

SCHEDULE 6

DIRECT LENDER AGREEMENT REQUIREMENTS

1. GENERAL

1.1 Capitalized Terms

Capitalized terms used in this Schedule have the definitions set out in the Agreement to Design, Build, Finance and Operate Anthony Henday Drive Southeast Leg Ring Road (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 Section 1.3 of the DBFO Agreement, and “Direct Lender Agreement” is defined in Section 1.1 of the DBFO Agreement. The Direct Lender Agreement (the “DLA”) that is the subject of this Schedule is referenced in Sections 3.2, 17.1 and 17.2(a) of the DBFO Agreement. The DLA (and any replacement DLA contemplated by Section 3.2 of the DBFO Agreement) must in all material respects comply with and fall within the parameters set out in sections 2.1 through 2.16 of this Schedule. The DLA shall expressly have precedence over the provisions of the DBFO Agreement.

2. DLA REQUIREMENTS

2.1 Parties

The parties to the DLA shall be the Province (as represented by the Minister of Transportation), the Contractor, and the lender or group of lenders or a trustee for or other representative of the lenders (collectively, the “Lender”) who hold the Senior Debt Financing.

2.2 Consent to Security

The Province will, as soon as practicable after receiving a request to do so, consent, as required by section 94 of the *Financial Administration Act* (Alberta), to the granting by the Contractor to the Lender of a security interest in the Payment and any Termination Payment or other payment becoming due by the Province to the Contractor under the DBFO Agreement. The Province acknowledges that, except for the consent required by section 94 of the *Financial Administration Act*, no consent of the Province is required for the granting by the Contractor of any security to the Lender or, subject to the provisions of the DBFO Agreement, the enforcement of any such security by the Lender.

2.3 Payment to Lender

The Payment, any Termination Payment, and all other sums that become payable by the Province to the Contractor under the DBFO Agreement shall be paid only:

- (a) subject to clause (b), to the Lender, in which case any such payment to the Lender shall be deemed payment to the Contractor under the DBFO Agreement; or
- (b) to any account or accounts of the Contractor at any time jointly designated by the Contractor and the Lender, in which case, for the purpose of calculating a Termination Payment under Section 18.8 or Section 18.9 of the DBFO Agreement, all payments to such account or accounts that ought to have been applied towards repayment of the Senior Debt Financing shall be deemed to have been so applied.

Payment of any Termination Payment may be conditional on the Lender discharging any caveat registered in relation to the Leased Lands.

2.4 No Guarantee

Nothing in the DLA shall in any way constitute the Province a guarantor of the Senior Debt Financing.

2.5 Province's Step-in Rights

The rights of the Lender under the DLA shall be subject to, and shall not derogate from or interfere with, the Province's step-in rights under Section 16.6 of the DBFO Agreement. At any time during which the Province is exercising its step-in rights under Section 16.6 of the DBFO Agreement, the Lender may put forward a remedial plan for consideration by the Province, and in that event the Province shall give consideration to the remedial plan.

2.6 Amendment of DBFO Agreement

The Province and the Contractor will undertake in the DLA not to:

- (a) materially amend or waive any provision of the DBFO Agreement in any way potentially material to the rights of the Lender under the DLA or under any agreement between the Lender and the Contractor;
- (b) terminate the DBFO Agreement other than in accordance with its terms; or
- (c) surrender or accept a surrender of the Lease;

except with the prior consent of the Lender, acting reasonably.

2.7 Lender's Right to Notice and Information

The Province will undertake to provide to the Lender, concurrently with providing them to the Contractor, a copy of:

- (a) each calculation of the Payment submitted to the Contractor under Section 9.3 of the DBFO Agreement;
- (b) any notice of a Payment Adjustment provided to the Contractor under Section 10.3 of the DBFO Agreement; and
- (c) any Notice of Default given to the Contractor under Section 16.8 of the DBFO Agreement, or any notice under Section 16.8(e), (k) or (l) of the DBFO Agreement.

In addition, the Province will provide reasonable cooperation to the Lender in furnishing information reasonably requested by the Lender in relation to any remedial plan being considered by the Lender or, in the event of termination of the DBFO Agreement, in relation to the process under Sections 18.4, 18.5 or 18.6 of the DBFO Agreement.

2.8 Lender's Right to Cure

The Lender will, subject to its agreement with the Contractor, have the right but not the obligation to cure any default by the Contractor under the DBFO Agreement, and performance by the Lender of any obligation of the Contractor under the DBFO Agreement shall constitute due performance of that obligation. The Lender shall not, by reason only of performing any obligation of the Contractor, be deemed to have assumed any obligation or liability of the Contractor.

2.9 Lender May Assume Responsibility

The Lender may at any time, except to the extent that its right to do so is restricted by a communication to the Province made jointly by the Lender and the Contractor, by notice to the Province assume direct responsibility for carrying out all of the obligations of the Contractor under the DBFO Agreement. In that event, the Lender may assign all rights and obligations under the DBFO Agreement to a third party only if:

- (a) the proposed assignee has the financial capability, reputation, expertise, resources and abilities necessary to perform the obligations of the Contractor under the DBFO Agreement, as determined by the Province, acting reasonably;
- (b) the proposed assignee assumes all obligations of the Contractor under the DBFO Agreement, by an assumption agreement among the Contractor, the

Province and the assignee, in a form prepared by the assignee or the Lender and acceptable to the Province, acting reasonably;

(c) all external expenses reasonably incurred by the Province in reviewing the assumption agreement contemplated by clause (b) and in carrying out reasonable due diligence in relation to clause (a) are paid by the proposed assignee or the Lender; and

(d) all defaults by the Contractor under the DBFO Agreement having been cured or, in the case of Incurable Defaults, mitigated as contemplated by Section 16.8(n)(iii) of the DBFO Agreement or, in either case, the Lender having made arrangements satisfactory to the Province, acting reasonably, to effect such cure or such mitigation.

In assessing whether or not to exercise its rights under this section, the Lender shall have regard in the first instance to information it obtains from the Contractor, provided that:

(e) if the Lender, despite its prudent and commercially reasonable measures to obtain from the Contractor pertinent information relative to the DBFO Agreement, is unable to obtain such information or reasonably concludes that such information may be unreliable, the Lender may request the Province to:

(i) confirm information provided by the Contractor; or

(ii) supply information not provided by the Contractor;

(f) upon receipt of a request from the Lender under clause (e), the Province shall as soon as is practicable respond to the request for information to the extent that the information sought is known by the Province; and

(g) the Province shall not incur any liability or obligation to the Lender in respect of information supplied or confirmed to the Lender under clause (f), except to the extent that the Province knew or ought to have known that the information supplied or confirmed was incorrect or misleading;

and if such conditions are met, the Lender shall not, following such assignment, have any liability or obligation to the Province under or in relation to the DBFO Agreement.

2.10 Lender's Step-In Rights

The DLA may provide for a right of the Lender to “step-in” and “step-out”(collectively, the “**Step-in Rights**”), provided such rights are circumscribed in accordance with the following:

(a) the principal legal effect of the Step-in Rights shall be to constitute the Lender (or any representative designated for such purpose by the Lender), for such period

of time (a “**Step-in Period**”) and as often as the Lender may require, the exclusive agent of the Contractor for all matters relating to the DBFO Agreement and involving the Province, including but not limited to the giving and receiving of all notices and communications under the DBFO Agreement;

(b) during any Step-in Period, the Province will be obligated to consider and decide upon (in its absolute discretion) any extension of the time period in section 2.11(a) of this Schedule proposed in connection with any remedial plan put forward by the Lender, but the exercise by the Lender of its Step-in Rights shall not otherwise affect the period in section 2.11(a);

(c) during any Step-in Period, the Lender may at any time, but not more often than is reasonably required for the purposes of any remedial plan being considered by the Lender, require the Province to provide current information regarding the liabilities and obligations of the Contractor under the DBFO Agreement, in which event the Province shall as soon as practicable supply to the Lender all such information that is known to senior officials of the Province’s Transportation Department, having made due inquiry.

2.11 Termination

Before the Province may terminate the DBFO Agreement under Section 17.2(a) of the DBFO Agreement upon a Termination Event, the Province must provide notice to the Lender and an opportunity to cure the default or defaults (the “Contractor’s Default”) that gave rise to the Termination Event, in accordance with the following:

(a) the Lender shall have 90 days from the giving of such notice to cure the Contractor’s Default;

(b) if the Contractor’s Default can only be cured following the appointment of a receiver or receiver-manager, and if such process requires longer than the 90 day cure period, then the Lender shall be entitled to such longer period, provided:

(i) the Lender obtained such contractual rights to appoint a receiver or receiver-manager of the Contractor as a prudent lender would obtain; and

(ii) the Lender diligently proceeds to have a receiver or receiver-manager appointed and thereafter diligently proceeds to cure the Contractor’s Default (but in any event within 90 days of appointment of the receiver or receiver-manager); and

(c) if the Contractor’s Default is an Incurable Default, then Section 16.8(n)(iii) of the DBFO Agreement shall apply to the Lender, with such changes as are necessary to the context.

2.12 Lender's Option Upon Termination

If the Province, after duly affording the Lender the opportunity required by section 2.10 to cure the Contractor's Default, terminates the DBFO Agreement by notice to the Contractor and the Lender, the Lender may, within five Business Days of receiving notice of the termination, require the Province to enter into a new DBFO Agreement directly with the Lender on the same terms (and having the same remaining Term) as the DBFO Agreement, with the intent being that the novation of the DBFO Agreement will place the Province in the same position as if the DBFO Agreement had not been terminated. In that event:

- (a) the Lender shall forthwith cure (or, in the case of an Incurable Default, mitigate as contemplated by Section 16.8(n)(iii) of the DBFO Agreement) all existing defaults of the Contractor;
- (b) no Termination Payment shall be payable by the Province; and
- (c) the Lender may at any time thereafter, subject to the same terms and conditions as set out in section 2.9 of this Schedule, assign all its rights and obligations in the new DBFO Agreement to a third party who meets the criteria in section 2.9(a) of this Schedule.

In order to give effect to this option, no Termination Payment arising upon termination of the DBFO Agreement under Section 17.2(a) shall become payable until after five Business Days following the effective date of termination.

2.13 Province's Option for Substituted Termination Payment

Upon any Termination Payment becoming due under Section 18 of the DBFO Agreement, but subject to section 2.13 of this Schedule, the Province may, within five Business Days of the effective date of the termination, by notice to the Lender and the Contractor elect in lieu of paying the Termination Payment to deliver to the Lender a bond issued by the Province, in accordance with the following:

- (a) the bond shall be issued to the Lender or as otherwise directed by the Lender;
- (b) the bond must rank *pari passu* with other unsecured bonds issued by the Province in financial markets; and
- (c) the bond must be in a principal amount and coupon rate such that the cash proceeds from the bond (net of trading commissions), if the bond is immediately liquidated by the Contractor in a manner that will maximize the net price obtained, will equal the amount of the Termination Payment.

2.14 Limitations on Province's Option

The Province's option under section 2.13 of this Schedule shall:

- (a) not apply to any Termination Payment under Section 18.9 of the DBFO Agreement; and
- (b) not apply unless there is a market for the bond described in section 2.13 of this Schedule such that the proceeds realizable by the Contractor from the bond can be ascertained with a reasonable measure of certainty in advance of the issue of the bond.

2.15 Insurance Proceeds

The DLA may address the payment and application of the proceeds of insurance required to be maintained by the Contractor under the DBFO Agreement; provided that, unless the Province otherwise agrees, any proceeds from property insurance required by the DBFO Agreement shall be applied firstly to repair or otherwise remedy the property damage, to the extent that the Contractor is obligated under the DBFO Agreement to effect such repairs or remediation.

2.16 Representations and Warranties

The Province's representations and warranties under the DLA will be limited to:

- (a) representations corresponding to the Province's representations and warranties in Section 15.1 of the DBFO Agreement;
- (b) a representation that the Province has provided to the Lender a true copy of the DBFO Agreement and that the DBFO Agreement has not been amended and is in full force and effect; and
- (c) a representation that the Province has not:
 - (i) consented under section 94 of the *Financial Administration Act* (Alberta) to any assignment of the Payment, other than under the DLA or any previous DLA entered into pursuant to the DBFO Agreement; or
 - (ii) entered into any other lease of, or granted any security in respect of, the Leased Lands.

2.17 Assignment

The Province will not be permitted to assign its rights and obligations under the DLA except to a Crown agent upon assigning its rights and obligations under the DBFO Agreement to that Crown agent in accordance with Section 22.4 of the DBFO Agreement.

The Contractor will not be permitted to assign its rights and obligations under the DLA except concurrently with assigning to the same assignee its rights and obligations under the DBFO Agreement in accordance with Section 22.1 of the DBFO Agreement.

The Lender will not be permitted to assign its rights and obligations under the DLA except with the prior consent of the Province, who may withhold such consent if the Province, acting reasonably, considers that such assignment may in any material way impair or prejudice the rights of the Province under the DBFO Agreement; but the Province and the Contractor will enter into a replacement DLA in the circumstances contemplated by Section 3.2(b) of the DBFO Agreement. Subject to the foregoing, the Province anticipates that it would be unreasonable for the Province to withhold its consent to:

- (a) if the Lender consists of a group of lenders or a representative of a group of lenders, a change in the make-up of the group; or
- (b) any assignment reasonably required in connection with a syndication of the Senior Debt Financing.

2.18 General Provisions

The DLA shall contain general provisions corresponding to the provisions in the DBFO Agreement regarding notices (Section 19.1), authority to give notices (Section 19.2), confidential information (Sections 19.4 and 19.5), public disclosure of the DLA (Section 19.6), applicable law and jurisdiction (Section 22.6), amendment and waiver (Section 22.7), additional assurances (Section 22.8) and counterpart execution (Section 22.9).