

SCHEDULE 6

DIRECT LENDER AGREEMENT

1. DBFO Agreement

This Schedule pertains to the Agreement to Design, Build, Finance and Operate Southwest Calgary Ring Road (the “**DBFO Agreement**”) between Her Majesty the Queen in right of Alberta and the Contractor, as defined therein.

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 that is the subject of this Schedule is referenced in sections 1.4, 3.2, 10.4, 17.1, 17.2(a), 17.5(b) and (c), 18.6 and 22.1 of the DBFO Agreement.

3. Direct Lender Agreement

The prescribed form of the Direct Lender Agreement contemplated by section 3.2 of the DBFO Agreement is the document commencing on the next page.

4. Trustee for or Representative of Lenders

Where, as contemplated by section 3.2 of the DBFO Agreement, the “**Lender**” is a collective of lenders represented by a trustee or other representative, the form prescribed by this Schedule shall be adapted as necessary to reflect such representative capacity but such adaptation shall include only minor modifications as to form and shall not introduce substantive changes in the rights or remedies available to or exercisable on behalf of the Lender or the rights and remedies exercisable by the Province. Such collective of Lenders may include any providers of the Senior Debt Financing as well as any monoline insurer or any other provider of credit enhancement in relation to the Senior Debt Financing, provided such collective is represented by a single trustee or other representative for purposes of dealing with the Province and the Contractor under the Direct Lender Agreement.

DIRECT LENDER AGREEMENT

made the ____ day of _____, 20__

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,
as represented by the Minister of Transportation
(the "**Province**")

AND:

(the "**Lender**")

AND:

(the "**Contractor**")

PREAMBLE:

The Province and the Contractor have entered into an Agreement to Design, Build, Finance and Operate Southwest Calgary Ring Road dated _____, 2016 (as such agreement may be amended, supplemented or replaced from time to time in accordance with the terms thereof, collectively, the "**DBFO Agreement**").

Pursuant to the DBFO Agreement, the Province and the Contractor have agreed to enter into this agreement with the Lender.

The Province, the Contractor and the Lender therefore agree as follows:

1. INTERPRETATION

1.1 Definitions

Capitalized terms used in this Agreement have the definitions set out in the DBFO Agreement, unless expressed otherwise, and:

- (a) "**Affiliate**" has the meaning given to "affiliate" in the *Business Corporations Act* (Alberta);
- (b) "**Agreement**" means this agreement, as amended or supplemented from time to time;
- (c) "**Default**" has the same meaning as set out in section 16.7 of the DBFO Agreement;
- (d) "**Default Notice**" means a notice given and delivered by the Province to the Lender in accordance with this Agreement upon a Default by the Contractor under the DBFO Agreement or upon the occurrence, or the reasonably anticipated occurrence, of a Termination Event under section 16.8(d), (e), (f), (j), (k) or (l) of the DBFO Agreement;
- (e) "**Notice Period**" means the period starting on the date of delivery of a Default Notice pursuant to Section 3.1 and ending 90 days later;
- (f) "**Representative**" means the representative named by the Lender in a Step-In Notice given by the Lender to the Province pursuant to Section 2.9(a) or a notice under Section 2.12 requiring the Province to enter into a New DBFO Agreement (as defined in Section 2.12), which representative may be:
 - (i) the Lender or any of its Affiliates;
 - (ii) (in the case of a Step-In Notice only) a receiver or receiver and manager of the Contractor appointed under an agreement between the Contractor and the Lender or appointed by a Court on application by the Lender;
 - (iii) a person directly or indirectly owned or controlled by the Lender;
or
 - (iv) any other person selected by the Lender and approved by the Province acting reasonably;
- (g) "**Step-In Date**" means the date on which the Lender gives the Province a Step-In Notice;

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- (h) "**Step-In Notice**" means the notice given by the Lender to the Province pursuant to Section 2.9(a) stating that the Lender is exercising the step-in rights under this Agreement and identifying the Representative;
- (i) "**Step-In Period**" means the period from the Step-In Date up to and including the earlier of:
 - (i) the Step-Out Date;
 - (ii) the date that a transfer to a Suitable Substitute Contractor becomes effective pursuant to Section 2.8;
 - (iii) the date of any notice from the Province to the Lender and the Contractor under Section 2.12;
 - (iv) if the Step-In Date occurs prior to PNI Traffic Availability, the later of (A) December 1, 2020, or such later date as the date in section 16.8(h) of the DBFO Agreement may be extended to in accordance with the DBFO Agreement, or (B) the first anniversary of the Step-In Date;
 - (iv.1) if the Step-In Date occurs after PNI Traffic Availability but prior to RNI Traffic Availability, the later of (A) October 1, 2022, or such later date as the date in section 16.8(h.1) of the DBFO Agreement may be extended to in accordance with the DBFO Agreement, or (B) the first anniversary of the Step-In Date; or
 - (v) the expiry of the Term;
- (j) "**Step-Out Date**" means the date that is 20 Business Days after the date of a Step-Out Notice;
- (k) "**Step-Out Notice**" means a notice from the Lender or the Representative to the Province pursuant to Section 2.10; and
- (l) "**Suitable Substitute Contractor**" means a person approved by the Province (such approval not to be unreasonably withheld or delayed) to replace the Contractor under the DBFO Agreement.

1.2 Order of Precedence

In the event of any conflict or inconsistency between the provisions in the body of this Agreement and the provisions of the DBFO Agreement, provisions in the body of this Agreement shall govern.

2. GENERAL

2.1 Consent to Security

The Province hereby:

- (a) consents, 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, the Progress Payments and any Termination Payment or other payment becoming due by the Province to the Contractor under the DBFO Agreement;
- (b) acknowledges and agrees that section 22.1 of the DBFO Agreement does not restrict any grant by the Contractor of a security interest in the rights and interests of the Contractor in, to and under the DBFO Agreement or any documents, instruments or letters of credit contemplated in or arising out of the DBFO Agreement or to the perfection of such security interests; and
- (c) acknowledges that, except for the consent referred to in Section 2.1(a) above, no consent of the Province is required for the granting by the Contractor of any security to the Lender or, subject to the restrictions on assignment in section 22.1 of the DBFO Agreement and to Sections 2.16 and 2.17 below, the enforcement of any such security by the Lender.

2.2 Payment to Lender

The Payment, any Progress 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) subsequent to the delivery by the Province of a Default Notice or during the Step-In Period, 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) subject to Section 2.2(a), to any account or accounts of the Contractor at any time jointly designated by the Contractor and the Lender and in the absence of such designation, to the Contractor, in either case, for the purpose of calculating a Termination Payment under section 18.8 or 18.9 of the DBFO Agreement, all payments to such account or accounts or to the Contractor that were required by the terms of the relevant Senior Debt Financing to have been applied towards repayment of the Senior Debt Financing shall be deemed to have been so applied.

2.3 No Guarantee

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

2.4 Province's Step-in Rights

The rights of the Lender hereunder 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, provided the Province delivers written notice to the Lender of the exercise by the Province of such step-in rights concurrently with the notice thereof delivered by the Province to the Contractor. 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, acting reasonably, to such remedial plan. The Lender shall not, by reason of putting forward of such remedial plan, be deemed to have assumed any obligation or liability of the Contractor.

2.5 Amendment of DBFO Agreement

The Province and the Contractor agree with the Lender not to:

- (a) materially amend or waive any provision of the DBFO Agreement in any way (i) potentially material to the rights of the Lender hereunder or under any agreement between the Lender and the Contractor, or (ii) that will have the effect of increasing any liability of the Contractor under the DBFO Agreement;
- (b) subject to the terms of this Agreement, terminate the DBFO Agreement other than in accordance with its terms; or
- (c) pursue any Change Orders that singularly or in the aggregate involve an alteration in the scope of the Project of such magnitude that it could reasonably be expected to materially impact the Project Financing or the Contractor's ability to achieve PNI Traffic Availability by the PNI Traffic Availability Target Date, RNI Traffic Availability by the RNI Traffic Availability Target Date or otherwise materially and adversely alter the risk profile of the Project (including, without limitation, increased exposure to Payment Adjustments),

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

2.6 Lender's Right to Notice and Information

The Province agrees with the Lender 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;

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- (b) any notice of a Payment Adjustment provided to the Contractor under section 10.3 of the DBFO Agreement;
- (c) any Notice of Default given to the Contractor under section 16.8 of the DBFO Agreement (and information relating to the Default, in reasonable detail), or any notice under section 16.8(e), (k) or (l), 17.2, or 17.4 of the DBFO Agreement;
- (d) any notice of set-off given to the Contractor under section 9.8 of the DBFO Agreement;
- (e) any notice of Force Majeure Event given to the Contractor under section 12.3 of the DBFO Agreement;
- (f) any notice of the Province’s step-in rights given to the Contractor under section 16.6 of the DBFO Agreement; and
- (g) any notice of Termination Payment given to the Contractor under section 18.4 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 section 18.2, 18.4, 18.5 or 18.6 of the DBFO Agreement.

2.7 Lender's Right to Cure

The Lender has the right but not the obligation to cure or cause to be cured any Default by the Contractor under the DBFO Agreement, and performance by the Lender or any person authorized by the Lender for that purpose by notice to the Province 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 the performance by the Lender or any person authorized by it of any obligation of the Contractor, be deemed to have assumed any obligation or liability of the Contractor.

2.8 Lender May Assume Responsibility

As between the Lender and the Province, 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 (and upon notice of such assumption, be entitled to all benefits and rights of the Contractor thereunder). In that event, the Lender may (either concurrently with or subsequent to such assumption) assign all rights and obligations under the DBFO Agreement to a Suitable Substitute Contractor, but only if:

- (a) the Suitable Substitute Contractor assumes all obligations of the Contractor under the DBFO Agreement, by an assumption agreement

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among the Contractor, the Province and the Suitable Substitute Contractor, in a form prepared by the Suitable Substitute Contractor or the Lender and acceptable to the Province, acting reasonably;

- (b) all external expenses reasonably incurred by the Province in reviewing the assumption agreement contemplated by Section 2.8(a) and in carrying out reasonable due diligence in relation to Section 2.8(a) are paid by the proposed Suitable Substitute Contractor or the Lender; and
- (c) 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, for the Suitable Substitute Contractor to use diligent efforts to effect such cure or such mitigation,

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.

In assessing whether or not to exercise its rights under this Section 2.8, the Lender shall have regard in the first instance to information it obtains from the Contractor, provided that:

- (d) 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;
- (e) upon receipt of a request from the Lender under Section 2.8(d), the Province shall as soon as is practicable respond to the request for information to the extent that the information sought is known by or reasonably available to the Province; and
- (f) the Province shall not incur any liability or obligation to the Lender in respect of information supplied or confirmed to the Lender under Section 2.8(e), except to the extent that the Province knew or ought to have known that the information supplied or confirmed was incorrect or misleading.

2.9 Lender's Step-In Rights

- (a) Without prejudice to the Lender's rights under any agreement between the Lender and the Contractor, the Lender may give the Province a Step-In Notice at any time:
 - (i) during which a Default is subsisting, whether or not a Default Notice has been served;
 - (ii) during the Notice Period; or
 - (iii) if the Lender delivers a notice to the Province stating that an event has occurred and is continuing which, under the Contractor's financing arrangements with the Lender, entitles the Lender to give a Step-In Notice.
- (b) The Lender or the Representative may at any time during the Step-In Period, 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 (and information relating to the Default 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.
- (c) Upon the issuance of the Step-In Notice and until the end of the Step-In Period, (i) the Lender or the Representative may exercise the rights of the Contractor under the DBFO Agreement arising from and after the Step-In Date, and (ii) the Lender or the Representative shall be 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.
- (d) During any Step-In Period, the Province shall consider and decide upon (in its absolute discretion) any extension of the time period in Section 2.11(a) hereof proposed in connection with any remedial plan put forward by the Lender or the Representative, but the exercise by the Lender of its step-in rights shall not otherwise affect the cure period referred to in Section 2.11(a).
- (e) All rights of the Lender under clauses (b), (c) and (d) of this Section and clause (a) of Section 2.10 may be exercised on behalf of the Lender by the Representative named in the Step-In Notice.

2.10 Step-Out

- (a) The Lender may at any time during the Step-In Period deliver to the Province a Step-Out Notice which specifies the Step-Out Date.

- (b) Upon expiry of the Step-In Period:
 - (i) the Province will no longer deal with the Lender or the Representative and will deal with the Contractor or the Suitable Substitute Contractor (if applicable); and

 - (ii) the Lender and the Representative are released from all obligations and liabilities under the DBFO Agreement.

2.11 Termination

Before the Province may terminate the DBFO Agreement under section 17.2(a) of the DBFO Agreement upon a Termination Event under section 16.8(d), (e), (f), (j), (k), (l) or (n) of the DBFO Agreement, the Province shall deliver to the Lender a Default Notice and provide to the Lender an opportunity to cure the Default or the subsisting grounds that gave rise to the applicable Termination Event, in accordance with the following:

- (a) the Lender shall have 90 days from the giving of such Default Notice to cure the Default or such subsisting grounds, as applicable;

- (b) if the Default or such subsisting grounds, as applicable, 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 Default or such subsisting grounds, as applicable, (but in any event within 90 days of appointment of the receiver or receiver-manager); and

- (c) if the 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 thereof.

Before the Province may terminate the DBFO Agreement under section 17.2(a) of the DBFO Agreement upon a Termination Event under section 16.8(a), (b), (c), (g), (h), (h.1), (i), (i.1) and (m) of the DBFO Agreement, the Province shall give the Lender five Business Days notice of the occurrence of such Termination Event or the reasonably anticipated occurrence of such Termination Event.

2.12 Lender's Option Upon Termination

This Section 2.12 shall not apply to a termination of the DBFO Agreement under section 17.2(a) of the DBFO Agreement upon a Termination Event under section 16.8(h) or section 16.8(i) of the DBFO Agreement. If the Province, after duly affording the Lender the opportunity required by Section 2.11 to cure the Default or the subsisting grounds that gave rise to the Termination Events specified in Section 2.11 or giving the Lender notice of the occurrence of certain Termination Events, as applicable, terminates the DBFO Agreement pursuant to section 17.2(a) of the DBFO Agreement by notice to the Contractor and the Lender, then the Lender may, within 45 days of receiving notice of the termination, require the Province to enter into a new DBFO Agreement (the “**New DBFO Agreement**”) directly with a Representative on the same terms (and having the same remaining Term) as the DBFO Agreement except as stated otherwise in this 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 Representative shall cure all existing Defaults of the Contractor as soon as reasonably practicable (or, in the case of an Incurable Default, mitigate as contemplated by section 16.8(n)(iii) of the DBFO Agreement);
- (b) no Termination Payment shall be payable by the Province in respect of the DBFO Agreement being terminated;
- (c) if the Termination Event that gave rise to the New DBFO Agreement was a Termination Event pursuant to section 16.8(g)(i) of the DBFO Agreement, then section 16.8(g)(i) shall be deleted and not included as a term of the New DBFO Agreement. If the Termination Event that gave rise to the New DBFO Agreement was a Termination Event pursuant to section 16.8(g)(ii) of the DBFO Agreement, then the date set forth in section 16.8(g)(ii) of the New DBFO Agreement shall be the date that is three years after Execution of the DBFO Agreement (for greater clarity, not three years after Execution of the New DBFO Agreement). If the Termination Event that gave rise to the New DBFO Agreement was a Termination Event pursuant to section 16.8(h.1) or (i.1) of the DBFO Agreement, then the deadline date set forth in sections 16.8(h.1) and (i.1) of the New DBFO Agreement shall be October 1, 2023. If the Termination Event that gave rise to the New DBFO Agreement was a Termination Event pursuant to section 16.8(k) or 16.8(l) of the DBFO Agreement, then none of the subsisting factual grounds for termination in respect of the DBFO Agreement being terminated (including Payment Adjustments) caused by the Contractor under the DBFO Agreement shall apply to the New DBFO Agreement;
- (d) the Province, the Lender, and the Contractor all acknowledge that this Agreement has been cancelled upon the entering into of the New DBFO Agreement and this Section 2.12 of this Agreement shall be deleted and not included in any Direct Lender Agreement entered into under section

3.2 of the New DBFO Agreement; and

- (e) the Representative may at any time thereafter:
 - (i) subject to the same terms and conditions as set out in Sections 2.8(a) and (b); and
 - (ii) provided any Defaults by the Representative, as the Contractor under the New DBFO Agreement have 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 Representative having made arrangements satisfactory to the Province, acting reasonably, for the Suitable Substitute Contractor to use diligent efforts to effect such cure or mitigation,

assign all of its rights and obligations under the New DBFO Agreement to a Suitable Substitute Contractor.

Following the assignment referred to in Section 2.12(e), the Representative shall be released from all liabilities and obligations to the Province under or in relation to the DBFO Agreement and the New DBFO Agreement.

In order to give effect to this option, no Termination Payment arising upon termination of the DBFO Agreement under section 17.2(a) of the DBFO Agreement shall become payable until after 45 days following the effective date of termination.

2.13 Province's Option for Substituted Termination Payment

Subject to the paragraph below, upon any Termination Payment becoming due under section 18 of the DBFO Agreement, but subject to Section 2.14 of this Agreement, 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 Her Majesty the Queen in right of Alberta (a "**Bond**"), in accordance with the following:

- (a) the Bond shall be issued by Her Majesty the Queen in right of Alberta to the Lender or as otherwise directed by the Lender;
- (b) the Bond must rank *pari passu* with other unsecured bonds issued by Her Majesty the Queen in right of Alberta 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 upon issuance in accordance with normal market practices for trading in Government of Alberta bonds, will equal the amount of the Termination Payment.

Upon a Termination Payment becoming due under section 18.2(f) of the DBFO Agreement, the Province shall, as soon as reasonably practicable after the effective date

of the termination, deliver to the Lender a bond issued by Her Majesty the Queen in right of Alberta (a "**Bond**"), in accordance with the following:

- (d) the Bond shall be issued by Her Majesty the Queen in right of Alberta to the Lender or as otherwise directed by the Lender;
- (e) the Bond must rank *pari passu* with other unsecured bonds issued by Her Majesty the Queen in right of Alberta in financial markets; and
- (f) the Bond must be in a principal amount equal to the Termination Payment, have the same required periodic principal repayments and repayment dates and the same coupon rate and interest payment dates as the Senior Debt Financing, and have the same prepayment premium, bonus or penalty provision as under the Senior Debt Financing provided such premium, bonus or penalty satisfies the conditions set out in (A) to (C) of (ii) in the definition of Redemption Payment in section 18.1 of the DBFO Agreement and if not, a premium, bonus or penalty provision that satisfies such conditions.

2.14 Limitations on Province's Option

The Province's option under the first paragraph of Section 2.13 above 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 such that the proceeds realizable by the Lender from the Bond can be ascertained with a reasonable measure of certainty in advance of the issue of the Bond, the Bond is not subject to any hold period and is freely tradable, and such proceeds can be realized.

2.15 Representations and Warranties

The Province hereby represents and warrants to and in favour of the Lender that:

- (a) the Province has all requisite capacity, power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement has been duly authorized on behalf of the Province and, upon execution and delivery, constitutes a legal, valid and binding obligation of the Province;
- (c) the Province has not consented under section 94 of the *Financial Administration Act* (Alberta) to any assignment of the Payment, Progress Payments, any Termination Payment or other payment becoming due by the Province to the Contractor under the DBFO Agreement, other than under this Agreement; and

- (d) the Province has not entered into any lease (except for the leases forming part of the Identified Encumbrances and the leases described in Appendix G of Schedule 18 to the DBFO Agreement) of, or granted any security in respect of, the Lands.

2.16 Assignment

- (a) The Province shall not assign or transfer its rights and obligations under this Agreement except to a permitted assignee of its interest in the DBFO Agreement in accordance with section 22.4 of the DBFO Agreement and provided such permitted assignee agrees in writing with the other parties hereto to be bound by the terms and conditions of this Agreement.
- (b) The Contractor shall not assign or transfer its rights and obligations under this Agreement except concurrently with the assignment or transfer by the Contractor to an assignee of the Contractor's rights and obligations under the DBFO Agreement in accordance with section 22.1 of the DBFO Agreement.
- (c) The Lender may assign or transfer its rights and obligations under any agreement between the Lender and the Contractor (other than this Agreement) in accordance with the terms thereof without the consent of the Province. The Province and the Contractor will, upon request by any such successor to the Lender, enter into a new direct agreement with that party on terms that are the same in all material respects as the terms of this Agreement, as contemplated by and in accordance with section 3.2 of the DBFO Agreement. The Lender may not otherwise transfer or assign its rights and obligations under this Agreement 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.

2.17 Approval of Suitable Substitute Contractor

In connection with the assignment to a Suitable Substitute Contractor under Section 2.8 or an assignment to a Suitable Substitute Contractor pursuant to Section 2.12, the Lender will deliver all information reasonably required by the Province to determine whether the proposed transferee is a Suitable Substitute Contractor. The Province will advise the Lender within ten Business Days from its receipt of the information referred to above whether it accepts a proposed transferee as a Suitable Substitute Contractor. If the Province fails to respond within such ten Business Days, the Province will be deemed to have accepted the Suitable Substitute Contractor. The Province acknowledges and agrees that it will not be reasonable for the Province to withhold its consent if a proposed Suitable Substitute Contractor has the financial capability, reputation, expertise, resources and abilities necessary to perform the obligations of the Contractor under the DBFO Agreement.

Any party may change its address information by giving notice to the other parties in the above manner.

3.2 Authority to Give Notices

The parties designate for the time being the following individuals as having authority to communicate to the other any notice, approval, consent, waiver or other communication under this Agreement:

- (a) in the case of the Province:

Landon Reppert
Alberta Transportation
Executive Director, Major Capital Projects Branch
- (b) in the case of the Contractor:
- (c) in the case of the Lender:

In the absence of any further designation or limitation communicated with reference to this Section 3.2, each party may assume that any notice, approval, consent, waiver or other communication under this Agreement given by the above individual has been duly authorized and is binding upon the relevant party hereto.

3.3 Confidential Information

Each party shall, upon delivering any information to the other pursuant to this Agreement that includes information delivered in confidence, identify the information delivered in confidence (the "**Confidential Information**"). The receiving party shall maintain (and shall ensure that its officers, employees, consultants, advisors and contractors maintain) the confidentiality of the Confidential Information, with the exception of information that:

- (a) at the time of the disclosure to the receiving party, was in the public domain;
- (b) after disclosure to the receiving party became part of the public domain through no fault of the receiving party or those for whom it is responsible at law;
- (c) was in the possession of the receiving party at the time of disclosure to it, as demonstrated by written records; or
- (d) was received by the receiving party from a third party who had a lawful right to disclose the information.

3.4 Disclosure of Confidential Information

No party to this Agreement shall disclose Confidential Information (as defined in Section 3.3) delivered by another party hereto except:

- (a) to such of its officers, employees, consultants, advisors and contractors (including without limitation any rating agency, surety company or guarantor, and any person with whom the disclosing party proposes to do business in furtherance of the purposes of this Agreement or the DBFO Agreement) who reasonably require access to the Confidential Information for the due performance of or to further the purposes of this Agreement or the DBFO Agreement;
- (b) as required by FOIP or any other applicable law; or
- (c) where the disclosure is consented to by the applicable other party.

3.5 Public Disclosure of Agreement

The Lender and the Contractor agree that the Province will be at liberty to make public disclosure of this Agreement, excepting only any portions thereof that the Lender or the Contractor has, prior to signing of this Agreement, established to the satisfaction of the Province, acting reasonably, would be exempted from disclosure under Part 1 of FOIP by the provisions of FOIP governing third party confidential information.

4. MISCELLANEOUS

4.1 Applicable Law and Jurisdiction

This Agreement shall be governed by the laws in force in Alberta, including the federal laws of Canada applicable therein. Except as may be agreed to by the parties and subject to Section 4.6, Alberta courts shall have exclusive jurisdiction over all matters arising in relation to this Agreement, and each party accepts the jurisdiction of Alberta courts.

4.2 Amendment and Waiver

No amendment of this Agreement is effective unless made in writing and signed by a duly authorized representative of each party hereto. No waiver of any provision of this Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by any of the parties with respect to the performance of any obligation under this Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

4.3 Additional Assurances

Each party agrees to from time to time do all such acts and provide such further assurances and instruments as may reasonably be required in order to carry out the

provisions of this Agreement according to their spirit and intent; but this Section 4.3 shall not in any event be construed as obligating the Province to amend or enact any statute or regulation.

4.4 Counterparts

This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by fax or by Portable Document Format transmission shall constitute good delivery.

4.5 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

4.6 Dispute Resolution Procedure

The parties agree that the Dispute Resolution Procedure provided for in the DBFO Agreement shall apply to any dispute under this Agreement, with such reasonable amendments as are necessary to adapt the Dispute Resolution Procedure to this

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Agreement, including the tri-partite elements of this Agreement. If there is any dispute in relation to amendments to the Dispute Resolution Procedure, the matter shall be determined by arbitration before one arbitrator and the *Arbitration Act* (Alberta) applies.

IN WITNESS WHEREOF each of the parties has executed this Agreement as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF
ALBERTA**, as represented by the
Minister of Transportation

by _____
Name:
Deputy Minister

**[INSERT LEGAL NAME OF THE
CONTRACTOR]**

by _____
Name:
Title:

by _____
Name:
Title:

**[INSERT LEGAL NAME OF THE
LENDER]**

by _____
Name:
Title:

by _____
Name:
Title: