

SCHEDULE 28

INSURANCE TRUST AGREEMENT

THIS AGREEMENT is made as of the 28th day of March, 2019

BETWEEN:

CITY OF OTTAWA

(the “City”)

AND:

[REDACTED]

(the “Lenders’ Agent”)

AND:

TRANSITNEXT GENERAL PARTNERSHIP, [REDACTED]

(“Project Co”)

AND:

[REDACTED]

(the “Account Trustee”)

WHEREAS:

- A. The City and Project Co have entered into the Project Agreement.
- B. The City, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. The City, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) “Account Trustee” means [REDACTED].
- (b) “Bank” means [REDACTED].

- (c) “**Business Day**” has the meaning given in the Project Agreement.
- (d) “**Change of Authorization Event**” has the meaning given in Section 7(a).
- (e) “**Change of Authorization Notice**” has the meaning given in Section 7(b)(ii).
- (f) “**City Step-In Notice**” means written notice given by the City to the Account Trustee that the City has delivered a Step-In Notice pursuant to Section 6 of the Maintenance and Rehabilitation Contractor’s Direct Agreement.
- (g) “**Crown**” has the meaning given in the Project Agreement.
- (h) “**Default Notice**” means a written notice given by the Lenders’ Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (i) “**Default Period**” means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (j) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (k) “**City Event of Default**” has the meaning given in the Project Agreement.
- (l) “**Insurance Policies**” has the meaning given in Section 4(a).
- (m) “**Insurance Proceeds**” has the meaning given in Section 4(b).
- (n) “**Insurance Trust Account**” means Account No. [REDACTED] at [REDACTED].
- (o) “**Insurance Trust Agreement**” means this insurance trust agreement.
- (p) “**LC Beneficiary**” has the meaning given in Section 4(f).
- (q) “**Lenders**” has the meaning given in the Project Agreement.
- (r) “**Lenders’ Agent**” means [REDACTED], acting as agent for and on behalf of the Lenders.
- (s) “**Lenders’ Direct Agreement**” means the lenders’ direct agreement made on or about the date hereof between the City, Project Co and the Lenders’ Agent.
- (t) “**Maintenance and Rehabilitation Contractor’s Direct Agreement**” has the meaning given in the Project Agreement.
- (u) “**Maintenance LC**” has the meaning given in the Project Agreement.
- (v) “**Order**” has the meaning given in Section 6(k).
- (w) “**Party**” means any of the City, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of the City, Project Co, the Lenders’ Agent and the Account Trustee.
- (x) “**Project**” has the meaning given in the Project Agreement.

- (y) “**Project Agreement**” means the project agreement made on or about March 28, 2019 between the City and Project Co.
- (z) “**Project Co**” means [REDACTED].
- (aa) “**Project Operations**” has the meaning given in the Project Agreement.
- (bb) “**System Infrastructure**” has the meaning given in the Project Agreement.
- (cc) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

2. INTERPRETATION

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but

shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

- (h) In construing this Insurance Trust Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of this Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Ottawa, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the City.
- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, the City, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration, rehabilitation or replacement of the System Infrastructure or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid;

- (ii) the completion of the Project; or
- (iii) indemnification for any the City loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co under delay in start-up, soft costs or business interruption insurance shall be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Project Operations.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if the City is entitled to indemnification under the Insurance Policies in respect of any loss incurred by the City, such related insurance proceeds are to be paid directly to the City by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii). For greater certainty, it is understood and agreed that the City shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. INSURANCE AND MAINTENANCE LC

- (a) Project Co shall deliver, or cause to be delivered, to the Account Trustee certified copies or originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders’ Agent or the City (the “**Insurance Proceeds**”) as follows:
 - (i) subject to the last paragraph of Section 3(c), in the case of the all risks course of construction (builders’ risk), boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
 - (A) if the Account Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
 - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$[REDACTED], to the Lenders’ Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
 - (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders’ Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as the City

may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and

- (ii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to the City, to be distributed to the parties entitled thereto.
- (c) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including any Insurance Proceeds held in the Insurance Trust Account:
- (i) if the Account Trustee has not received a Default Notice, to Project Co; and
 - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, the City, may at any time or from time to time direct in writing.
- (d) Upon Substantial Completion, Project Co shall deliver, or cause to be delivered, to the Account Trustee the original of the Maintenance LC, and the Account Trustee shall hold and release the Maintenance LC in accordance with Sections 4(e) through (i) trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (e) The Parties acknowledge that, pursuant to Section 4.2 of Schedule 4 – Funding Requirements, the required amount of the Maintenance LC may vary on an annual basis and, accordingly, Project Co may, from time to time, deliver, or caused to be delivered, to the Account Trustee replacement letters of credit or renewed letters of credit reflecting the required amount of the Maintenance LC at such time. The Account Trustee shall, concurrently with delivery to the Account Trustee of any replacement letter of credit or renewed letter of credit, release the original Maintenance LC then held by the Account Trustee to Project Co, and such replacement letter of credit or renewed letter of credit shall be deemed to be the Maintenance LC.
- (f) If the Account Trustee has not received a City Step-In Notice, the Maintenance LC shall be held in trust by the Account Trustee for the benefit of Project Co. If the Account Trustee has received a City Step-In Notice, the Maintenance LC shall be held in trust by the Account Trustee for the benefit of the City. The Party for whose benefit the Account Trustee is holding the Maintenance LC at the relevant time is hereinafter referred to as the "LC Beneficiary."
- (g) If the LC Beneficiary presents to the Account Trustee a declaration that it or any person it designates requires possession of the original Maintenance LC for the purposes of drawing on the same, the Account Trustee shall provide the original Maintenance LC to the LC Beneficiary or such designated party forthwith (and, in any event, within 2 Business Days following the presentation of such declaration by the LC Beneficiary) without the need for further investigation or inquiry by the Account Trustee. For certainty, the LC Beneficiary shall be entitled to retain the proceeds of any draw on the Maintenance LC.
- (h) The LC Beneficiary shall return the original Maintenance LC to the Account Trustee, for the Account Trustee to hold and release in accordance with Sections 4(e) through (i), within 5 Business Days of the LC Beneficiary drawing on the same.

- (i) Notwithstanding anything to the contrary in this Section 4, the Account Trustee shall release the Maintenance LC to Project Co in accordance with Section 4.4 of Schedule 4 – Funding Requirements.

5. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to the City all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the City may from time to time request in writing.

6. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, the City or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, the City or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in

respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
 - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, Lenders' Agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including negligence in the handling of funds), willful misconduct, bad faith or reckless disregard of any duty hereunder.

- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent or the City for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, the City and Project Co.
- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, the City, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, the City, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, the City, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any

other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by the City shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the City.

- (o) Each of the Lenders' Agent and the City shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or the City, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or the City which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or the City, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or the City, as applicable, pursuant to Section 6(o).

7. LENDERS' AGENT AND CITY'S RIGHTS TO DIRECT

- (a) Until the termination of the Project Agreement in accordance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 – Compensation on Termination to the Project Agreement and all Insurance Proceeds to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by the City (a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
 - (i) the Lenders' Agent shall cease to be entitled, and the City shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
 - (ii) the Lenders' Agent and the City shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that the City shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where a City Event of Default has occurred. Where a City Event of Default has occurred, upon receipt by the Lenders' Agent and Lenders of all amounts owing by the City to the Lenders' Agent and Lenders under the Lenders' Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account,

the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

8. TERMINATION

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
- (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
 - (ii) the obligations of Project Co to the City have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lenders' Agent, the City, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory the Lenders' Agent and the City.

9. ASSIGNMENT

- (a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, the City and Project Co.

10. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under the Project Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Insurance Trust Agreement) and served by sending the same by registered mail, facsimile or by hand, (in each case, with a copy by electronic transmission), as follows:

If to the City: City of Ottawa
110 Laurier Ave West
Ottawa, Ontario K1P 1J1

Email: [REDACTED]
Attn.: [REDACTED]

If to Project Co: TransitNEXT General Partnership
[REDACTED]

Email: [REDACTED]
Attn.: [REDACTED]

If to the Account Trustee: [REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]

If to the Lenders' Agent: [REDACTED]

Attention: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.
- (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

11. AMENDMENTS

- (a) This Insurance Trust Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Insurance Trust Agreement.

12. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

13. RELATIONSHIP BETWEEN THE PARTIES

- (a) The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and Lenders' Agent.

14. ENTIRE AGREEMENT

- (a) Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Insurance Trust Agreement.

15. SEVERABILITY

- (a) Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Insurance Trust Agreement. If any such provision of this Insurance Trust Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Insurance Trust Agreement as near as possible to its original intent and effect.

16. ENUREMENT

- (a) This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

17. GOVERNING LAW AND JURISDICTION

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.

(b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

(c) [Intentionally Deleted].

18. INTENTIONALLY DELETED

19. FURTHER ASSURANCE

(a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Insurance Trust Agreement.

20. LANGUAGE OF AGREEMENT

(a) Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

21. COUNTERPARTS

(a) This Insurance Trust Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Insurance Trust Agreement which was so faxed.

IN WITNESS WHEREOF the Parties have executed this Insurance Trust Agreement as of the date first above written.

CITY OF OTTAWA

Per: _____
Name: [REDACTED]
Title: [REDACTED]

TRANSITNEXT GENERAL PARTNERSHIP

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the partnership.

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the trust company.

[REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.