

## SCHEDULE 11

### INSURANCE REQUIREMENTS

#### 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 Evan-Thomas Water and Wastewater Treatment Facilities Upgrade, Kananaskis Country, Alberta (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, 11.7, 11.8, and 11.9 of the DBFO Agreement.

##### 1.3 Section References

Unless otherwise provided, references to section numbers are references to sections in this Schedule.

#### 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,

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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 those that the Province 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. CONTRACTOR REQUIRED INSURANCE**

**3.1 Contractor Required Insurance**

The Contractor shall purchase and maintain in full force at all times:

- (a) from the Execution of the DBFO Agreement through to Construction Completion, project specific general liability wrap-up insurance in an amount not less than \$25,000,000 inclusive per occurrence and in the aggregate with respect to products and completed operations, insuring against bodily injury, personal injury and property damage including loss of use thereof. Project aggregate limit, if any, must not be less than \$50,000,000. Defence costs must be in addition to the limits of insurance. Aggregate limit can be achieved through primary, excess, or umbrella liability 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 Project whether conducted on the Lands or elsewhere. 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 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;
- Employees as additional insureds;
- Forest fire fighting expenses;
- Broad form property damage endorsement;
- Operation of attached machinery; and
- Sudden and accidental pollution as per IBC 2313 or similar wording,

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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 unless this risk is covered by the “all risks” builder’s risk policy under Section 3.1(d);
- (b) from the Execution of the DBFO Agreement through to Construction Completion, project specific Contractor’s pollution liability insurance in an amount not less than \$10,000,000 inclusive per occurrence and in the aggregate. The \$10,000,000 limits 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 Province and the Contractor. Other insureds on the policy shall include all consultants, subconsultants, and subcontractors, whether named or unnamed in the policy. Such insurance should also not be impaired by any time element limitations, biological contaminants (mould/Legionella/bacteria), asbestos, or lead based paint exclusions. Any “insured vs. insured” exclusion shall not prejudice coverage for the owner and shall not affect the owner’s ability to bring suit against the Contractor as a third party. Furthermore, any “insured vs. insured” exclusion shall not affect the owner’s coverage in the event of a government cleanup order. The Province 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:
- Completed operations; the completed operations pollution liability coverage shall remain in effect for a period of 24 months after Construction Completion;
  - Blanket non-owned disposal site coverage;
  - First and third party transported cargo coverage; and
  - Civil fines and penalties and punitive damages where allowable by law;
- (c) from the Execution of the DBFO Agreement through to Construction Completion, insurance covering physical damage of the Existing Facilities on a replacement cost basis. Such coverage can be achieved via the “all risks” builder’s risk policy required under Section 3.1(d) or through the placement of a “all risks” property policy comparable to that required under Section 3.1(j);
- (d) from the Execution of the DBFO Agreement through to Construction Completion, course of construction insurance in the form of an “all risks” builder’s risk policy covering the Infrastructure on a replacement cost basis. 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, and all others

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having an insurable interest in the Project. The Province 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 Province; (iii) modify or endorse the Standard Mortgage Clause; (iv) modify or endorse the Loss Payable Clause; nor (v) modify or endorse the Basis of Loss Settlement Clause in terms of the insertion of an insurance trustee;

- (e) from the Execution of the DBFO Agreement through to Construction Completion, 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 claim. The Contractor must ensure that such policy is endorsed to add by name 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 Construction Completion;
- (f) from the Execution of the DBFO Agreement through to the end of the Term, automobile liability on all vehicles owned or licensed in the name of the Contractor in an amount not less than \$2,000,000 inclusive per occurrence;
- (g) from the Execution of the DBFO Agreement through to the end of the Term, Standard Comprehensive Boiler and Machinery Insurance insuring not less than the replacement values of the Existing Facilities and the Infrastructure;
- (h) from the Execution of the DBFO Agreement through to the end of the Term, general liability insurance in an amount not less than \$25,000,000 inclusive per occurrence against bodily injury and property damage, including loss of use thereof. Aggregate limit can be achieved through primary, excess, or umbrella liability insurance. Defence costs must be in addition to the limits of insurance. Such policy must cover the management and supervision of the Existing Facilities O&M and the O&M. Any professional liability exclusion for supervisory or inspection activities shall be limited to services provided by architects, engineers, surveyors or design professionals. The Province shall be added as an additional insured under this policy for any and all claims arising out of the operations of the Contractor. 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;

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- Cross liability with respect to additional insureds;
- Employees as additional insureds;
- Broad form property damage endorsement;
- Forest fire fighting expenses;
- Operation of attached machinery; and
- Sudden and accidental pollution as per IBC 2313 or similar wording,

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;

- (i) from the Construction Completion through to the end of the Term, a fixed site pollution policy in an amount not less than \$10,000,000 inclusive per occurrence and in the aggregate. The named insureds on the policy shall be the Province and the Contractor. Other insureds on the policy shall include all subcontractors, whether named or unnamed in the policy. The \$10,000,000 limits 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. Such insurance shall not be impaired by any time element limitations or biological contaminants (mould/Legionella/bacteria), exclusions. Any “insured vs. insured” exclusion shall not prejudice coverage for the owner and shall not affect the owner’s ability to bring suit against the Contractor as a third party. Furthermore, any “insured vs. insured” exclusion shall not affect the owner’s coverage in the event of a government cleanup order. The Province 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:

- Blanket non-owned disposal site coverage;
  - First and third party onsite/offsite cleanup coverage;
  - First and third party transported cargo coverage; and
  - Civil fines and penalties and punitive damages where allowable by law;
- and

- (j) from Construction Completion through to the end of the Term, broad form “all risks” property insurance on a replacement cost basis and including coverage for flood and earthquake, debris removal, building by-laws and demolition costs. The replacement cost of the Infrastructure shall be determined by the Contractor acting reasonably and the Contractor shall report the replacement cost of the Infrastructure to the Province annually on the anniversary date of the Execution of the DBFO Agreement. The receipt and review by the Province of the reported replacement cost of the Infrastructure shall not create on the part of the Province any responsibility or liability for the adequacy or suitability of the replacement cost determined by the

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Contractor. The named insureds under the policy shall be the Contractor and the Province. The policy shall include an agency clause which states that the Contractor as the first named insured shall act as agent for payment of premiums, providing notice of loss and submission of required information. The Province 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 Province; (iii) modify or endorse the Standard Mortgage Clause; (iv) modify or endorse the Loss Payable Clause; nor (v) modify or endorse the Basis of Loss Settlement Clause in terms of the insertion of an insurance trustee. The following risks (collectively, the “**Primary Exclusions**”), are permitted excluded risks under the required property insurance and are the Primary Exclusions included in “Damage Events” as defined in the DBFO Agreement:

- war;
- nuclear radiation or radioactive contamination;
- terrorism;
- electronic data recognition; there must be an exception to the exclusion to provide coverage for resultant damage and damage not otherwise excluded;
- electronic data exclusion for damage or destruction, distortion, erasure, corruption of alteration of electronic data; and
- computer virus or hacking exclusion.

The following risks are the only other risks that may be excluded risks under the property insurance but shall not be considered Primary Exclusions included in “Damage Events” as defined in the DBFO Agreement:

- inherent vice, latent defect, faulty materials, error in design, faulty workmanship, wear and tear or gradual deterioration, rust, corrosion, wet or dry rot; there must be an exception to the exclusion to provide coverage for resultant damage and damage not otherwise excluded;
- loss or damage by normal settling, shrinkage, expansion or contraction in the building or foundation; there must be an exception to the exclusion to provide coverage for resultant damage and damage not otherwise excluded;
- 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;
- seepage or gradual pollution or contamination damage; 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;

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

#### **4. SUBCONTRACTOR REQUIRED INSURANCE**

##### **4.1 Subcontractor Required Insurance**

The Contractor shall require and ensure that:

(a) from the Execution of the DBFO Agreement through to the end of the Term, each of its subcontractors designing or building the Project and each of its subcontractors carrying out the Existing Facilities O&M or the O&M maintains and provides evidence as reasonably requested by the Province of automobile liability on all vehicles owned or licensed in the name of the subcontractor in an amount not less than \$2,000,000 inclusive per occurrence;

(b) except where its subcontractor identified in Schedule 17 (Subcontractors) primarily responsible for carrying out the Existing Facilities O&M or the O&M is a named insured under Section 3.1(h) and such master policy covers the Existing Facilities O&M and the O&M, from the Execution of the Agreement through to the end of the Term, its subcontractor identified in Schedule 17 (Subcontractors) primarily responsible for carrying out the Existing Facilities O&M and the O&M maintains and provides evidence as reasonably requested by the Province of general liability insurance in an amount not less than \$25,000,000 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. 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. The Province is to be added as an additional insured under this policy for any and all claims arising out of the operations of the subcontractor identified in Schedule 17 (Subcontractors) primarily responsible for carrying out the Existing Facilities O&M or the O&M. 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;

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- 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;
- Forest fire fighting expenses;
- Operation of attached machinery; and
- Sudden and accidental pollution as per IBC 2313 or similar wording,

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

(c) from Execution of the DBFO Agreement through to the end of the Term, each of its subcontractors carrying out the Existing Facilities O&M or the O&M other than its subcontractor identified in Schedule 17 (Subcontractors) primarily responsible for carrying out the Existing Facilities O&M or the O&M maintains and provides evidence as reasonably requested by the Province of general liability insurance in an amount not less than \$5,000,000 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. Any professional liability exclusion for supervisory or inspection activities shall be limited to services provided by architects, engineers, surveyors or design professionals.