

SCHEDULE 11

INSURANCE REQUIREMENTS

1. DEFINITIONS

In this Schedule 11, in addition to the definitions set out in Section 1.1 of this Agreement, the following expressions have the following meanings (and, where applicable, their plurals have corresponding meanings):

“**Primary Exclusions**” has the meaning indicated in Section 4.4.

2. GENERAL INSURANCE REQUIREMENTS

2.1 Insurance Act

All insurance policies must comply with *The Saskatchewan Insurance Act* (Saskatchewan) and must be provided through companies licensed, admitted and authorized to do business in Saskatchewan.

2.2 No Limit on Obligations

The insurance forms and limits listed below are presented as minimum requirements that Project Co must provide. Any insurance maintained by Project Co, whether in accordance with this Agreement or otherwise, will not reduce or limit the obligations or liabilities of Project Co under this Agreement in any way. The insolvency or bankruptcy of any insurance company, or failure of any insurance company to pay any claim, shall not reduce or limit the obligations or liabilities of Project Co under this Agreement in any way.

2.3 Actual Form and Substance

All insurance must be in forms and with terms and conditions acceptable to the City, acting reasonably. The City shall be deemed to be acting unreasonably if the effect of not finding certain forms or terms and conditions acceptable is to impose on Project Co any insurance requirements which are in addition to the insurance requirements set out in this Agreement. The policies shall require that the insurers give all named insured 30 days prior written notice of any cancellation or material reduction in coverage or limits. All policies required to be placed and maintained by Project Co will be with insurers reasonably acceptable to the City.

2.4 Waiver of Subrogation

All insurance policies, other than any insurance policies placed in accordance with Sections 3.5 and 4.3, will contain a waiver of all rights of recovery, under subrogation or otherwise, against the City and any City Party. Such waiver will be evidenced within any certificate of insurance issued in respect of the relevant policy.

2.5 Primary Insurance

All insurance policies will provide primary coverage and will be non-contributory with any insurance carried by the City.

2.6 Project Co Party Insurance

Project Co shall ensure that all Project Co Parties maintain any insurance required by Applicable Law or Good Industry Practice.

2.7 Deductibles

Unless the City or a City Party is responsible for the matter giving rise to the claim, Project Co shall pay any deductibles, self-insured retentions or retentions associated with any claim through insurance, as applicable.

2.8 Availability of Insurance

Project Co shall take all steps necessary to ensure that the full benefit of the insurance coverage set out in this Schedule 11 remains available to the parties and that, where such insurance is subject to annual aggregate limits, the coverage is fully maintained and not diminished through the incidence of claims from other sources. Project Co will not do or omit to do, or authorize or permit any Project Co Party to do or omit to do, anything that would prejudice or result in loss of coverage under any policy required to be placed and maintained by Project Co. Notwithstanding this Section 2.8, where any insurance coverage set out in this Schedule 11 is subject to annual aggregate limits and such coverage is diminished through the incidence of claims for which the City or a City Party is responsible, the City shall be responsible for any costs associated with the reinstatement of such insurance coverage.

2.9 Cooperation with City

Project Co shall cooperate, and cause each Project Co Party to cooperate, with the City in the administration of the insurance program for the Project, including promptly notifying the City of any claim or event or circumstance that may result in a claim. Project Co will comply, and cause each Project Co Party to comply, with reasonable written procedures issued by the City from time to time relative to the administration of the insurance program for the Project.

3. PROJECT CO REQUIRED CONSTRUCTION PERIOD INSURANCE

3.1 Project Specific General Liability Wrap-Up Insurance

From the date hereof through to Final Completion, Project Co shall maintain or cause to be maintained project specific general liability wrap-up insurance in an amount not less than \$50,000,000 inclusive per occurrence and in the aggregate with respect to products and completed operations, insuring against bodily injury and property damage, including loss of use thereof. The aggregate limit can be achieved through primary, excess or umbrella liability insurance and any such excess or umbrella liability insurance shall be written on a follow-form basis. Defence costs must be in addition to the limits of insurance. Any professional liability exclusion for supervisory or inspection activities shall be limited to services provided by

architects, engineers, surveyors or design professionals. Such coverage shall cover all operations related to the Existing Facilities O&M and the Works whether conducted on the Lands or elsewhere. The named insureds on the policy shall be the City and Project Co. Other insureds on the policy shall include all Project Co Parties and City Parties, as applicable, whether named or unnamed in the policy, any lender providing all or any part of the Senior Debt Financing and all others having an insurable interest in the Project. The City as a named insured must have the right to make a claim directly to the insurer. Such insurance shall include but not be limited to:

- (a) products and completed operations liability, which shall remain in effect for a period of 24 months after Final Completion;
- (b) the City's and Project Co's protective liability;
- (c) blanket written contractual liability;
- (d) contingent employer's liability;
- (e) personal injury liability;
- (f) non-owned automobile liability;
- (g) cross liability;
- (h) employees as additional insureds;
- (i) prairie and forest fire fighting expenses;
- (j) broad form property damage endorsement;
- (k) operation of attached machinery;
- (l) sudden and accidental pollution as per IBC 2313 or similar wording;
- (m) blasting, demolition, pile driving, caisson work or tunneling, as applicable;
- (n) elevator and hoist liability;
- (o) towing/on hook (riggers liability) coverage unless this risk is covered by Project Co's builder's risk insurance policy; and
- (p) loading and unloading.

3.2 Project Specific Pollution Liability Insurance

From the date hereof through to Final Completion, Project Co shall maintain or cause to be maintained project specific pollution liability insurance in an amount not less than \$20,000,000 inclusive per loss and in the aggregate. The \$20,000,000 limit must be dedicated to this policy and must not be shared or linked as tower limits between this and any other insurance policy.

The named insureds on the policy shall be the City and Project Co. Other insureds on the policy shall include all Project Co Parties and City Parties, as applicable, whether named or unnamed in the policy, any lender providing all or any part of the Senior Debt Financing and all others having an insurable interest in the Project. The City as a named insured must have the right to make a claim directly to the insurer. Such insurance shall include but not be limited to:

- (a) completed operations, which shall remain in effect for a period of 24 months after Final Completion;
- (b) blanket non-owned disposal site coverage;
- (c) first and third party transported cargo coverage; and
- (d) civil fines and penalties and punitive damages where allowable by Applicable Law.

Such insurance shall not be impaired by any time element limitations, biological contaminants (mold/Legionella/bacteria), asbestos or lead based paint exclusions. Any “insured vs. insured” exclusion shall not prejudice coverage for the City and shall not affect the City’s ability to bring suit against Project Co as a third party. Furthermore, any “insured vs. insured” exclusion shall not affect the City’s coverage in the event of a government cleanup order.

3.3 Builder’s Risk Insurance

From the date hereof through to Final Completion, Project Co shall maintain or cause to be maintained course of construction insurance in the form of an “all risks” builder’s risk policy covering the Infrastructure and Existing Facilities on a replacement cost basis. The named insureds on the policy shall be the City and Project Co. Other insureds on the policy shall include all Project Co Parties and City Parties, as applicable, whether named or unnamed in the policy, and all others having an insurable interest in the Project. Any lender providing all or any part of the Senior Debt Financing shall be added as a loss payee. The City as a named insured must have the right to make a claim directly to the insurer. The course of construction insurance shall not: (i) create or contemplate an insurance trustee; (ii) contain any endorsements in favour of lenders that may be prejudicial to the City; (iii) modify or endorse the standard mortgage clause; (iv) modify or endorse the loss payable clause, or (v) modify or endorse the basis of loss settlement clause in terms of the insertion of an insurance trustee.

Such insurance shall include, but not be limited to, all materials, supplies, equipment and machinery, including mechanical and electrical breakdown and other property intended to be permanently incorporated in the Works. Coverage shall apply to such property while it is located at the Lands or located at temporary off-site storage or staging areas, or while in land-based transit to the Lands within the continental United States and Canada. Coverage shall be written on an “all risk” form for direct physical damage. Limits under this insurance shall not be less than 100% of the contract value of the Works and full replacement cost for the Infrastructure and the Existing Facilities for physical damage to property and related expenses, provided that sublimits shall be established for losses due to certain perils, including, but not limited to, earthquake and/or flood. Any time element deductibles shall not exceed 30 days.

The policy shall be extended to provide coverage for all testing and commissioning activities and provide a minimum of 90 cumulative days hot testing to each component, cumulatively, with no limit on cold testing.

The policy shall include delay in start-up coverage for the benefit of the lenders providing the Senior Debt Financing for the financial consequences of a delay to Works completion arising from an insured physical damage event. Delay in start-up indemnification shall consist of gross profit, loss of anticipated revenue, including debt service costs, fixed operating costs as well as anticipated net profit, and extra expense to reduce loss. The indemnification period shall consist of a minimum of twenty four months. If delay in start-up is triggered, provisions for reinstatement of the limits shall be included.

Where specialized owned, leased or rented equipment is utilized for the Works and replacement of such equipment, if damaged, would impact the Construction Period, such equipment shall be insured under Project Co's builder's risk insurance policy.

Exclusions from such insurance may include:

- (a) loss or damage to any automobiles;
- (b) loss or damage to Project Co's or any Project Co Party's owned, leased or rented property or construction-type tools, equipment, machinery or supplies used for the Works but not intended to be permanently incorporated in the Project;
- (c) loss or damage covered by a manufacturer's warranty or guarantee; and
- (d) loss or damage caused by or resulting from faulty workmanship, faulty material, faulty design, except resulting damage.

3.4 Project Specific Professional Liability Errors and Omissions Insurance

From the date hereof through to Final Completion, Project Co shall maintain project specific professional errors and omissions insurance, covering the Independent Certifier and all architects and engineers and other design professionals and consultants involved in the Project, in an amount not less than \$10,000,000 per claim. Project Co must ensure that such policy is endorsed to add by name the Independent Certifier and all architects, engineers and design professionals involved in the Project as additional insureds. Project specific professional errors and omissions insurance coverage shall include an extended reporting period of not less than 36 months from Final Completion.

3.5 Automobile Liability Insurance

From the date hereof through to Final Completion, Project Co shall maintain automobile liability insurance on all vehicles owned or licensed in the name of Project Co in an amount of not less than \$2,000,000 inclusive per occurrence.

3.6 Marine Cargo

If applicable, Project Co shall maintain or cause to be maintained ocean marine cargo insurance for all materials, equipment or other property to be supplied pursuant to this Agreement, or used in the performance of this Agreement, and which will be transported as ocean marine cargo for their full replacement value subject to the conditions of the Institute Cargo Clauses (All Risks), including delay in start-up, war and strikes extensions and transit and storage, as applicable. Any lender providing all or any part of the Senior Debt Financing shall be added as a loss payee to any insurance policies placed in accordance with this Section 3.6.

4. PROJECT CO REQUIRED OPERATING PERIOD INSURANCE

4.1 General Liability Insurance

From Substantial Completion through to the end of the Term, Project Co shall maintain or cause to be maintained general liability insurance in an amount not less than \$50,000,000 (Index Linked) inclusive per occurrence and in the aggregate, insuring against bodily injury and property damage, including loss of use thereof. The aggregate limit can be achieved through primary, excess or umbrella liability insurance and any such excess or umbrella liability insurance shall be written on a follow-form basis. Defense costs must be in addition to the limits of insurance. Such policy must cover or provide a defense for actual or alleged third party liability as a result of the operations of Project Co, including the Existing Facilities O&M and the O&M. The named insureds on the policy shall be the City and Project Co. Other insureds on the policy shall include all Project Co Parties and City Parties, as applicable, whether named or unnamed in the policy, any lender providing all or any part of the Senior Debt Financing and all others having an insurable interest in the Project. The City as a named insured must have the right to make a claim directly to the insurer. Any professional liability exclusion for supervisory or inspection activities shall be limited to services provided by architects, engineers, surveyors or design professionals. Such insurance shall include but not be limited to:

- (a) products and completed operations liability;
- (b) the City's and Project Co's protective liability;
- (c) blanket written contractual liability;
- (d) employer's liability;
- (e) contingent employer's liability;
- (f) personal injury liability;
- (g) non-owned automobile liability;
- (h) cross liability with respect to additional insureds;
- (i) employees as additional insureds;
- (j) prairie and forest fire fighting expenses;

- (k) broad form property damage endorsement;
- (l) operation of attached machinery;
- (m) sudden and accidental pollution as per IBC 2313 or similar wording;
- (n) blasting, demolition, pile driving, caisson work or tunneling, as applicable;
- (o) elevator and hoist liability;
- (p) towing/on hook coverage; and
- (q) loading and unloading.

4.2 Project Specific Pollution/Environmental Liability Insurance

From Substantial Completion through to the end of the Term, Project Co shall maintain or cause to be maintained a project specific pollution/environmental liability policy in an amount not less than \$20,000,000 (Index Linked) inclusive per loss and in the aggregate. The \$20,000,000 limit must be dedicated to this policy, must apply on an annual basis and must not be shared or linked as tower limits between this and any other insurance policy. The named insureds on the policy shall be the City and Project Co. Other insureds on the policy shall include all Project Co Parties and City Parties, as applicable, whether named or unnamed in the policy, any lender providing all or any part of the Senior Debt Financing and all others having an insurable interest in the Project. The City as a named insured must have the right to make a claim directly to the insurer. Such insurance shall include but not be limited to:

- (a) blanket non-owned disposal site coverage;
- (b) first and third party onsite/offsite cleanup coverage;
- (c) first and third party transported cargo coverage; and
- (d) civil fines and penalties and punitive damages where allowable by Applicable Law.

Such insurance shall not be impaired by any time element limitations or biological contaminants (mold/Legionella/bacteria) exclusions. Any “insured vs. insured” exclusion shall not prejudice coverage for the City and shall not affect the City’s ability to bring suit against Project Co as a third party. Furthermore, any “insured vs. insured” exclusion shall not affect the City’s coverage in the event of a government cleanup order.

4.3 Automobile Liability Insurance

From Substantial Completion through to the end of the Term, Project Co shall maintain or cause to be maintained automobile liability insurance on all vehicles owned or licensed in the name of Project Co in an amount not less than \$2,000,000 (Index Linked) inclusive per occurrence.

4.4 Existing Facilities and Completed Works Operating Period Property Insurance

From Substantial Completion through to the end of the Term, Project Co shall maintain or cause to be maintained broad form “all risks” property insurance on a replacement cost basis and including coverage for flood and earthquake, debris removal, building by-laws, demolition costs, business interruption and extra expenses with indemnifying values in accordance with the terms set forth in this Agreement. The replacement cost of the Infrastructure shall be determined by Project Co, acting reasonably, and Project Co shall report the replacement cost of the Infrastructure to the City annually on the anniversary of the date hereof. The receipt and review by the City of the reported replacement cost of the Infrastructure shall not create on the part of the City any responsibility or liability for the adequacy or suitability of the replacement cost determined by Project Co. The named insureds on the policy shall be the City and Project Co. Other insureds on the policy shall include all Project Co Parties and City Parties, as applicable, whether named or unnamed in the policy, and all others having an insurable interest in the Project. Any lender providing all or any part of the Senior Debt Financing shall be added as a loss payee. The policy shall include an agency clause which states that Project Co as the first named insured shall act as agent for payment of premiums, providing notice of loss and submission of required information. The City as a named insured must have the right to make a claim directly to the insurer. The “all risks” insurance shall not: (i) create or contemplate an insurance trustee; (ii) contain any endorsements in favour of lenders that may be prejudicial to the City; (iii) modify or endorse the standard mortgage clause; (iv) modify or endorse the loss payable clause, or (v) modify or endorse the basis of loss settlement clause in terms of the insertion of an insurance trustee.

War, nuclear radiation or radioactive contamination and terrorism (collectively, the “**Primary Exclusions**”) are permitted excluded risks under the required property insurance.

The following risks are the only other risks that may be excluded risks under the property insurance but shall not be considered Primary Exclusions:

- (a) inherent vice, latent defect, faulty materials, error in design, faulty workmanship, wear and tear or gradual deterioration, rust, corrosion, wet or dry rot, provided that there must be an exception to the exclusion to provide coverage for resultant damage and damage not otherwise excluded;
- (b) loss or damage by normal settling, shrinkage, expansion or contraction in the building or foundation, provided that there must be an exception to the exclusion to provide coverage for resultant damage and damage not otherwise excluded;
- (c) loss or damage caused by or resulting from misappropriation, conversion, inventory shortages, unexplained disappearance, infidelity or any dishonest act on the part of the insured, its employees or agents or subcontractors or any others to whom property has been entrusted;
- (d) seepage or gradual pollution or contamination damage, provided that there must be an exception to the pollution or contamination exclusion to provide coverage for sudden and accidental contamination and resultant damage not otherwise excluded;

- (e) mechanical breakdown or failure, derangement of mechanical parts, or rupture caused by centrifugal force, provided that there must be an exception to the exclusion where physical loss or damage not otherwise excluded ensues;
- (f) mold, provided that the exclusion should not apply to loss or damage concurrently caused directly by an otherwise covered cause of loss; and
- (g) electrical injury or disturbance from artificial causes to electric devices or appliances, provided that there must be an exception to the exclusion to provide coverage for resultant damage and damage not otherwise excluded.

4.5 Machinery Breakdown Insurance

From Substantial Completion through to the end of the Term, Project Co shall maintain or cause to be maintained comprehensive broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount of at least the replacement cost of all boilers, pressure vessels, HVAC equipment and other mechanical and electrical equipment owned or operated by Project Co or by others on behalf of Project Co as part of the Infrastructure, or relating to, or serving the Infrastructure. Additional coverage shall include business interruption, extra expense and consequential damage. Any lender providing all or any part of the Senior Debt Financing shall be added as a loss payee to any insurance policies placed in accordance with this Section 4.5.