

## EXHIBIT 17

### INSURANCE COVERAGE REQUIREMENTS

#### 1. Builder's Risk Insurance During Construction

At all times during the period from the Operating Commencement Date until the last Service Commencement Date and during any other period in which other construction work is in progress during the Operating Period (including elements of initial construction not required to be constructed as part of achieving Substantial Completion, unless covered by property insurance pursuant to Section 2 of this Exhibit 17), Developer shall, or shall require the Design-Build Contractor, to procure and keep in force a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Facility under construction, excluding terrorism but including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, and tornado and subsidence; shall contain extensions of coverage that are typical for a project of the nature of the Facility; and shall contain only those exclusions that are typical for a project of the nature of the Facility.

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Facility under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, and (ii) unless covered by property insurance pursuant to Section 2 of this Exhibit 17, all existing property and improvements that are within the construction work zone or are or will be affected by the Construction Work.

(c) The policy shall provide coverage per occurrence up to the full replacement cost of the covered property loss, plus an allowance for professional fees, demolition and debris removal, without risk of co-insurance; provided, however, that the policy may include a sublimit for earth movement and flood of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate.

(d) Developer, TxDOT and the Design-Build Contractor shall be the named insureds on the policy as their respective interests appear. Developer also may, but is not obligated to, include other Contractors as named insured as their respective interests appear. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other named insureds. Developer may name itself or the Collateral Agent as loss payee under the policy.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design

error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, and (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

## 2. Property Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of property insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the Facility, excluding terrorism but including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, tornado and subsidence, shall contain extensions of coverage that are typical for a project of the nature of the Facility; and shall contain only those exclusions that are typical for a project of the nature of the Facility.

(b) The policy shall cover all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the Facility.

(c) The policy shall provide coverage per occurrence sufficient to reinstate the insured property and for a sum not less than the probable maximum loss, plus an allowance for professional fees, demolition and debris removal, without risk of co-insurance. Developer and its insurance consultant shall perform the maximum probable loss analysis using industry standard underwriting practices. The probable maximum loss analysis and recommended policy limit based thereon, as well as any exclusions, shall be subject to the review and comment by TxDOT to verify reasonableness under industry standard underwriting practices, prior to issuance of the policy or renewal of any policy. Developer and its insurance consultant shall review annually the probable maximum loss values for the covered property and shall adjust the coverage limit accordingly for the period during which the property Insurance Policy is required hereunder.

(d) Developer and TxDOT shall be the named insureds on the policy. Developer also may, but is not obligated to, include Contractors as named insured as their respective interests appear. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. Developer may name itself or the Collateral Agent as loss payee under the policy. TxDOT shall be named as additional loss payee as its interest may appear; provided that during all portions of the last five years of the Term that there are no outstanding Security Documents, TxDOT shall be named as the loss payee. If TxDOT is the loss payee and receives proceeds of such insurance for insured loss or damage, TxDOT shall hold such proceeds available to pay and reimburse Developer for reasonable costs it incurs to repair and replace the loss or damage. However, at Developer's request, TxDOT will negotiate an amendment to the Facility Trust Agreement for the purpose of establishing a property insurance proceeds account under the Facility Trust Agreement, on commercially reasonable terms that shall include joint control of funds therein, into which such proceeds during the last five years of the Term will be deposited and held available for use to pay for

restoration and repair of the damage or loss (with unspent proceeds, if any, to be disposed of in the same manner as proceeds in the Handback Requirements Reserve).

(e) To the extent available, the policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) physical damage resulting from mechanical breakdown or electrical apparatus breakdown, (vii) demolition and debris removal coverage, (viii) the increased replacement cost due to any change in applicable codes or other Laws, (ix) expense to reduce loss, (x) building ordinance compliance, with the building ordinance exclusion deleted, and (xi) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

### 3. Business Interruption Insurance

At all times during the Term commencing on the first Service Commencement Date, Developer shall procure and keep in effect or cause to be procured and kept in effect, business interruption insurance coverage that satisfies the following requirements.

(a) Such Insurance Policy shall insure against interruption or loss of Toll Revenues resulting from physical loss or damage to any portion of the Facility caused by occurrence of any risk which is required to be insured under the all risk property insurance specified in Section 2 above.

(b) The policy shall cover interruption or loss of Toll Revenues for up to one full year from the date of the interruption. The amount of coverage shall be adjusted annually to reflect the projected Toll Revenues for the next 12-month period.

(c) TxDOT and Developer shall be named insureds on the policy providing business interruption insurance coverage. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds.

(d) The policy shall provide a deductible or self-insured retention per occurrence not exceeding the first 15 days of loss following the date of interruption.

(e) The policy shall be in form and substance as is then standard in the State for policies of like coverage.

### 4. Commercial General Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below. During any period in which Developer, at its election, maintains in effect builder's third party liability

insurance pursuant to Section 5 below, the commercial general liability Insurance Policy need not duplicate the builder's third party liability insurance coverage.

(a) The policy shall be in form reasonably acceptable to TxDOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Facility, and shall contain only those exclusions that are typical for a project of the nature of this Facility.

(b) The policy shall insure against the legal liability of the insureds named in Section 4(d), relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

- (i) Contractual liability;
- (ii) Premises/operations;
- (iii) Independent contractors;
- (iv) Products and completed operations (with acknowledgement that the Facility constitutes the premises and not a product);
- (v) Broad form property damage (including nuisance; interference with rights of way, water, light or air; false arrest; detainment; and broader definition of "damage");
- (vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;
- (vii) Fellow employee coverage for supervisory personnel;
- (viii) Incidental medical malpractice;
- (ix) No exclusion for work performed within 50 feet of a railroad;
- (x) Except with regard to indemnifying a professional advisor, consultant, sub-consultant, Supplier or manufacturer engaged by Developer, no application of any limitation or exclusion for bodily injury or property damage arising out of professional services, including engineering, architecture and surveying, in any manner to (A) coverage respecting Developer's supervision, coordination, management, scheduling or other similar services or (B) the products and completed operations coverage;
- (xi) Broad named insured endorsement; and
- (xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 6 of this Exhibit 17.

(c) The policy shall have limits of not less than \$25,000,000 per occurrence and in the aggregate per policy period. Such limits shall be shared by all insured and additional insured parties and shall reinstate annually.

(d) TxDOT and the Indemnified Parties shall be the named insureds. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other named insured.

(e) The policy shall provide one of the following, as Developer selects:

(i) A deductible or self-insured retention not exceeding \$100,000 per occurrence;

(ii) A deductible or self-insured retention not exceeding \$250,000 per occurrence with an aggregate of \$2,000,000 per policy period; or

(iii) A deductible (but not self-insured retention) of \$500,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to compensate the claimant on a first dollar basis (meaning that the insurer meets the third-party claim in full and recovers the deductible from Developer).

#### 5. Builder's Third Party Liability Insurance

During any period in which Construction Work or other work of construction is in progress, Developer, at its election, may procure and keep in effect builder's third party liability insurance, as specified below, in lieu of commercial general liability insurance coverage for construction activities (but Developer shall maintain commercial general liability insurance coverage for all non-construction-related activities).

(a) The policy shall insure against liability to third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, arising out of the Construction Work or other work of construction or the improvements under construction. The policy shall contain extensions of coverage that are typical for a project of the nature of the Facility, and shall contain only those exclusions that are typical for a project of the nature of the Facility.

(b) If Developer obtains a warranty against defects from the Design-Build Contractor, then Developer shall continue the policy in effect for not less than the warranty period.

(c) The policy shall otherwise include the same provisions as described for the commercial general liability insurance under Sections 4(b) through (e) above.

#### 6. Automobile Liability Insurance

At all times during the Term, Developer shall procure and keep in force comprehensive, business, or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Facility, and shall contain only those exclusions that are typical for a project of the nature of the Facility.

(b) Developer shall be the named insured under its automobile liability policy.

(c) Developer's policy shall have a combined single limit per policy period of not less than \$25,000,000.

(d) Each policy shall provide a deductible or self-insured retention not exceeding \$50,000 per occurrence.

#### 7. Pollution Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, pollution liability insurance as specified below.

(a) The policy shall cover sums that the insured becomes liable to pay to a third party or that are incurred by the order of a regulatory body consequent upon a pollution incident, subject to the policy terms and conditions. Such policy shall cover claims related to pollution conditions to the extent such are caused by the performance of Work or by other activities that occur on the Facility.

(b) Developer and the Indemnified Parties shall be the named insureds under such policy. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. The insured vs. insured exclusion shall be deleted, so that the policy will insure Developer against, and respond to, pollution liability claims and actions of TxDOT against Developer.

(c) The policy shall have a limit of not less than \$2,000,000 per occurrence and in the aggregate per policy period, unless applicable regulatory standards impose more stringent coverage requirements.

(d) The policy shall provide a deductible or self-insured retention not exceeding \$250,000 per occurrence.

#### 8. Professional Liability Insurance

At all times during the Term that professional services are rendered respecting design and construction of the Facility until the first to occur of (1) five years after the professional services have concluded for the Facility or (2) expiration of all applicable statutes of limitation and repose applicable to professional services performed for the Facility, Developer shall cause the Design-Build Contractor or its lead design subcontractor (in the case of the Design Work) and each Contractor (other than NTTA) that is under direct contract with Developer and provides professional services to Developer respecting such design and construction (in the case of any other design or engineering work) to procure and keep in force professional liability insurance as specified below. Such insurance requirements also shall apply in like manner to professional services for any Renewal Work or Upgrades having an estimated cost in excess of \$10 million. Developer may satisfy such insurance via a Facility or "project" policy covering all the foregoing providers of professional services, provided no insured v. insured or similar exclusion precludes coverage of professionals for claims made by Developer or TxDOT or their respective successors or assigns.

(a) Each policy shall provide coverage of liability of the party performing the professional services arising out of any negligent act, error or omission in the performance of professional services or activities for the Facility.

(b) Each policy shall have a limit of not less than \$10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

(c) Each policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

Developer shall cause each other Contractor (other than NTTA) that is under direct contract with Developer and provides professional services to Developer to procure and keep in force professional liability insurance of not less than \$2,000,000 per claim and in the aggregate per annual policy period. Such policy need not be Facility-specific or include a tail period for making claims, and shall include a commercially reasonable deductible.

#### 9. Workers' Compensation Insurance

At all times when work is being performed by any employee of Developer or a Contractor (other than NTTA), Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Developer and/or the Contractor (other than NTTA), whichever is the applicable employer, shall be the named insured on these policies. Such policy need not be Facility-specific. The workers' compensation Insurance Policy shall contain the following endorsements:

(a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act;

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement; and

(d) An endorsement extending coverage to all states operations on an "if any" basis.

#### 10. Employer's Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

(a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Developer working on or about any Site or otherwise engaged in the Work.

(b) Developer shall be the named insured.

(c) The policy shall have a limit of not less than \$25,000,000 per accident and in the aggregate per policy period.

(d) Such policy need not be Facility-specific.

#### 11. Railroad Protective Liability Insurance

Developer shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance as may be required by any railroad in connection with Work

across, under or adjacent to it's the railroad's tracks or railroad right-of-way. In the event any agreement between TxDOT and a railroad includes railroad protective insurance requirements applicable to the Work, Developer shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements. The railroad shall be the named insured on any such policy.

## 12. Contractors' Insurance

(a) At all times during the Term, Developer shall cause each Contractor (other than NTTA) that performs Work on the Site to provide commercial general liability insurance that complies with Section 16.1 of the Agreement, with commercially reasonable limits and deductibles or self-insured retentions, in circumstances where the Contractor (other than NTTA) is not covered by Developer-provided liability insurance. Developer shall cause each such Contractor (other than NTTA) that provides such insurance to include each of the Indemnified Parties as additional insureds under such Contractor's (other than NTTA) liability Insurance Policies. Such insurance need not be Facility-specific. TxDOT shall have the right to contact the Contractors (other than NTTA) directly in order to verify the above coverage.

(b) At all times during the Term, Developer shall cause each Key Contractor that has vehicles on the Site or uses vehicles in connection with the Work to procure and keep in force, comprehensive, business, or commercial automobile liability insurance meeting the requirements as specified below.

(i) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work. The policy shall contain extensions of coverage that are typical for a project of the nature of the Facility, and shall contain only those exclusions that are typical for a project of the nature of the Facility.

(ii) Each such Key Contractor shall be the named insured under its respective automobile liability policy.

(iii) Each policy shall have a combined single limit per policy period of not less than \$1,000,000.

(iv) Each policy shall include each of the Indemnified Parties as additional insureds.

(c) At all times during the Term, Developer shall cause each Contractor that has vehicles on the Site or uses vehicles in connection with the Work (other than Key Contractors subject to subsection (b) above) to maintain an automobile liability policy which provides at least the minimum coverage for its employees and automobiles that is required by Law. Developer shall use diligent efforts to cause each such Contractor to include in the policy each of the Indemnified Parties as additional insureds.