

SCHEDULE 11

INSURANCE REQUIREMENTS SCHEDULE

1. GENERAL

1.1 Capitalized Terms

Capitalized terms used in this Schedule have the definitions as set out in the Agreement to Design, Build, Finance and Operate Southeast Stoney Trail, Calgary (the “**DBFO Agreement**”) between Her Majesty the Queen in right of Alberta and the Contractor, as defined therein, unless expressed otherwise.

1.2 DBFO Agreement Reference

This Schedule is referenced in sections 1.3, 11.1, 11.2, 11.4, 11.6 and 11.9 of the DBFO Agreement.

2. GENERAL INSURANCE REQUIREMENTS

2.1 Insurance Act

All insurance policies must comply with the *Insurance Act* (Alberta).

2.2 No Limit on Obligations

The insurance forms and limits listed below are presented as minimum requirements that the Contractor must provide, without in any way limiting the Contractor’s obligations or liabilities under the DBFO Agreement.

2.3 Actual Form and Substance

All insurance must be in forms and with terms and conditions acceptable to the Province, acting reasonably and acting in a reasonably timely manner. The Province shall be deemed to be acting unreasonably if the effect of not finding certain forms or terms and conditions acceptable is to impose on the Contractor (or its subcontractors) insurance requirements additional to the insurance requirements set out in the DBFO Agreement, including this Schedule 11. The purpose of this Section 2.3 is to give the Province the right to have modified or deleted from the actual insurance policies, terms and conditions that the Province becomes aware of, including becomes aware of only after receiving the certified copies of the insurance policies, that are clearly contrary to the express intent or the spirit of the insurance requirements in the DBFO Agreement, including this Schedule 11.

3. THE INSURANCE DURING THE CONSTRUCTION PERIOD

3.1 Required Construction Period Insurance

The Contractor shall purchase and maintain in full force at all times, from the Execution of the DBFO Agreement through to Construction Completion:

- (a) general liability wrap-up insurance in an amount not less than \$10,000,000 inclusive per occurrence, insuring against bodily injury, personal injury and property damage including loss of use thereof. Aggregate limit can be achieved through primary or umbrella liability insurance. Such coverage shall cover all operations related to the Project whether onsite or offsite. Furthermore, such coverage shall cover the Contractor's supervision and management of the carrying out of any operations and maintenance activities during the Construction Period by its subcontractors. The named insureds on the policy shall be the Province and the Contractor. Other insureds on the policy shall include all consultants, subconsultants and subcontractors whether named or unnamed in the policy. The Province as a named insured must have the right to make a claim under the policy directly to the insurer. Such insurance shall include but not be limited to:

- Products and completed operations liability; the completed operations liability coverage shall remain in effect for a period of 24 months after Construction Completion;
- Owner's and contractor's protective liability;
- Blanket written contractual liability;
- Contingent employer's liability;
- Personal injury liability;
- Non-owned automobile liability;
- Cross liability with respect to additional insureds;
- Employees as additional insureds;
- Broad form property damage endorsement;
- Operation of attached machinery; and
- Sudden and accidental pollution,

and where such further risk exists:

- Blasting, demolition, pile driving, caisson work or tunnelling, as applicable;
- Elevator and hoist liability; and
- Towing/on hook coverage;

- (b) automobile liability on all vehicles owned, operated or licensed in the name of the Contractor in an amount not less than \$5,000,000;

**SCHEDULE 11 – DBFO AGREEMENT
EXECUTION VERSION**

- (c) course of construction insurance in the form of an “all risks” builder’s risk policy covering bridge structures, bridge culverts, and any other similar structures (including without limitation large sign structures) forming part of the Project (collectively, the “**Bridge Component**”). The course of construction policy shall insure the Project to a minimum of the full value of the Bridge Component of the Project. The named insureds on the policy shall be the Contractor and the Province. Other insureds under the policy shall include any Lender (as defined in Schedule 6 to the DBFO Agreement), all consultants, subconsultants, subcontractors, whether named or unnamed in the policy and all others having an insurable interest in the Project. The Province as a named insured must have the right to make a claim under the policy directly to the insurer. The course of construction insurance shall not: (i) itself create or contemplate an insurance trustee, nor modify or endorse the Basis of Loss Settlement Clause in terms of the insertion of an insurance trustee, unless such insurance trustee has been approved by the Province acting reasonably and has entered into an agreement among the Province, the Contractor, and the Lender, satisfactory to the Province acting reasonably (the “**Approved ITA**”); (ii) contain any endorsements in favour of the Lender that may be prejudicial to the Province in terms of directing insurance proceeds contrary to the DBFO Agreement or adversely impacting the use of the insurance proceeds to repair all damage to the New Infrastructure during the Construction Period (the obligation to repair being as required under the DBFO Agreement); nor (iii) modify or endorse the Standard Mortgage Clause unless to factor in the use of an approved insurance trustee and with the approval of the Province acting reasonably. The Approved ITA shall: (iv) provide that the Contractor pay for all fees and expenses of the insurance trustee; (v) provide that the insurance trustee hold any insurance proceeds it may receive in trust for the Province, the Lender, and the Contractor in accordance with their respective interests, and only disburse or otherwise deal with such insurance proceeds in accordance with the provisions of the Approved ITA; (vi) have terms and conditions which are consistent with the provisions of the DBFO Agreement, including without limitation, provisions dealing with insurance proceeds; and (vii) provide that unless otherwise agreed to by the Province and the Lender, insurance proceeds shall be used to repair all damage to the New Infrastructure during the Construction Period (the obligation to repair being as required under the DBFO Agreement); and
- (d) or shall cause to be purchased and maintained, project specific professional errors and omissions insurance, covering all architects and engineers and other design professionals involved in the Project, in an amount not less than \$5,000,000 per occurrence subject to a minimum \$5,000,000 project aggregate. Project specific professional errors and omissions insurance coverage shall include an extended reporting period of not less than 36 months from Construction Completion.

4. THE INSURANCE DURING THE OPERATING PERIOD

4.1 Required Operating Period Insurance

The Contractor shall purchase and maintain in full force at all times, from the earlier of Traffic Availability and Construction Completion, through to the end of the Term:

- (a) general liability insurance in an amount not less than \$5,000,000 inclusive per occurrence against bodily injury and property damage, including loss of use thereof. Annual general aggregate limit, if any, must not be less than \$10,000,000. Aggregate limit can be achieved through primary or umbrella liability insurance. The Province is to be added as an additional insured under this policy for any and all claims arising out of the Contractor's operations under the DBFO Agreement. Such insurance shall include but not be limited to:

- Products and completed operations liability;
- Owner's and contractor's protective liability;
- Blanket written contractual liability;
- Contingent employer's liability;
- Personal injury liability;
- Non-owned automobile liability;
- Cross liability with respect to additional insureds;
- Employees as additional insureds;
- Broad form property damage endorsement;
- Operation of attached machinery; and
- Sudden and accidental pollution,

and where such further risk exists:

- Blasting, demolition, pile driving, caisson work or tunnelling, as applicable;
- Elevator and hoist liability; and
- Towing/on hook coverage; and

- (b) automobile liability on all vehicles owned, operated or licensed in the name of the Contractor in an amount not less than \$5,000,000.