

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

Schedule 17

Insurance Requirements

SCHEDULE 17

INSURANCE REQUIREMENTS

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SCHEDULE 17

INSURANCE REQUIREMENTS

1. INSURANCE REQUIREMENTS

Subject to Section 5 [*Uninsurability*] of this Schedule, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained in force and renewed, the insurance covers set out in Appendix 17A [*Project Co Construction Period Insurance*] and Appendix 17B [*Project Co Operating Period Insurance*] of this Schedule.

2. OTHER INSURANCE REQUIREMENTS

2.1 Other Operating Period Insurance

During the Operating Period, Project Co shall take out, maintain in force and renew, or cause to be taken out, maintained in force and renewed:

- (a) when construction, rehabilitation, major repair or restoration work is being carried out by or on behalf of Project Co as part of the Services under this Agreement and the risks associated with such work are not insured by the insurance described in the policies described in Section 1 [*Insurance Requirements*] of this Schedule, such of the insurance referred to in Section 1 [*Insurance Requirements*] of this Schedule in such amounts, as a prudent owner would reasonably require, as determined by the City acting reasonably, at least 10 Business Days before the commencement of the applicable period during which the insurance is required. To the extent that such work is undertaken pursuant to a Change Order Confirmation and such work is not covered in the policies referred to in Section 1 [*Insurance Requirements*] of this Schedule, the Change Order Confirmation for such work shall include such insurance coverage as the City, acting reasonably, considers necessary in the circumstances; and
- (b) insurance required by Section 3.4 [*Additional and Elective Insurance*] of this Schedule.

3. GENERAL INSURANCE PROVISIONS

3.1 Insurance Act

All of the insurance policies required to be taken out, maintained in force and renewed by Project Co pursuant to this Agreement shall comply with the Applicable Law, including but not limited to the *Insurance Act* (Alberta).

3.2 Liability Not Limited by Insurance

Except to the extent otherwise expressly provided in this Agreement, none of the insurance coverage amounts, values, limits or sublimits specified in this Schedule limit the liability of Project Co with respect to any obligations of Project Co to the City arising under this Agreement.

3.3 Insurers and Terms of Policies

- (a) Project Co shall ensure that all policies for the insurance it is required to obtain, maintain and renew pursuant to this Schedule are obtained, maintained and renewed with Qualified Insurers authorized or licensed to insure the risks in question in Alberta and, subject to this Schedule, are in such forms and contain such terms and conditions which are equal to or better than those that would be obtained, maintained and renewed by prudent owners and operators of projects of similar scope and magnitude to the Project and, in addition to the required inclusions or permitted exclusions for each policy specifically described in this Schedule, include such other inclusions and exclusions as such prudent owner or operator would require or permit.
- (b) Project Co shall ensure that all insurance policies that it is required to obtain, maintain and renew pursuant to this Schedule must be in forms and with terms and conditions acceptable to the City, acting reasonably and acting in a reasonably timely manner. The purpose of this Section 3.3(b) is to give the City the right to have modified or deleted from the actual insurance policies, terms and conditions that the City becomes aware of, including those that the City becomes aware of only after receiving the certified copies of the insurance policies, that are contrary to the express intent or the spirit of the insurance requirements in this Agreement, including this Schedule.
- (c) Subject to this Section 3.3, the insurance covers required under this Agreement may be structured as single policies or combinations of primary, excess, and umbrella policies.

3.4 Additional and Elective Insurance

Project Co: (1) shall obtain and maintain, or cause to be obtained and maintained, at its cost, all such other policies of insurance required by Applicable Law to be obtained and maintained by Project Co in connection with the performance of its obligations under this Agreement ("**Additional Insurance**"); and (2) may increase the limits or decrease the deductibles of the insurance policies it is required to take out, maintain and renew under this Schedule, provided that such increase or decrease does not reduce the amount or extent of cover available, and may obtain and maintain all such other policies of insurance which Project Co deems necessary having regard to the policies of insurance which prudent owners and operators of projects of similar scope and magnitude to the Project would obtain and maintain, or cause to be obtained and maintained (together "**Elective Insurance**"), including directors and officers liability and corporate indemnification insurance.

3.5 [NOT USED]

3.6 Other Requirements of Policies

Without limiting the generality of this Schedule and the provisions of Section 11 [*Insurance, Damage and Destruction*]:

- (a) each policy of insurance required to be taken out, maintained and renewed by Project Co shall:
 - (1) be primary and not require the sharing of any loss or contribution by any insurer of the City or any other named insured;

- (2) bear an endorsement to the effect that the insurer will not affect any adverse material change or amendment to the policy or any cancellation of the policy without first giving at least 30 days prior written notice by registered mail to the City and each of the other named insureds and loss payees; and
 - (3) contain an endorsement to the effect that the policy will not be invalidated and coverage thereunder will not be denied to any insureds by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policy other than as a result of a negligent act, misrepresentation or omission of such insured, except that this clause (3) shall not apply to the following insurance policies:
 - (i) the automobile liability insurance covers described in Section E *[Automobile Liability Insurance]* of Appendix 17A *[Project Co Construction Period Insurance]* and Section D *[Automobile Liability Insurance]* of Appendix 17B *[Project Co Operating Period Insurance]*; and
 - (ii) the workers compensation insurance covers described in Section K *[Workers Compensation Insurance]* of Appendix 17A *[Project Co Construction Period Insurance]* and Section J *[Workers Compensation Insurance]* of Appendix 17B *[Project Co Operating Period Insurance]*;
- (b) each policy of liability insurance required under this Agreement, shall contain a cross liability endorsement to the effect that Project Co and the City and the other insureds will each be entitled to indemnification under such policy as if each were insured under a separate policy and notwithstanding that the claim in respect of which indemnification is sought is made by any other insured, except that this clause (b) shall not apply to the following insurance policies:
- (1) the professional liability insurance described in Section C *[Professional Liability Insurance]* of Appendix 17A *[Project Co Construction Period Insurance]* and Section C *[Professional Liability Insurance]* of Appendix 17B *[Project Co Operating Period Insurance]*; and
 - (2) the automobile liability insurance described in Section E *[Automobile Liability Insurance]* of Appendix 17A *[Project Co Construction Period Insurance]* and Section D *[Automobile Liability Insurance]* of Appendix 17B *[Project Co Operating Period Insurance]*; and
- (c) each policy of property insurance required under this Agreement shall be on a stated amount co-insurance basis or a no co-insurance basis, other than the contractor's equipment insurance described in Section H *[Contractor's Equipment All Risks Insurance]* of Appendix 17A *[Project Co Operating Period Insurance]* of this Schedule.

3.7 Waiver of Recourse

Project Co shall, to the extent that any of its property is required under this Agreement to be insured against, waive any right of recourse against the City in regard to any loss or damage to such property, and shall make its insurer(s) aware of such waiver.

3.8 Subcontractor Insurance

Project Co shall determine the applicable insurance coverage to be obtained by each Subcontractor, provided that such insurance coverages shall be consistent with the insurance that prudent subcontractors would be required to maintain for projects of similar scope and magnitude to the Project.

3.9 Evidence of Insurance

Project Co shall deliver or cause to be delivered to the City:

- (a) in relation to the insurance required pursuant to Section 1 [*Insurance Requirements*] or Section 2.1 [*Other Operating Period Insurance*] of this Schedule, evidence satisfactory to the City acting reasonably (which evidence may include but not be limited to detailed insurance cover notes, detailed certificates of insurance, copies of the insurance policies and written confirmation from Project Co's insurance broker) that all insurance required pursuant to this Schedule is in effect and complies with each of the insurance requirements in this Schedule of all insurance policies required to be taken out, maintained or renewed by Project Co at least 5 days prior to Project Co making any entry upon the Lands for the purpose of commencing Construction (or, in respect of covers required under Section 2.1 [*Other Operating Period Insurance*] of this Schedule, commencing such construction, rehabilitation, major repair or restoration work). Project Co shall deliver or cause to be delivered to the City certified copies of all insurance policies evidencing the insurance required to be taken out, maintained or renewed by Project Co by this Schedule as soon as reasonably practicable, and in any event within 30 days after Commercial Close; and
- (b) in relation to the insurance required for the Operating Period, certified copies of all insurance policies evidencing the insurance required to be taken out, maintained or renewed by Project Co in accordance with this Schedule prior to and as a precondition to Service Commencement,

and shall provide or cause to be provided, not less than 1 month prior to expiration of any then current policy, documentation evidencing to the satisfaction of the City (acting reasonably) the renewal, extension or replacement of such insurance and as soon as reasonably practicable, and in any event within 30 days after expiration of any then current policy, certified copies of policies evidencing to the satisfaction of the City (acting reasonably) the renewal, extension or replacement of such insurance.

No delivery to, or review or approval by, the City of any insurance certificate, insurance policy or other documentation evidencing insurance cover shall derogate from or diminish the City's rights under this Agreement.

3.10 Project Co Deductibles and Self-Insured Retentions

- (a) Subject to Section 3.10(b), Project Co shall be responsible for the deductible or self-insured retention portion of, or waiting period for, any claim made on any policy of insurance maintained pursuant to this Schedule.
- (b) The City shall be responsible for the deductible or self-insured retention portion of, or waiting period for, any claim made on any policy of insurance maintained pursuant to this Schedule:

- (1) made in respect of any earthquake or flood, except to the extent that the flood or the flood damage or earthquake damage is caused by, attributable to or increased by the actions or inactions of or failure of Project Co or any Project Co Person to comply with this Agreement; or
- (2) to the extent that such claim is caused by, attributable to or increased by the actions or inactions of or failure of the City to comply with this Agreement.

3.11 City Deductibles and Self-Insured Retentions

Project Co shall be responsible for the deductible or self-insured retention portion of, or waiting period for, any claim made on any policy of insurance obtained or maintained by the City to the extent that such claim is caused by, attributable to or increased by the Legal Fault of Project Co, a Project Co Party or other person for whom Project Co is responsible in law.

3.12 Reinstatement of Aggregate Insurance Limits

To the extent that Project Co obtains, maintains or renews, or is required to cause others to obtain, maintain or renew, insured values or limits of liability on an aggregate basis for policies of insurance required in accordance with this Schedule, Project Co shall ensure that such aggregate insured values or aggregate limits are reinstated and available in full to the extent of any claims not arising in connection with the Project made against such limits or insured values.

3.13 No Indemnification for Insured Claims

Project Co shall not be entitled to claim compensation, indemnification or reimbursement from the City under this Agreement to the extent that Project Co:

- (a) is entitled to recover any such amounts under any insurance in force at the time of loss; or
- (b) would have been entitled to recover any such amounts under any insurance if it had complied with its obligation to take out and maintain, or cause to be taken out and maintained, insurance in accordance with this Agreement.

3.14 Compliance

- (a) Project Co shall comply with the terms, conditions and requirements of all policies for the insurance required by this Schedule and shall not do, or omit to do, or permit to be done or omitted by any Project Co Person, anything with respect to the Project or the Lands that could reasonably be expected to result in the cancellation of any insurance required by this Schedule, or that would reasonably be expected to entitle any insurer to refuse to pay any claim under the policy for any such insurance.

- (b) The City and Project Co shall, and Project Co shall cause the Subcontractors to:
- (1) comply with all insurance policy warranties, terms and conditions made known to them; and
 - (2) take any and all special precautions necessary to prevent loss or damage occurring in or about the Project as required by the terms of the course of construction property policy required pursuant to Section A [*Course of Construction All Risk Property Insurance*] of Appendix 17A [*Project Co Construction Period Insurance*] of this Schedule.

3.15 Claims Reporting and Settlement

Project Co shall:

- (a) maintain a written register of all losses, claims and circumstances that might reasonably result in a claim under any of the policies of insurance required under this Schedule and of all claims made by third parties involving bodily injury, illness, death, personal injury or property damage in respect of the Project (each such loss, claim, circumstance or third party claim, a "**Reportable Circumstance**"). Such claims register shall indicate the date of the Reportable Circumstance, the type of Reportable Circumstance, the circumstances giving rise to the Reportable Circumstance, and quarterly updates reflecting developments in such Reportable Circumstance until each such Reportable Circumstance is resolved, completed and designated as closed;
- (b) allow the City to inspect such register at any time and provide a copy of such register to the City quarterly and on the City's reasonable request;
- (c) in collaboration with the City appoint a claims adjuster (the "**Claims Adjuster**") to investigate and adjudicate Reportable Circumstances falling or likely to fall within Project Co's insurance deductibles;
- (d) arrange and attend quarterly claims meetings with City representatives, the Claims Adjuster and insurers' representatives to review the status of all such Reportable Circumstances, including but not limited to any disputed or denied Reportable Circumstance or claim arising therefrom;
- (e) meet with the City at the City's reasonable request to discuss any such Reportable Circumstance;
- (f) promptly upon becoming aware of a Reportable Circumstance, but in any event no later than five days after Project Co becomes aware of such Reportable Circumstance, notify the City's Representative, the City's LRT Project Manager, the Claims Adjuster and the insurers' claim representatives assigned to the Project of the full particulars of such Reportable Circumstance;
- (g) provide reasonable access, support, documents and information to City representatives, including City insurance and risk management personnel, and the Claims Adjuster in respect of any Reportable Circumstance;

- (h) as soon as practicable but no later than seven days after becoming aware of the Reportable Circumstance, provide reasonable access, support, documents and information to the Claims Adjuster and any adjuster assigned by the insurer(s) to investigate any Reportable Circumstance;
- (i) comply with the City's reasonable requests regarding the investigation, negotiation and settlement of any such Reportable Circumstance or claim arising therefrom;
- (j) without prejudice to the provisions of this Agreement, including but not limited to Schedule 12 *[Public Communications and Public Engagement]*, comply with the City's reasonable requests regarding communication, including but not limited to communication with claimant(s) and members of the public, in respect of any such Reportable Circumstance and claim arising therefrom;
- (k) upon receiving recommendations on liability and quantum from the Claims Adjuster, settle any claims falling within the deductibles, self-insured retentions or waiting periods of the policies of insurance required under this Agreement, using a release on terms reasonably required by the City, and including Project Co, the City, and any parties reasonably required by the City, as releasees thereunder; and
- (l) ensure that the adjuster assigned by insurers or the Claims Adjuster, as applicable, shall provide recommendations on liability and quantum in respect of such Reportable Circumstances to Project Co, the insurers (for losses in excess of the policy deductible) and to the City representatives assigned in accordance with this Section 3.15. For clarity, the City shall have no responsibility for the costs of such adjuster, which shall be borne by Project Co or the insurer(s).

Wherever the requirements of this Section 3.15 are at variance with the terms and conditions of the actual insurance policy(ies), the terms and conditions of the actual insurance policy(ies) will prevail.

3.16 Insurance Trust Agreement

The parties agree to enter into the Insurance Trust Agreement in the form attached as Appendix 17D *[Insurance Trust Agreement]* to this Schedule.

3.17 Insurance Representative

Before commencing Construction, Project Co shall appoint an insurance representative who shall communicate with the City and keep the City advised of all material matters of insurance, including claims, possible claims and policy changes or amendments. Project Co shall at all times maintain such a representative throughout the Term. Such representative shall be an individual located in Edmonton and Project Co shall advise the City promptly of any change in such representative during the Term.

3.18 Failure to Insure

Subject to Section 5 *[Uninsurability]* of this Schedule, if Project Co at any time fails or refuses to obtain, maintain in force or renew any insurance required to be effected by it under this Schedule, or to furnish the City with evidence of any required insurance or renewals in relation thereto as and when required and in accordance with this Schedule, the City shall, upon 5 days' written notice to Project Co, without

prejudice to any of its other rights under this Agreement or otherwise, have the right itself to procure such insurance, in which event any amounts paid by the City for that purpose together with all reasonable costs incurred by the City in procuring such insurance shall become due and payable by Project Co to the City.

Without prejudice to this Section 3.18 [*Failure to Insure*], the City may, acting reasonably, require that any person or entity, including but not limited to Project Co or any Subcontractor, shall not access the Site if any insurance relating to such access, person or entity is not obtained or maintained as required under this Agreement.

4. INSURANCE PREMIUM PAYMENT

4.1 Project Co Premiums

Project Co shall pay all premiums payable in respect of the policies of insurance required to be taken out, maintained in force or renewed by Project Co pursuant to this Schedule.

4.2 Changes in Project Co Premiums

At least 60 days, but not more than 90 days, before each anniversary of the Service Commencement Date during the Operating Period, commencing on the first anniversary after the Service Commencement Date:

- (a) Project Co and the City shall jointly review this Schedule and amend this Schedule as necessary to maintain reasonably appropriate coverage in light of any changes in Good Industry Practice since the date of Commercial Close or the date of the last review, as the case may be;
- (b) notwithstanding clause (a), the City may require Project Co to enhance the terms and conditions (including limits and deductibles) of the policies of insurance required under this Agreement, or to take out, maintain in force or renew, or cause to be taken out, maintained in force or renewed, such other policies of insurance, as the City may reasonably require; and
- (c) Project Co and the City shall jointly adjust, upwards or downwards, the Operating Period Payments coming due from and after such anniversary so as to reflect generally applicable changes to insurance premiums payable by light rail operations and maintenance contractors in Canada (having regard to any changes in coverage arising under clause (a) and clause (b) and otherwise having regard only to the insurance covers A [*All Risks Property Insurance, including Boiler and Machinery Insurance*], B [*Commercial General Liability Insurance*], G [*Contractor's Equipment All Risks Insurance*], H [*Pollution Insurance*] and I [*Comprehensive Crime Insurance*] of Appendix 17B to this Schedule and not to any Additional Insurance and Elective Insurance or to the insurance claims record of Project Co), determined as of such anniversary on the basis of industry standard insurance premiums for services in Canada approximating the O&M Requirements (the "**Benchmark Insurance Premium**"), which adjustment shall be calculated in accordance with cost increases indicated by the Benchmark Insurance Premium but subject to the following:
 - (i) for the purposes of the review contemplated by this Section 4.2, Project Co's insurance broker shall, at Project Co's cost and expense, prepare a report on behalf of both Project

Co and the City that contains the following information for the 12 month period from the anniversary of the Service Commencement Date following such review:

- a. an assessment and quantification of any amendments proposed by Project Co or the City pursuant to (a) above, any City requirements pursuant to (b) above, and any changes to insurance premiums pursuant to (c) above;
 - b. the opinion of Project Co's insurance broker as to the reasons for the changes, if any, to insurance premiums pursuant to and in accordance with this Section 4.2(c), together with evidence reasonably satisfactory to the City therefor; and
 - c. the calculation of the adjustment to the Operating Period Payments contemplated in (c) above.
- (ii) the calculation shall take into account the application of the Operating Period Payment Indexation Factor in Appendix 2 [*Indexation Factors*] of Schedule 16 [*Payment Mechanism*], so as to avoid double-counting;
 - (iii) any such adjustment shall be in respect of the insurance premiums for the 12 month period following such anniversary; and
 - (iv) no upwards adjustment shall exceed the increase in Project Co's actual cost of the insurance covers that are subject to adjustment under this Section 4.2.

For clarity, the determination of the generally applicable changes to insurance premiums pursuant to (c) above should reflect general industry standards and should not be affected by any increases to Project Co insurance premiums arising as a result of or attributable to insurance claims within Project Co's or any Project Co Person's control.

In the event of disagreement regarding Good Industry Practice and currently applicable industry standards or the insurance coverage appropriate in light of Good Industry Practice and those standards, or the calculation or application of the Benchmark Insurance Premium, either party may refer the matter to the Dispute Resolution Procedure.

5. UNINSURABILITY

- (a) Notwithstanding Section 1 [*Insurance Requirements*] and Section 2.1 [*Other Operating Period Insurance*] of this Schedule, Project Co shall not be obligated to maintain insurance against a risk that has become uninsurable. A risk shall be considered to have become uninsurable only if:
 - (1) insurance against that risk is generally not available to comparable Canadian light rail design and construction contractors or operations and maintenance contractors (as applicable) with Qualified Insurers; or
 - (2) the terms and conditions generally required by Qualified Insurers for insuring such risk are such that the risk is generally not being insured against by comparable Canadian light rail

design and construction contractors or operations and maintenance contractors (as applicable);

and shall only be considered an uninsurable risk during such period when Project Co has not obtained insurance against such risk. Upon Project Co becoming aware of an uninsurable risk, Project Co shall in a timely manner give the City notice of the uninsurable risk, including any details as may be reasonably requested by the City.

- (b) For so long as a risk is uninsurable, the Construction Period Payments or Operating Period Payments, as applicable, shall abate by the amount of any reduction in the insurance premiums paid by Project Co (or that would have been paid by Project Co had Project Co obtained insurance in accordance with this Schedule) as a result of no longer being required to insure against such risk.
- (c) In the event that, after the Financial Submission Date, a risk becomes an uninsurable risk, and if Project Co would have been required under Section 1 [*Insurance Requirements*] or Section 2.1 [*Other Operating Period Insurance*] of this Schedule to insure against that risk but for the risk having become an uninsurable risk, then the City may declare a Force Majeure Termination and pay the Termination Payment required by Section 18.6 [*Force Majeure Termination – Construction Period*] or Section 18.7 [*Force Majeure Termination – Operating Period*], as applicable, provided that:
 - (1) the risk that has become an uninsurable risk is a material risk to the Project or the Infrastructure; and
 - (2) the City has first afforded Project Co a reasonable opportunity to meet with the City to discuss alternative ways to address risks that have become uninsurable;

provided further that if the City has not or does not exercise its right to declare a Force Majeure Termination pursuant to this Section 5, and if a loss occurs in respect of that risk, then the City shall, at its option, either:

- (3) assume responsibility for the loss, to the extent of the insurance proceeds that would have been payable if the insurance specified in this Schedule had been available to and was obtained by Project Co (having regard to the coverage limits specified in this Schedule and any applicable deductibles) and in the event that the loss includes damage to the Infrastructure, then Project Co shall proceed as if the repairs necessitated by the loss were requested by the City pursuant to a Change Directive under Schedule 13 [*Changes*]; or
- (4) declare a Force Majeure Termination, pay the Termination Payment required by Section 18.6 [*Force Majeure Termination – Construction Period*] or Section 18.7 [*Force Majeure Termination – Operating Period*], as applicable, and, if applicable, assume responsibility for the loss arising from the occurrence, to the extent of the insurance proceeds that would have been payable if the insurance specified in this Schedule had been available to and was obtained by Project Co (having regard to the coverage limits specified in this Schedule and any applicable deductibles);

provided that the City shall not declare a Force Majeure Termination under clause (4) unless:

- (5) the risk that has become an uninsurable risk is a material risk to the Project or the Infrastructure.

If the City makes a payment to or on behalf of Project Co in place of insurance proceeds that would have been payable pursuant to clause (c)(3) or clause (c)(4) of this Section, then the City, to the extent of the amount paid, shall be subrogated to Project Co's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the uninsurable risk before it became uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

Appendix 17A

PROJECT CO CONSTRUCTION PERIOD INSURANCE

During the Construction Period and during any construction or decommissioning work on the Infrastructure required for Project Co to comply with the Handback Requirements, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, the following insurance covers:

A. Course of Construction All Risks Property Insurance

All risks property insurance covering all Construction, the Infrastructure and all materials, property, buildings, structures and equipment for or intended to form part of the Infrastructure or incidental to Construction, including all existing structures at the worksite and on and off-site installation, while located anywhere within Canada or the United States of America during construction, erection, installation, testing and commissioning and decommissioning of the Project, provided on a replacement cost basis, such cost to be determined at the time of replacement, which will include the following terms:

(a) include the following additional covers:

- (i) flood and earth movement;
- (ii) cold and hot testing of all machinery including HVAC;
- (iii) off-site property and property in transit;
- (iv) off premises service interruption;
- (v) soft costs, including costs of carrying project financing, recurring soft costs and non-recurring soft costs;
- (vi) margin of profit extension for contractors;
- (vii) interruption by civil authority or apparent civil authority;
- (viii) escalation as percentage of sum insured;
- (ix) underground services, temporary buildings and structures, temporary boilers and pressure vessels, scaffolding, false work, forms, hoardings, excavation, site preparation, landscaping and similar work;
- (x) electronic data processing equipment and media, including the cost to restore or recreate data;
- (xi) prevention of ingress or egress;
- (xii) resultant damage from faulty materials, faulty workmanship, and design errors and omissions, insured on terms no less favourable than LEG 2 terms;
- (xiii) damage to existing structures while they are being worked upon;
- (xiv) delay in start-up, including contingent delayed start up related to losses at supplier's or manufacturers' premises or other temporary storage locations;
- (xv) tunnel and subsurface structures;
- (xvi) tunnel boring machine evaluation clause;
- (xvii) expediting expense;
- (xviii) extra expense;
- (xix) increased costs due to bylaws or ordinances including demolition, increased costs of repairs and replacement;

- (xx) debris removal and cleanup;
 - (xxi) valuable papers;
 - (xxii) accounts receivable; and
 - (xxiii) costs of cleanup and removal of contamination;
- (b) a limit of loss of not less than \$600,000,000, any one occurrence, including salvage charges and other expenses or all combined;
- (c) the following sub-limits (per occurrence unless specified otherwise):
- (i) unnamed locations, not less than \$2,000,000;
 - (ii) professional fees, including costs to establish quantum of any covered loss, not less than \$10,000,000;
 - (iii) off-site property or property in transit, not less than \$2,000,000;
 - (iv) off premises service interruption, not less than \$15,000,000;
 - (v) soft costs, not less than 100% of recurring/continuing soft costs, including cost of carrying project financing for not less than 12 months, and not less than 25% of non-recurring soft costs;
 - (vi) prevention of ingress or egress, for a period of not less than 8 weeks;
 - (vii) firefighting expense, not less than \$10,000,000;
 - (viii) debris removal and clean up, not less than \$25,000,000;
 - (ix) expediting expense, not less than \$10,000,000;
 - (x) extra expense, not less than \$10,000,000;
 - (xi) increased costs due to bylaws or ordinances including demolition, increased costs of repairs and replacement subject to a sub-limit of not less than \$25,000,000 with respect to existing or renovated buildings;
 - (xii) delay in start-up, indemnity period of not less than 12 months;
 - (xiii) valuable papers, not less than \$2,500,000;
 - (xiv) accounts receivable, not less than \$2,500,000;
 - (xv) costs of cleanup and removal of contamination, not less than \$250,000; and
 - (xvi) interruption by civil authority or apparent civil authority, not less than 8 weeks;
- (d) deductibles, self-insured retentions and waiting periods not to exceed the following maximums, and if more than one deductible applies, the highest one shall apply:
- (i) floods and water damage, not more than \$500,000 per occurrence;
 - (ii) testing and commissioning, not more than \$500,000 per occurrence;
 - (iii) LEG 3, if applicable, not more than \$500,000 per occurrence;
 - (iv) underground losses, deductible of not more than \$500,000 and waiting period of not more than 120 days;
 - (v) earthquakes, not more than 3% of loss value (such percentage subject to a minimum of not more than \$500,000) per occurrence; and
 - (vi) all other insured perils, not more than \$250,000 per occurrence or waiting period of not more than 60 days per occurrence, as applicable; and
- (e) include the following special terms:
- (i) cover for flood and water damage, to full policy limit;

- (ii) cover for natural or man-made earth movement, including earthquake, landslide or subsidence, to full policy limit;
- (iii) cover for unintentional errors and omissions;
- (iv) cover for breach of conditions;
- (v) cover for named insureds (including Project Co, all Subcontractors, the Security Trustee and the City as their respective interests appear), and other additional insureds;
- (vi) multiple insureds clause;
- (vii) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule, but not to prejudice the City by payment of insurance proceeds contrary to the Agreement;
- (viii) delay in start-up coverage:
 - 1) in an amount sufficient to compensate the Project Co for finance penalties and charges, and extra costs related to the insured risks, including but not limited to additional capital payments, additional interest for the extension of financing necessary for the completion of Construction, legal and accounting expenses, property taxes, insurance premiums, building permits and other miscellaneous costs, various incurred fees, fixed expenses, additional commissions and advertising;
 - 2) with an indemnity period of not less than 12 months; and
 - 3) subject to a waiting period of not more than 60 days;
- (ix) exclusion for contractor's equipment, except scaffolding and hoarding;
- (x) no early occupancy restrictions;
- (xi) permit immediate repairs;
- (xii) permit use and occupancy of the incomplete Project works by Project Co and its Subcontractors and the City prior to Service Commencement for construction, office, installation-testing-commissioning-storing of equipment, orientation and training, and partial operation;
- (xiii) named insureds to include the City, Project Co, all Subcontractors, professional consultants and subconsultants, and the shareholders, officials, directors, officers, employees, servants, consultants and agents of the foregoing;
- (xiv) insurers to waive their rights of recovery and subrogation against the City and all named and unnamed insureds under the policy other than with respect to design professionals where the loss arises from their professional services;
- (xv) the City to be entitled to bring claims under policy directly against insurer; and
- (xvi) cover shall not create or contemplate appointment or existence of Insurance Trustee unless agreed by the City.

B. Construction Wrap-Up Commercial Liability

Commercial general liability insurance on a wrap-up basis covering all Project construction and decommissioning, for bodily injury (including death), personal injury and property damage, including loss of use thereof, which will include the following terms:

- (a) include the following additional covers:
 - (i) premises and operations liability;
 - (ii) damage to existing structures;
 - (iii) products and completed operations;

- (iv) owner's and contractor's protective liability;
 - (v) broad form property damage endorsement;
 - (vi) broad form completed operations coverage for a period of not less than 24 months after Service Commencement with an aggregate limit equal to the policy limit;
 - (vii) personal injury liability;
 - (viii) contingent employer's liability;
 - (ix) use of attached machinery;
 - (x) sudden and accidental pollution, on terms not less favourable than 240 hour detection / 240 hour notice coverage structure;
 - (xi) shoring, blasting, excavating, underpinning, demolition, pile-driving and caisson work, work below ground surface, tunnelling and grading and similar operations, as applicable;
 - (xii) onsite and offsite operations;
 - (xiii) elevator and hoist liability;
 - (xiv) towing/on-hook coverage;
 - (xv) non-owned automobile liability;
 - (xvi) physical damage to non-owned automobiles;
 - (xvii) loading and unloading of automobiles;
 - (xviii) unlicensed equipment;
 - (xix) permission for unlicensed vehicles;
 - (xx) blanket contractual liability;
 - (xxi) cross liability;
 - (xxii) blanket tenant's legal liability;
 - (xxiii) intentional injury committed to protect persons or property;
 - (xxiv) watercraft liability;
 - (xxv) voluntary medical payments;
 - (xxvi) employee benefits administrative errors and omissions;
 - (xxvii) legal defence costs; and
 - (xxviii) prairie or forest fire fighting expenses;
- (b) insured limits of not less than \$250,000,000 per occurrence but in the aggregate with respect to products and completed operations;
- (c) the following sub-limits:
- (i) non-owned automobile liability, not less than \$50,000,000;
 - (ii) physical damage to non-owned automobiles, not less than \$100,000;
 - (iii) blanket tenant's legal liability, not less than \$5,000,000; and
 - (iv) prairie or forest fire fighting expenses, not less than \$20,000,000;
- (d) deductibles and self-insured retentions not to exceed the following maximums, and if more than one deductible applies, the highest one shall apply:
- (i) physical damage to non-owned automobiles, tenants legal liability and employee benefits administrative errors and omissions, not more than \$1,000 per occurrence;
 - (ii) non-owned automobile liability, not more than \$10,000;
 - (iii) prairie or forest fire fighting expenses, not more than \$25,000 per occurrence; and
 - (iv) all other claims, not more than \$500,000 per occurrence; and

- (e) include the following special terms:
- (i) cover to be continuously in effect from Project Co's access to the Lands to the substantial completion of construction, whereafter the products and completed operations coverage of such cover shall be in effect;
 - (ii) exclusion for supervisory inspection limited to liability arising out of technical or professional advice other than in respect of bodily injury or third party property damage;
 - (iii) named insureds to include the City, Security Trustee, Project Co, Subcontractors, all suppliers and tradesmen while working on site, engineers, architects, consultants, and subconsultants, and shareholders, officials, directors, officers, employees, servants, consultants and agents of the foregoing;
 - (iv) insurers to waive their rights of recovery and subrogation against the City and all named and unnamed insureds under the policy;
 - (v) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule; and
 - (vi) cover not to apply to bodily injury or property damage arising out of the rendering of or the failure to render professional services by the insured's architect, engineer or surveyor, except such services as are an integral part of other work performed by or on behalf of the insured or any associated or affiliated company or are incidental to the manufacture, installation, sale, handling or distribution of the insured's products or the products of any associated or affiliated company.

C. Professional Liability Insurance

Project-specific errors and omissions liability insurance for professional, advisory, architectural, engineering, environmental, design and survey services provided by Project Co, Subcontractors, and all engineers architects, consultants, subconsultants, environmental and design professionals engaged by Project Co or any Subcontractor in connection with the Project, which will include the following terms:

- (a) insured limits of not less than \$50,000,000 per claim and project aggregate, such aggregate to be reinstated and available in full during the Construction Period;
- (b) deductibles and self-insured retentions not to exceed \$500,000 per claim; and
- (c) include the following special terms:
 - (i) coverage from first design, including without limitation preliminary design, until construction completion plus extended reporting period of not less than 36 months;
 - (ii) coverage not to exclude environmental impairment liability;
 - (iii) cover provided to present, former partners, executive officers, directors and shareholders of named insureds, and to individuals or personal corporations retained by named insureds;
 - (iv) retroactive cover to date of first design activity;
 - (v) mitigation of loss cover, subject to a sublimit of not less than \$5,000,000; and
 - (vi) the City to have right to bring claims if City property is damaged as a result of design or other professional error.

D. Pollution Insurance

Project specific pollution and environmental impairment liability insurance covering liability for bodily injury, property damage and costs of cleaning up, removing, containing, detoxifying and neutralizing pollutants, resulting from pollution conditions arising from or, in the case of any known or pre-existing pollution conditions, exacerbated by construction operations, which will include the following terms:

- (a) include the following additional covers:
 - (i) premises and operations liability;
 - (ii) on site and off site clean-up and remediation expense and restoration costs without the need for a third party claim;
 - (iii) conditions exacerbated by construction operations during the Construction Period;
 - (iv) legal defence costs, civil fines and penalties where insurance coverage is permitted by Applicable Law;
 - (v) coverage for non-owned disposal sites;
 - (vi) emergency response costs;
 - (vii) contractual liability; and
 - (viii) underground/aboveground storage tanks;
- (b) insured limits of not less than \$25,000,000 per claim and in the aggregate;
- (c) deductibles and self-insured retentions not to exceed \$250,000 per occurrence; and
- (d) include the following special terms:
 - (i) coverage for Project Co, Subcontractors, consultants, sub-consultants and all other parties engaged in the Project;
 - (ii) the City and Security Trustee included as additional insured;
 - (iii) shareholders, officials, directors, officers, employees, servants, consultants and agents of named and additional insureds included as additional insureds;
 - (iv) insurers to waive their rights of recovery and subrogation against the City and all insureds under the policy;
 - (v) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule;
 - (vi) microbial matter included in definition of pollution conditions;
 - (vii) diminution of third-party property value and natural resource damage included in the definition of property damage;
 - (viii) not restricted by time elements;
 - (ix) completed operations cover for a period of not less than 36 months; and
 - (x) reporting extension of not less than 36 months.

E. Automobile Liability Insurance

Automobile liability insurance for third party property damage and bodily injury, including accident benefits, arising out of the use of any automobile in connection with the Project, including all vehicles owned, operated or licensed in the name of Project Co, which will include the following terms:

- (a) insured limits of not less than \$5,000,000 per occurrence in respect of Project Co and Project Contractors; and
- (b) deductibles and self-insured retentions not to exceed \$25,000 per occurrence.

F. Aircraft and Watercraft Liability Insurance

If aircraft or watercraft are used in connection with the Project, and except to the extent covered under the construction wrap-up commercial liability insurance set out in A [*Course of Construction All Risks Property Insurance*] of this Appendix 17A, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, liability insurance for damage to property and bodily injury or death (including passenger liability) arising in respect of the use of owned and non-owned aircraft and watercraft by Project Co or Subcontractors in connection with the Project, which will include the following terms:

- (a) insured limits of not less than \$50,000,000 per occurrence, including not less than \$10,000,000 per passenger for aircraft liability insurance, as applicable;
- (b) deductibles and self-insured retentions not to exceed \$100,000 per occurrence; and
- (c) include the following special terms:
 - (i) coverage for Project Co and Subcontractors;
 - (ii) the City and Security Trustee and their officials, directors, officers, employees, servants, consultants and agents included as additional insureds;
 - (iii) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule; and
 - (iv) insurers to waive their rights of recovery and subrogation against the City and all named and unnamed insureds under the policy.

G. Marine Cargo Transit Insurance

If marine transport is used to transport any materials, equipment or property supplied under or used during the Project, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, all risks marine cargo transit property insurance for such materials, equipment or property, which will include the following terms:

- (a) an insured value of not less than the full replacement value of materials, equipment or property in transit;
- (b) deductibles, self-insured retentions and waiting periods not to exceed \$25,000, except as set out hereunder; and
- (c) include the following special terms:
 - (i) coverage for Project Co and Subcontractors;
 - (ii) the City and Security Trustee and shareholders, officials, directors, officers, employees, servants, consultants and agents of all insureds included as additional insureds;
 - (iii) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule;

- (v) insurers to waive their rights of recovery and subrogation against the City and all insureds under the policy;
- (iv) on Institute Cargo Clauses (All Risks) terms, including war and strikes extensions, and including transit and storage where applicable;
- (v) if an entire vessel is chartered for shipping materials, equipment or property, charterer's liability insurance in an amount sufficient to cover the City, Project Co and all Subcontractors from and against all liability arising out of the chartering of such vessel; and
- (vi) delay in start-up coverage:
 - 1) sufficient to compensate the City, Security Trustee and Project Co for finance penalties and charges, and extra costs related to the insured risks, including but not limited to additional capital payments, additional interest for the extension of financing necessary for the completion of Construction, legal and accounting expenses, property taxes, insurance premiums, building permits and other miscellaneous costs, various incurred fees, fixed expenses, additional commissions, advertising, margin of profit of Project Co;
 - 2) with an indemnity period of not less than 12 months; and
 - 3) subject to a waiting period of not more than 60 days.

H. Contractor's Equipment All Risks Insurance

All risks property insurance for equipment owned, leased, rented or borrowed for use on the Project during the Construction Period, which will include the following terms:

- (a) an insured value of not less than the actual cash valuation of insured equipment;
- (b) deductibles and self-insured retentions not to exceed \$100,000 per occurrence; and
- (c) include the following special terms:
 - (i) coverage for Project Co, Subcontractors, consultants and subconsultants; and
 - (ii) insurers to waive their rights of recovery and subrogation against the City, Security Trustee, all insureds under the policy and the shareholders, officials, directors, officers, employees, servants, consultants and agents of the foregoing.

I. Commercial General Liability Insurance

Commercial general liability insurance for all operations and offsite activities in respect of the Project on an occurrence basis against claims for bodily injury (including death), personal injury and property damage, including loss of use thereof, which will include the following terms:

- (a) include the following additional covers:
 - (i) broad form property damage including loss of use;
 - (ii) broad form products and completed operations liability, including cover beyond the commercial general liability wrap-up insurance policy extension period in respect of products and completed operations;
 - (iii) owner's and contractor's protective liability;
 - (iv) blanket contractual (written);
 - (v) direct and contingent employers liability;

- (vi) personal injury (nil participation);
 - (vii) shoring, blasting, excavating, underpinning, demolition, pile-driving and caisson work, work below ground surface, tunnelling and grading and similar operations, as applicable;
 - (viii) elevator and hoist collision liability;
 - (ix) non-owned automobile liability;
 - (x) prairie or forest fire fighting expenses;
 - (xi) permission for unlicensed vehicles (partial road use);
 - (xii) unlicensed equipment;
 - (xiii) loss of use without property damage;
 - (xiv) loading and unloading of automobiles;
 - (xv) broad form property damage;
 - (xvi) broad form completed operations;
 - (xvii) intentional injury, committed to protect persons or property; and
 - (xviii) worldwide territory, subject to suits being brought in Canada or the US;
- (b) insured limits of:
- (i) not less than \$25,000,000 per occurrence and in the aggregate with respect to broad form products and completed operations for Project Co and the Design Builder not restricted by time elements; and
 - (ii) not less than \$5 million each occurrence and in the annual aggregate with respect to broad form completed operations for any other Subcontractor, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Design and Construction not restricted by time elements; and
- (c) deductibles and self-insured retentions not to exceed \$50,000 per occurrence.
- (d) include the following special terms:
- (i) Project Co and Subcontractors as named insureds;
 - (ii) the City, Security Trustee, and shareholders, officials, directors, officers, employees, servants, consultants and agents of named insureds included as additional insureds, whether named or not;
 - (iii) employees and volunteers as insureds;
 - (iv) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule; and
 - (v) insurers to waive their rights of recovery and subrogation against the City, all named and unnamed insureds and additional named insureds.

J. Comprehensive Crime Insurance

Insurance for loss of money, securities and inventory resulting from fraud or dishonest acts by officers and employees of Project Co, which will include the following terms:

- (a) insured limits of not less than \$1,000,000 per occurrence;
- (b) deductibles and self-insured retentions not to exceed \$25,000 per occurrence; and

(c) include the following special terms:

- (i) broad form money and securities, money orders and counterfeit paper, depositors' forgery, computer fraud and funds transfer fraud, audit expenses and credit card forgery; and
- (ii) custodial endorsement extension to third parties.

K. Workers Compensation Insurance

Workers compensation insurance for all employees of Project Co and any Subcontractor engaged in connection with the Project, in accordance with Applicable Law and the requirements of any Governmental Authority.

Appendix 17B

PROJECT CO OPERATING PERIOD INSURANCE

During the Operating Period, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, the following insurance covers:

A. All Risks Property Insurance, including Boiler and Machinery Insurance

a. All Risks Property

All risks property insurance in respect of the System and the Services for the buildings, structures, improvements, materials, equipment or other property used in or forming part of the Project; provided on a replacement cost basis, such cost to be determined at the time of replacement, which will include the following terms:

(a) Include the following additional covers:

- (i) flood and earth movement;
- (ii) debris removal and cleanup;
- (iii) offsite property and property in transit;
- (iv) underground property, tunnel and subsurface structures;
- (v) interruption by civil authority or apparent civil authority;
- (vi) unnamed locations;
- (i) electronic data processing equipment and media, including the cost to restore or recreate data;
- (ii) off premises service interruption;
- (vii) professional fees, including costs to establish quantum of any covered loss;
- (viii) firefighting expenses;
- (ix) expediting expenses
- (x) valuable papers;
- (xi) accounts receivable;
- (iii) increased costs due to bylaws or ordinances including demolition, increased costs or repairs and replacement;
- (xii) prevention of ingress or egress;
- (xiii) automatic coverage for newly acquired locations;
- (xiv) business interruption using gross profits or gross revenue form;
- (xv) extra expense; and
- (xvi) costs of cleanup and removal of contamination;

(b) a limit of loss of not less than \$600,000,000, any one occurrence, including salvage charges and other expenses or all combined;

(c) the following sublimits (per occurrence unless specified otherwise):

- (i) debris removal and cleanup, not less than \$15,000,000;
- (ii) transit, not less than \$10,000,000;

- (iii) unnamed locations, not less than \$10,000,000;
 - (iv) professional fees, including costs to establish quantum of any covered loss, not less than \$10,000,000;
 - (v) firefighting expenses, not less than \$10,000,000;
 - (vi) valuable papers, not less than \$5,000,000;
 - (vii) accounts receivable, not less than \$5,000,000;
 - (viii) costs of cleanup and removal of contamination, not less than \$1,000,000;
 - (ix) civil authority access interruption, not less than 8 weeks;
 - (x) prevention of ingress or egress, for a period of not less than 8 weeks;
 - (xi) automatic coverage for newly acquired locations, not less than 90 day reporting period;
 - (xii) business interruption using gross profits or gross revenue form, indemnity period of not less than 12 months; and
 - (xiii) extra expense, not less than \$10,000,000;
- (d) deductibles, self-insured retentions and waiting periods not to exceed the following maximums, and if more than one deductible applies, the highest one shall apply:
- (i) floods and water damage, not more than \$500,000 per occurrence;
 - (ii) earthquakes, not more than 3% of loss value (such percentage subject to a minimum of not more than \$500,000) per occurrence;
 - (iii) underground losses, waiting period of not more than 120 days;
 - (iv) off premises services, waiting period of not more than 48 hours; and
 - (v) all other insured perils, not more than \$250,000 per occurrence or waiting period of not more than 60 days per occurrence, as applicable; and
- (e) include the following covers and special provisions:
- (i) cover for flood and water damage, to full policy limit;
 - (ii) cover for natural or man-made earth movement, including earthquake, landslide or subsidence, to full policy limit;
 - (iii) replacement cost valuation for property;
 - (iv) margin of profit extension for contractors;
 - (v) the City and Security Trustee to be included as named insureds, Security Trustee as loss payee and mortgagee, as applicable;
 - (vi) the City to be entitled to bring claims under policy directly against insurer;
 - (vii) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule;
 - (viii) insurers to waive their rights of recovery and subrogation against the City and all named and unnamed insureds under the policy; and
 - (ix) include a joint loss agreement if boiler and machinery cover, pursuant to Section A.b [*Boiler and Machinery*] of this Appendix 17B, is placed as separate policy.

b. Boiler and Machinery

Property insurance placed on a comprehensive basis effective from the earlier of the date on which testing and commissioning of any boiler and machinery is complete or the Service Commencement Date, covering all boilers, pressure vessels, electrical and mechanical

machines, including HVAC, forming part of the Project, provided on a replacement cost basis, such cost to be determined at the time of replacement, which will include the following terms:

- (a) an insured value of not less than \$100,000,000 per occurrence;
- (b) deductibles and self-insured retentions not to exceed \$500,000 per occurrence; and
- (c) include the following special provisions:
 - (i) business interruption coverage with an indemnity period of not less than 12 months (and business interruption payments may be used towards project financing costs);
 - (ii) extra expense, subject to a sublimit of not less than \$10,000,000;
 - (iii) the City to be included as loss payee;
 - (iv) the City, Project Co and Security Trustee to be included as named insureds, Security Trustee as loss payee and mortgagee, as applicable;
 - (v) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule;
 - (vi) insurers to waive their rights of recovery and subrogation against the City, all named and unnamed insureds under the policy; and
 - (vii) include a joint loss agreement if all risks property cover, pursuant to Section A.a [*All Risks Property*] of this Appendix 17B, is placed as separate policy.

B. Commercial General Liability Insurance

Commercial general liability insurance for bodily injury (including death), personal injury and property damage, including loss of use thereof, which will include the following terms:

- (a) include the following additional covers:
 - (i) premises and operations liability;
 - (ii) damage to existing structures;
 - (iii) products and completed operations;
 - (iv) owner's and contractor's protective liability;
 - (v) broad form property damage endorsement endorsed to remove any exclusion limiting coverage when third party property is in the care, custody, control and/or possession of an insured;
 - (vi) broad form completed operations for extended period and separate aggregate;
 - (vii) personal injury liability;
 - (viii) contingent employer's liability;
 - (ix) use of attached machinery;
 - (x) sudden and accidental pollution, on terms not less favourable than 240 hour detection / 240 hour notice coverage structure;
 - (xi) shoring, blasting, excavating, underpinning, demolition, pile-driving and caisson work, work below ground surface, tunnelling and grading and similar operations, as applicable;
 - (xii) elevator and hoist liability;
 - (xiii) towing/on-hook coverage;
 - (xiv) non-owned automobile liability, subject to a sublimit of not less than \$50,000,000;

- (xv) physical damage to non-owned automobiles, subject to a sublimit of not less than \$100,000;
 - (xvi) loading and unloading of automobiles;
 - (xvii) blanket contractual liability;
 - (xviii) cross liability;
 - (xix) blanket tenant's legal liability, subject to a sublimit of not less than \$5,000,000;
 - (xx) intentional injury committed to protect persons or property;
 - (xxi) watercraft liability;
 - (xxii) voluntary payments;
 - (xxiii) legal defence costs; and
 - (xxiv) prairie or forest fire fighting expenses, with a sublimit of not less than \$5,000,000;
- (b) insured limits of not less than \$150,000,000 per occurrence, but in the aggregate in respect of products and completed operations;
- (c) deductibles and self-insured retentions not to exceed the following maximums, and if more than one deductible applies, the highest one shall apply:
- (i) physical damage to non-owned automobiles, tenants legal liability and employee benefits administrative errors and omissions, not more than \$1,000 per occurrence;
 - (ii) non-owned automobile liability, not more than \$10,000;
 - (iii) prairie or forest fire fighting expenses, not more than \$25,000 per occurrence; and
 - (iv) all other claims, not more than \$500,000 per occurrence; and
- (d) include the following special provisions:
- (i) exclusion for supervisory inspection limited to liability arising out of technical or professional advice other than in respect of bodily injury or third party property damage;
 - (ii) Project Co and Subcontractors as named insureds;
 - (iii) the City, Security Trustee, and shareholders, officials, directors, officers, employees, servants, consultants and agents of named insureds included as additional insureds, whether named or not;
 - (iv) employees and volunteers as insureds;
 - (v) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule; and
 - (vi) insurers to waive their rights of recovery and subrogation against the City, all named and unnamed insureds and additional named insureds.

C. Professional Liability Insurance

During periods when professional services are provided or obtained by Project Co in respect of the Project during the Operating Period, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, errors and omissions liability insurance for professional, advisory, architectural, engineering, environmental, design and survey services provided by Project Co, Subcontractors, and all engineers, architects, consultants, subconsultants, and environmental and design professionals engaged by Project Co or any Subcontractor in connection with the Project, which will include the following terms:

- (a) insured limits that prudent owners and operators of projects of similar scope and magnitude to the Project would maintain and obtain, or cause to be obtained and maintained, in respect of the professional services to which such insurance applies;
- (b) deductibles and self-insured retentions that prudent owners and operators of projects of similar scope and magnitude to the Project would maintain and obtain, or cause to be obtained and maintained, in respect of the professional services to which such insurance applies; and
- (d) include the following special terms:
 - (i) coverage from first design, including without limitation preliminary design, until construction completion plus extended reporting period of not less than 36 months;
 - (ii) coverage not to exclude environmental impairment liability;
 - (iii) cover provided to present, former partners, executive officers, directors and shareholders of named insureds, and to individuals or personal corporations retained by named insureds;
 - (iv) retroactive cover to date of first design activity;
 - (v) mitigation of loss cover; and
 - (vi) the City to have right to bring claims if City property is damaged as a result of design or other professional error.

D. Automobile liability Insurance

Automobile liability insurance for third party property damage and bodily injury, including accident benefits, arising out of the use of any automobile in connection with the Project, including all vehicles owned, operated or licensed in the name of Project Co or Subcontractors, which will include the following terms:

- (a) insured limits of not less than \$5,000,000 per occurrence in respect of Project Co and Project Contractors, and not less than \$2,000,000 per occurrence in respect of all other Subcontractors; and
- (b) deductibles and self-insured retentions not to exceed \$25,000 per occurrence.

E. Aircraft and Watercraft Liability Insurance

If aircraft or watercraft are used in connection with the Project during the Operating Period, and except to the extent covered under the commercial general liability insurance set out in Section B [*Commercial General Liability Insurance*] of this Appendix 17B, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, liability insurance for damage to property and bodily injury or death (including passenger liability) arising in respect of the use of owned and non-owned aircraft and watercraft by Project Co or Subcontractors in connection with the Project, which will include the following terms:

- (a) insured limits of not less than \$50,000,000 per occurrence, including not less than \$10,000,000 per passenger for aircraft liability insurance, as applicable;
- (b) deductibles and self-insured retentions not to exceed \$100,000 per occurrence; and

- (c) include the following special terms:
 - (i) coverage for Project Co and Subcontractors;
 - (ii) the City and Security Trustee included as additional insureds;
 - (iii) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule;
 - (iv) insurers to waive their rights of recovery and subrogation against the City and all insureds under the policy; and
 - (v) breach of warranty endorsement.

F. Marine Cargo Transit Insurance

If marine transport is used to transport any of the materials, equipment or property supplied under or used in connection with the Project during the Operating Period, Project Co shall take out, maintain in force and renew, or shall cause to be taken out, maintained and renewed, all risks marine cargo transit property insurance for such materials, equipment or property, which will include the following terms:

- (a) an insured value of not less than the full replacement value of materials, equipment or property in transit;
- (b) deductibles, self-insured retentions and waiting periods not to exceed \$25,000, except as set out hereunder; and
- (c) include the following special terms:
 - (i) coverage for Project Co and Subcontractors;
 - (ii) the City and Security Trustee and shareholders, officials, directors, officers, employees, servants, consultants and agents of all insureds included as additional insureds;
 - (iii) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule;
 - (iv) insurers to waive their rights of recovery and subrogation against the City and all insureds under the policy;
 - (v) on Institute Cargo Clauses (All Risks) terms, including war and strikes extensions, and including transit and storage where applicable;
 - (vi) if an entire vessel is chartered for shipping materials, equipment or property, charterer's liability insurance in an amount sufficient to cover the City, Project Co and all Subcontractors from and against all liability arising out of the chartering of such vessel; and
 - (vii) delay in start-up coverage:
 - 1) sufficient to compensate the Project Co for finance penalties and charges, and extra costs related to the insured risks, including but not limited to additional capital payments, additional interest for the extension of financing necessary for the completion of construction, legal and accounting expenses, property taxes, insurance premiums, building permits and other miscellaneous costs, various incurred fees, fixed expenses, additional commissions, advertising, margin of profit of Project Co;
 - 2) with an indemnity period of not less than 12 months; and
 - 3) subject to a waiting period of not more than 30 days.

G. Contractor's Equipment All Risks Insurance

All risks property insurance for all equipment owned, leased or rented by Project Co or Subcontractors for use on the Project during the Operating Period to the extent such equipment is not insured under the all risks property insurance described at Section A.a [*All Risks Property*] of this Appendix, which will include the following terms:

- (a) an insured value of not less than the actual cash valuation of insured equipment;
- (b) deductibles and self-insured retentions not to exceed \$100,000 per occurrence; and
- (c) include the following special terms:
 - (i) coverage for Project Co, Subcontractors, consultants and subconsultants; and
 - (ii) insurers to waive their rights of recovery and subrogation against the City, Security Trustee, all insureds under the policy and the shareholders, officials, directors, officers, employees, servants, consultants and agents of the foregoing.

H. Pollution Insurance

Project specific pollution and environmental impairment liability insurance covering liability for bodily injury, property damage and costs of cleaning up, removing, containing, detoxifying, and neutralizing pollutants, resulting from pollution conditions on, at or emanating from Project operations, including any known or pre-existing pollution conditions, which will include the following terms:

- (a) include the following additional covers:
 - (i) premises and operations liability;
 - (ii) on site and off site clean-up and remediation expense and restoration costs without the need for a third party claim;
 - (iii) construction operations during the Operating Period;
 - (iv) legal defence costs, civil fines and penalties where insurance coverage is permitted by Applicable Law;
 - (v) coverage for non-owned disposal sites;
 - (vi) emergency response costs;
 - (vii) contractual liability; and
 - (viii) underground/aboveground storage tanks;
- (b) insured limits of not less than \$25,000,000 per occurrence and in the aggregate;
- (c) deductibles and self-insured retentions not to exceed \$250,000 per occurrence; and
- (d) include the following special terms:
 - (i) coverage for Project Co, Subcontractors, consultants, sub-consultants and all other parties engaged in the Project;
 - (ii) the City and Security Trustee included as additional insureds;
 - (iii) shareholders, officials, directors, officers, employees, servants, consultants and agents of named and additional insureds included as additional insureds;

- (iv) include Lender Endorsements substantially in the form set out in Appendix 17C [*Lender Endorsements*] of this Schedule;
- (v) insurers to waive their rights of recovery and subrogation against the City and all insureds under the policy;
- (vi) microbial matter included in definition of pollution conditions;
- (vii) diminution of third-party property value and natural resource damage included in the definition of property damage;
- (viii) not restricted by time elements;
- (ix) completed operations cover for a period of not less than 36 months from the termination of this Agreement in accordance with its terms; and
- (x) reporting extension of not less than 36 months from the termination of this Agreement in accordance with its terms.

I. Comprehensive Crime Insurance

Insurance for loss of money, securities and inventory resulting from fraud or dishonest acts by officers and employees of Project Co, which will include the following terms:

- (a) insured limits of not less than \$1,000,000 per occurrence;
- (b) deductibles and self-insured retentions not to exceed \$25,000 per occurrence; and
- (c) include the following special terms:
 - (i) broad form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery; and
 - (ii) custodial endorsement extension to third parties.

J. Workers Compensation Insurance

Workers compensation insurance for all employees of Project Co and any Subcontractor engaged in connection with the Project, in accordance with Applicable Law and the requirements of any Governmental Authority.

Appendix 17C

LENDER ENDORSEMENTS

With respect to any policy of insurance noted in this Schedule as requiring these Lender Endorsements, Project Co shall use all reasonable efforts to have the insurers of such policies include terms and endorsements substantially similar to those set out in this Appendix 17C with such changes and amendments as may reasonably be required in the context of the coverage provided under, and the wording contained in, each such policy.

Notwithstanding any other provisions of this Policy, the following endorsement shall apply:

Section I: Definitions

1. In this endorsement:

Common Terms and Intercreditor Agreement means the agreement dated February 8, 2016 between, among others, TransEd Partners General Partnership, as borrower and issuer and Fengate (TransEd) LP, BDC TransEd (NovaScotia) Co., EllisDon TransEd General Partnership and Bombarider TransEd Holdings LP as partners, each of the Lenders and such other lenders from time to time parties thereto, each of the Hedge Providers and such other hedge providers from time to time parties thereto, Computershare Trust Company of Canada as Indenture Trustee, The Bank of Nova Scotia as administrative agent, and Computershare Trust Company of Canada as Security Trustee;

Finance Parties has the meaning ascribed thereto in the Common Terms and Intercreditor Agreement;

Insurance Trust Account means an account in the name of the Insurance Trustee, in trust for the parties set forth in the Insurance Trust Agreement, and maintained at the sole expense of Project Co and into which shall be paid certain proceeds of insurance and which account shall operate pursuant to, and in accordance with, the Insurance Trust Agreement;

Insured means those parties so described in the policy declarations;

Insurers means the insurer or insurers underwriting this insurance policy;

Project means the project described in the declarations to this Policy;

Project Agreement means the project agreement dated February 8, 2016 between the City of Edmonton and Project Co.

Project Co means TransEd Partners General Partnership;

Security Trustee means Computershare Trust Company of Canada, currently located at 100 University Avenue 9th Floor, North Tower Toronto, Ontario M5J 2Y1; and

Senior Creditor has the meaning ascribed thereto in the Common Terms and Intercreditor Agreement.

Section II: Policy formation/basis

2. Separate Policy

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

3. Interest of the Finance Parties and the City of Edmonton

3.1 The Insurers acknowledge that the Finance Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional insureds under this Policy and that the premium specified in this Policy provides consideration for their being insured parties.

3.2 The Insurers acknowledge that the City of Edmonton and (in respect of third party liabilities) its officers, directors, employees, secondees and assigns are each additional insureds under the sections of this Policy relating to property damage and third party liability risks and that the premium specified in this Policy provides consideration for their being insured parties.

4. Liability for premium

Neither the Security Trustee (on behalf of the Finance Parties), nor the Finance Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium.

5. Disclosure

5.1 The Finance Parties shall have no duty of disclosure to Insurers in relation to the Policy.

5.2 The Insurers acknowledge to the Finance Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring Project Co in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Finance Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Finance Party. The acknowledgements provided by the Insurers in this clause 5.2 shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party (including Project Co) other than the Finance Parties and the Security Trustee (on behalf of the Finance Parties) in the absence of such acknowledgements.

- 5.3 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

Section III: Rights to avoid/cancel or change Policy terms

6. Non-vitiating

- 6.1 The Insurers undertake to each Insured that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy.

- 6.2 The Insurers agree that no Insured shall be penalised or prejudiced in any way by any unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together "**the Relevant Matter**"), but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.

7. Cancellation

- 7.1 The Insurers agree that they shall not seek to cancel or suspend the construction phases of this insurance without providing prior written notice to the Security Trustee (on behalf of the Finance Parties) as required under the Common Terms and Intercreditor Agreement and to the City of Edmonton as required under the Project Agreement.
- 7.2 The Insurers shall promptly notify the Security Trustee (on behalf of the Finance Parties) and the City of Edmonton in writing of any default in the payment of premium and shall give the Security Trustee (on behalf of the Finance Parties) and the City of Edmonton at least 15 days' notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

8. Changes in cover

The Insurers shall give the Security Trustee (on behalf of the Finance Parties) and the City of Edmonton at least 90 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. Amendments to Endorsement

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between Project Co., the Insurers, the City of Edmonton and the Security Trustee (on behalf of the Finance Parties), such amendment to be endorsed on the Policy.

Section IV: Claims

10. Notice of claims

10.1 Notice of claim by the City of Edmonton or the Security Trustee (on behalf of the Finance Parties) or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

11. Claim Payments/Loss Payee

Payments made in accordance with this Clause 11 shall, to the extent of the payment, discharge the Insurers' liability to pay Project Co or any other Insured.

11.1 In respect of course of construction property, boiler and machinery and cargo transit risks only:

All claim payments or return premium shall be paid into the Insurance Trust Account or to such other account as the Security Trustee (on behalf of the Finance Parties) and as the City of Edmonton may specify in writing.

11.2 In respect of the insurance under this Policy of third party liability risks only:

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the Insurance Trust Account or such account as the Security Trustee (on behalf of the Finance Parties) and the City of Edmonton direct in writing.

Any return premiums shall be paid to the Insurance Trust Account or such other account as the Security Trustee (on behalf of the Finance Parties) and the City of Edmonton direct in writing.

11.3 In respect of the insurance for loss of revenue or delay in start-up risks only:

All claim payments or return premiums shall be paid to Project Co and the Security Trustee (on behalf of the Finance Parties).

12. Waiver of subrogation

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured and/or loss payee under the policies arising out of any occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- (i) such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out).

13. Primary insurance

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Project;
- (b) any third party liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies, if any;
- (d) any claim made under a Contingent Motor Liability extension to this Policy, if any; or
- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
 - (i) any other policy specifically effected for the construction or operational phase(s) of the Project;

Section V: Miscellaneous

14. Notice of Security Interest

The Insurers acknowledge that by an assignment contained (i) in a general security agreement dated on or about February 8, 2016 (the "**Assignment**"), Project Co assigned by way of security to the Security Trustee (on behalf of the Finance Parties) all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in Project Co's interest in this insurance. The City of Edmonton, Project Co and the Security Trustee (on behalf of the Finance Parties) agree that this endorsement and the Insurance Trust Agreement shall take priority over any such assignment.

15. Notice

15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:

15.1.1 if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and

15.1.2 if by post, within 7 business days of release from the relevant Insurer's office.

15.2 The address and fax number of the Security Trustee (on behalf of the Finance Parties) for all notices under or in connection with the Policy are those notified from time to time by the Finance Parties for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Security Trustee (on behalf of the Finance Parties) is as follows:

Address: Computershare Trust Company of Canada
 11-100 University Ave.
 Toronto, Ontario M5J 2Y1

Fax No: (416) 981-9777
Attention: Manager, Corporate Trust

15.3 The address and fax number of the City of Edmonton for all notices under or in connection with the Policy are those notified from time to time by the City of Edmonton for this purpose to the insurance broker at the relevant time. The initial address and fax number of the City of Edmonton is as follows:

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

Fax No: (780) 496-2803
Attention: Brad Smid, Valley Line Project Director

With a copy to:

Address: City of Edmonton
Risk Management Section
Chancery Hall, 10th Floor
#3 Sir Winston Churchill Square
Edmonton, Alberta T5J 2C3

Fax No: (780) 496-5149
Attention: Don Marshall, Director of Risk Management

16. Governing law & Jurisdiction

The Policy shall be governed and interpreted in accordance with the Law of Alberta.
This endorsement overrides any conflicting provision in this Policy.

17. Conflicts

If a conflict or inconsistency exists in or between a provision of this endorsement and a provision of the Project Agreement or the Insurance Trust Agreement, the provisions of the Project Agreement or the Insurance Trust Agreement shall prevail.

Appendix 17D
Pages D-1 to D-21
Removed
s16 and s25