City shall consider and decide upon (in its absolute discretion) any extension of the time period in Section 2.11(a) hereof proposed in connection with any remedial plan put forward by the Security Trustee or the Representative, but the exercise by the Security Trustee of its Step-in Rights shall not otherwise affect the cure period referred to in Section 2.11(a).
- (e) All rights of the Security Trustee under clauses (b), (c) and (d) of this Section and Section 2.10(a) may be exercised on behalf of the Security Trustee by the Representative named in the Step-In Notice.
- (f) There will not be more than one Step-In Period in respect of any one Default Notice.

2.9 Suitable Substitute Contractor

Upon the issuance of the Step-In Notice and until the end of the Step-In Period, the Security Trustee may direct that all rights and obligations under the Project Agreement and all other documents to which both the City and Project Co are parties pursuant to or in connection with the Project Agreement be assigned to a Suitable Substitute Contractor, but only if:

- (a) the Suitable Substitute Contractor assumes all obligations of Project Co under the Project Agreement and all other documents to which both the City and Project Co are parties pursuant to or in connection with the Project Agreement by an assumption agreement among Project Co, the City and the Suitable Substitute Contractor, in a form prepared by the Suitable Substitute Contractor or the Security Trustee and acceptable to the City, acting reasonably;

- (b) all external expenses reasonably incurred by the City in reviewing the assumption agreement contemplated by Section 2.9(a) and in carrying out reasonable due diligence in relation to Section 2.9(a) are paid by the proposed Suitable Substitute Contractor or the Security Trustee;
- (c) all Defaults by Project Co under the Project Agreement have been cured or, in the case of Incurable Defaults, mitigated as contemplated by Section 16.7(m)(iii) [*Termination Events*] of the Project Agreement or, in either case, the Security Trustee having made arrangements satisfactory to the City, in its discretion, for the Suitable Substitute Contractor to use diligent efforts to effect such cure or such mitigation;
- (d) the Suitable Substitute Contractor has the financial capability, reputation, expertise, resources and abilities necessary to perform the obligations of Project Co under the Project Agreement and all other documents to which both the City and Project Co are parties pursuant to or in connection with the Project Agreement;
- (e) the Suitable Substitute Contractor is not a Restricted Person or other person who is not permitted to be Project Co or a subcontractor pursuant to the Project Agreement;
- (f) the proposed security interests to be granted by the Suitable Substitute Contractor to the Security Trustee or a replacement Security Trustee are not materially different from the Senior Financing Agreements and do not materially adversely affect the ability of the Suitable Substitute Contractor to perform under the Project Agreement or have the effect of increasing any liability of the City, whether actual or potential,

and if such conditions are met, the Security Trustee and any Representative shall not, following such assignment, have any liability or obligation to the City under or in relation to the Project Agreement and all other documents to which both the City and Project Co are parties pursuant to or in connection with the Project Agreement. In assessing whether or not to exercise its rights under this Section 2.9, the Security Trustee shall have regard in the first instance to information it obtains from Project Co, provided that:

- (g) if the Security Trustee, despite its prudent and commercially reasonable measures to obtain from Project Co pertinent information relative to the Project Agreement, is unable to obtain such information or reasonably concludes that such information may be unreliable, the Security Trustee may request the City to:
 - (i) confirm information provided by Project Co; or
 - (ii) supply information not provided by Project Co;
- (h) upon receipt of a request from the Security Trustee under Section 2.9(g), the City shall as soon as is practicable respond to the request for information to the extent that the information sought is known by or reasonably available to the City; and
- (i) the City shall not incur any liability or obligation to the Security Trustee in respect of information supplied or confirmed to the Security Trustee under Section 2.9(h), except to

the extent that the City knew or ought to have known that the information supplied or confirmed was materially incorrect or misleading.

2.10 Step-Out

- (a) The Security Trustee may at any time during the Step-In Period deliver to the City a Step-Out Notice which specifies the Step-Out Date.
- (b) Upon expiry of the Step-In Period:
 - (i) the City will no longer deal with the Security Trustee or the Representative and will deal with Project Co or the Suitable Substitute Contractor (if applicable); and
 - (ii) the Security Trustee and the Representative are released from all obligations and liabilities under the Project Agreement and all other documents to which both the City and Project Co are parties pursuant to or in connection with the Project Agreement.

2.11 Termination

Before the City may terminate the Project Agreement under Section 17.2(a) [*Termination by City*] of the Project Agreement upon a Termination Event under Section 16.7(d), (e), (f), (i), (j), (k), (m) and (o) [*Termination Events*] of the Project Agreement, the City shall deliver to the Security Trustee a Default Notice and provide to the Security Trustee an opportunity to cure the Default or the subsisting grounds that gave rise to the applicable Termination Event, in accordance with the following:

- (a) the Security Trustee shall have 90 days from the giving of such Default Notice to cure the Default or such subsisting grounds, as applicable;
- (b) if the Default or such subsisting grounds, as applicable, can only be cured following the appointment of a receiver or receiver-manager, and if such process requires longer than the 90 day cure period, then the Security Trustee shall be entitled to such longer period, provided:
 - (i) the Security Trustee obtained such contractual rights to appoint a receiver or receiver-manager of Project Co as a prudent lender would obtain; and
 - (ii) the Security Trustee diligently proceeds to have a receiver or receiver-manager appointed and thereafter diligently proceeds to cure the Default or such subsisting grounds, as applicable, (but in any event within 90 days of appointment of the receiver or receiver-manager); and
- (c) if the Default is an Incurable Default, then Section 16.7(m)(iii) [*Termination Events*] of the Project Agreement shall apply to the Security Trustee, with such changes as are necessary to the context thereof.

Before the City may terminate the Project Agreement under Section 17.2(a) [*Termination by City*] of the Project Agreement upon a Termination Event under Section 16.7(a), (b), (c), (g), (h), (l) and (n)

[Termination Events] of the Project Agreement, the City shall give the Security Trustee fifteen Business Days' notice of the occurrence of such Termination Event or the reasonably anticipated occurrence of such Termination Event.

2.12 Security Trustee's Option Upon Termination

If the City, after duly affording the Security Trustee the opportunity required by Section 2.11 [Termination] to cure the Default or the subsisting grounds that gave rise to the Termination Events specified in Section 2.11 [Termination] or giving the Security Trustee notice of the occurrence of certain Termination Events, as applicable, terminates the Project Agreement pursuant to Section 17.2(a) [Termination by City] of the Project Agreement by notice to Project Co and the Security Trustee, then the Security Trustee may, within 45 days of receiving notice of the termination, require the City to enter into a new Project Agreement (the "**New Project Agreement**") directly with a Representative on the same terms (and having the same remaining Term) as the Project Agreement except as stated otherwise in this Agreement or as may be a direct consequence of and required for the entering into of the New Project Agreement, with the intent being that the novation of the Project Agreement will place the City in the same position as if the Project Agreement had not been terminated. In that event:

- (a) the Representative shall cure all existing Defaults of Project Co as soon as reasonably practicable (or, in the case of an Incurable Default, mitigate as contemplated by Section 16.7(m)(iii) [Termination Events] of the Project Agreement);
- (b) no Termination Payment shall be payable by the City in respect of the Project Agreement being terminated;
- (c) if the Termination Event that gave rise to the New Project Agreement was a Termination Event pursuant to Section 16.7(g) [Termination Events] of the Project Agreement, then the date set forth in Section 16.7(g) [Termination Events] of the New Project Agreement shall be the date that is three years after the Commercial Close (for greater clarity, not three years after Execution Date of the New Project Agreement).

If the Termination Event that gave rise to the New Project Agreement was a Termination Event pursuant to Section 16.7(h) [Termination Events] of the Project Agreement, then the Long Stop Date for the purpose of Section 16.7(h) [Termination Events] of the New Project Agreement shall be 180 days after the date of the New Project Agreement.

If the Termination Event that gave rise to the New Project Agreement was a Termination Event pursuant to Section 16.7(k) [Termination Events] of the Project Agreement, then none of the subsisting factual grounds for termination in respect of the Project Agreement being terminated (including Payment Adjustments) caused by Project Co under the Project Agreement shall apply to the New Project Agreement;

- (d) the City, the Security Trustee, and Project Co all acknowledge that this Agreement has been cancelled upon the entering into of the New Project Agreement and this Section 2.12 of this Agreement shall be deleted and not included in any Direct Lender Agreement entered into under Section 3.4 of the New Project Agreement; and

- (e) the Representative may at any time thereafter:
 - (i) subject to the same terms and conditions as set out in Sections 2.9(a), (b), (c), (d), (e) and (f); and
 - (ii) provided any Defaults by the Representative, as Project Co under the New Project Agreement have been cured or, in the case of Incurable Defaults, mitigated as contemplated by Section 16.7(m)(iii) [*Termination Events*] of the Project Agreement or, in either case, the Representative having made arrangements satisfactory to the City, acting reasonably, for the Suitable Substitute Contractor to use diligent efforts to effect such cure or mitigation,

assign all of its rights and obligations under the New Project Agreement to a Suitable Substitute Contractor.

Following the assignment referred to in Section 2.12(e), the Representative shall be released from all liabilities and obligations to the City under or in relation to the Project Agreement and the New Project Agreement.

In order to give effect to this option, no Termination Payment arising upon termination of the Project Agreement under Section 17.2(a) [*Termination by City*] of the Project Agreement shall become payable until after 45 days following the effective date of termination.

2.13 Representations and Warranties

The City hereby represents and warrants to and in favour of the Security Trustee that:

- (a) the City has all requisite capacity, power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement has been duly authorized on behalf of the City and, upon execution and delivery, constitutes a legal, valid and binding obligation of the City; and
- (c) the City has not consented to any assignment of the Payment, any Termination Payment or other payment becoming due by the City to Project Co under the Project Agreement, other than under this Agreement.

2.14 Assignment

- (a) The City shall not assign or transfer its rights and obligations under this Agreement except to a permitted assignee of its interest in the Project Agreement in accordance with Section 23.6 [*Assignment by City*] of the Project Agreement and provided such permitted assignee agrees in writing with the other parties hereto to be bound by the terms and conditions of this Agreement.
- (b) Project Co shall not assign or transfer its rights and obligations under this Agreement except concurrently with the assignment or transfer by Project Co to an assignee of

Project Co's rights and obligations under the Project Agreement in accordance with Section 23.1 [*Limitations on Assignment*] of the Project Agreement.

- (c) The Security Trustee may assign or transfer its rights and obligations under the Senior Financing Agreements in accordance with the terms thereof, and shall provide the City with prior written notice of such assignment or transfer. The City and Project Co will, upon request by any such successor to the Security Trustee, enter into a new direct agreement with that party on terms that are the same in all material respects as the terms of this Agreement, as contemplated by and in accordance with Section 3.4 [*Direct Lender Agreement*] of the Project Agreement. The Security Trustee may not otherwise transfer or assign its rights and obligations under this Agreement except with the prior consent of the City, who may withhold such consent if the City, acting reasonably, considers that such assignment may in any material way impair or prejudice the rights of the City under the Project Agreement or this Agreement.

2.15 Approval of Suitable Substitute Contractor

In connection with the assignment to a Suitable Substitute Contractor under Section 2.9 or an assignment to a Suitable Substitute Contractor pursuant to Section 2.12, the Security Trustee will deliver all information reasonably required by the City to determine whether the proposed transferee is a Suitable Substitute Contractor. The City will advise the Security Trustee within 10 Business Days from its receipt of the information referred to above whether it accepts a proposed transferee as a Suitable Substitute Contractor. The City acknowledges and agrees that it will not be reasonable for the City to withhold its consent if a proposed Suitable Substitute Contractor has the financial capacity, expertise, resources and abilities necessary to perform the obligations of Project Co under the Project Agreement. If the City fails to respond within such 10 Business Days, the City will be deemed to have not accepted the Suitable Substitute Contractor. If the City withholds its approval of a proposed transferee as a Suitable Substitute Contractor, the Security Trustee may make one or more subsequent request for approval of a Suitable Substitute Contractor containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Security Trustee has good cause to believe will be acceptable to the City, acting reasonably, provided that only one request for approval may be outstanding at any one time.

2.16 Replacement of Subcontractor

The City acknowledges that where it becomes necessary for Project Co to replace the Service Provider, a replacement Service Provider can most efficiently be procured only if the consequences of future Payment Adjustments are "reset" to zero. Accordingly, where the Service Provider is replaced either by Project Co or pursuant to this Agreement, then provided that:

- (a) the replacement Service Provider is at arm's length from the replaced Service Provider; and
- (b) the Service Provider has not previously been replaced more than once in the immediately preceding five year period;

the first circumstance thereafter giving rise to a Payment Adjustment shall be deemed to be the first

Payment Adjustment under the Project Agreement. Nothing in this Section 2.16 shall operate to relieve Project Co against any Payment Adjustments arising prior to the replacement of the Service Provider. The Service Provider shall only be replaced in compliance with Section 23.5 [*Project Co Persons, Subcontractors*] of the Project Agreement.

2.17 Collateral Agreements

- (a) Following termination of the Project Agreement (other than as a result of entering into a New Project Agreement) in accordance with this Agreement, unless the Security Trustee has exercised its option to require the City to enter into a New Project Agreement pursuant to Section 2.12 [*Security Trustee's Option on Termination*], the City shall from such date (in this section the "Exercise Date") be entitled to exercise its rights under the Collateral Agreements to step into and/or novate any contracts in accordance with the Collateral Agreements.
- (b) Following the Exercise Date, the City shall not do anything to prejudice the rights which are not transferred to it pursuant to the Collateral Agreements.
- (c) Where all amounts which may be or become owing by Project Co to the Security Trustee, and other credit support providers as expressly provided for in or contemplated by Senior Financing Agreements, have been irrevocably paid in full, the Security Trustee shall promptly release and discharge all security in respect of contracts assumed or novated by the City pursuant to a Collateral Agreement.

3. COMMUNICATIONS

3.1 Notices

Any notice, consent, approval or other communication under any provision of this Agreement must be in writing to be effective, and is effective when delivered by any means, including e-mail or fax transmission, to the following respective addresses:

- (a) 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

(b) 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

(c) if to the Security Trustee:

Computershare Trust Company of Canada
11-100 University Ave.
Toronto, ON M5J 2Y1
Attention: Manager, Corporate Trust
Fax No.: (416) 981-9777

Any party may change its address information by giving notice to the other parties in the above manner.

3.2 Authority to Give Notices

The parties designate for the time being the following individuals as having authority to communicate to the other any notice, approval, consent, waiver or other communication under this Agreement:

(a) in the case of the City:

Brad Smid, Valley Line Project Director

(b) in the case of Project Co:

George Morschauser, Project Co's Representative

(c) in the case of the Security Trustee:

In the absence of any further designation or limitation communicated with reference to this Section 3.2, each party may assume that any notice, approval, consent, waiver or other communication under this Agreement given by the above individual has been duly authorized and is binding upon the relevant party hereto.

3.3 Confidential Information

Each party shall, upon delivering any information to the other pursuant to this Agreement that includes information delivered in confidence, identify the information delivered in confidence (the “Confidential Information”). The receiving party shall maintain (and shall ensure that its officers, employees, consultants, advisors and contractors maintain) the confidentiality of the Confidential Information, with the exception of information that:

- (a) at the time of the disclosure to the receiving party, was in the public domain;
- (b) after disclosure to the receiving party became part of the public domain through no fault of the receiving party or those for whom it is responsible at law;
- (c) was in the possession of the receiving party at the time of disclosure to it, as demonstrated by written records; or
- (d) was received by the receiving party from a third party who had a lawful right to disclose the information.

3.4 Disclosure of Confidential Information

No party to this Agreement shall disclose Confidential Information delivered by another party hereto except:

- (a) to such of its directors, officers, employees, consultants, advisors, counsel and contractors (including without limitation the Senior Lenders, any rating agency, surety company or guarantor, and any person with whom the disclosing party proposes to do business in furtherance of the purposes of this Agreement or the Project Agreement) who reasonably require access to the Confidential Information for the due performance of or to further the purposes of this Agreement, the Project Agreement or the Senior Financing Agreements;
- (b) as required by FOIP or any other applicable law;
- (c) to a Contribution Agreement Party in connection with any obligations of the City pursuant to a Contribution Agreement, and in the event of such disclosure, Project Co acknowledges that the Contribution Agreement Parties may be subject to FOIP, *Access to Information Act* (Canada) or other applicable laws in respect of the use, protection and/or disclosure of such information; or
- (d) where the disclosure is consented to by the applicable other party.

3.5 Public Disclosure of Agreement

The Security Trustee and Project Co agree that the City will be at liberty to make public disclosure of this Agreement, excepting only any portions thereof that the Security Trustee or Project Co has, prior to signing of this Agreement, established to the satisfaction of the City, acting reasonably, would be exempted from disclosure under Part 1 of FOIP by the provisions of FOIP governing third party

confidential information.

4. MISCELLANEOUS

4.1 Applicable Law and Jurisdiction

This Agreement shall be governed by the laws in force in Alberta, including the federal laws of Canada applicable therein. Except as may be agreed to by the parties and subject to Section 4.6, Alberta courts shall have exclusive jurisdiction over all matters arising in relation to this Agreement, and each party accepts the jurisdiction of Alberta courts.

4.2 Amendment and Waiver

No amendment of this Agreement is effective unless made in writing and signed by a duly authorized representative of each party hereto. No waiver of any provision of this Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by any of the parties with respect to the performance of any obligation under this Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

4.3 Additional Assurances

Each party agrees to from time to time do all such acts and provide such further assurances and instruments as may reasonably be required in order to carry out the provisions of this Agreement according to their spirit and intent; but this Section 4.3 shall not in any event be construed as obligating the City to amend or enact any by-law or motion.

4.4 Counterparts

This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by fax or by Portable Document Format transmission shall constitute good delivery.

4.5 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.

4.6 Dispute Resolution Procedure

The parties agree that the Dispute Resolution Procedure provided for in the Project Agreement shall apply to any dispute under this Agreement, with such reasonable amendments as are necessary to adapt the Dispute Resolution Procedure to this Agreement, including the tri-partite elements of this Agreement. If there is any dispute in relation to amendments to the Dispute Resolution Procedure, the matter shall be determined by arbitration before one arbitrator and the *Arbitration Act* (Alberta) applies.

4.7 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 each of the parties has executed this Agreement as of the day and year first above written.

Legally Reviewed and
Approved as to Form:

Law Branch – C. Pooli

Approved as to Content:

LRT Design & Construction – B. Smid

Signed for the City:

CITY OF EDMONTON

Per: _____

As represented by Linda Cochrane,
Acting City Manager

Date: _____

***Edmonton Valley Line LRT – Stage 1
Project Agreement – Execution Version
Schedule 21 – Direct Lender Agreement
Date: February 8, 2016***

COMPUTERSHARE TRUST COMPANY OF CANADA,
acting as Security Trustee

Per: _____

Name:

Title:

Per: _____

Name:

Title:

***Edmonton Valley Line LRT – Stage 1
Project Agreement – Execution Version
Schedule 21 – Direct Lender Agreement
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: