

PORT MANN/HIGHWAY 1 PROJECT

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INSURANCE REQUIREMENTS

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PART 1
INSURANCE REQUIRED FOR CONSTRUCTION

1.1 Third Party Liability Insurance During Construction

(a) “Wrap-Up” Commercial General Liability insurance with limits of not less than [REDACTED] inclusive of defence costs, for bodily injury, death, and property damage arising from any one accident or occurrence, and in the aggregate. The insurance policy will pay on behalf of the named insureds and the additional named insureds under the policy for any sum or sums which the insureds may become liable to pay or shall pay for bodily injury, death or property damage or for loss of use thereof, arising out of or resulting from the work or operations of the Constructor or the Subcontractors including all persons, firms, corporations or partnerships who perform any of the DB Work contemplated by this Agreement, anywhere within Canada and the USA at a minimum. In addition to the above limits, such liability insurance will also pay all costs, charges, and expenses in connection with any claims that may require to be contested by the insureds anywhere within Canada and the USA at a minimum.

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(b) For all bodily injury or death and property damage arising from any one accident or occurrence for all vessels that are owned, leased, rented or operated by the Constructor or any Subcontractor including all persons, firms, corporations or partnerships who perform any DB Work contemplated by this Agreement, insurance coverage is to be provided through either:

- (i) the “Wrap-Up” Commercial General Liability Insurance policy referred to in Section 1.1(a) of this Schedule; or
- (ii) a separate Protection and Indemnity insurance policy or such other policy or policies or combination thereof appropriate for this risk in the context of the DB Work, in any case with limits of not less than [REDACTED] for bodily injury or death and property damage arising from any one accident or occurrence and in the aggregate.

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The Authority will be responsible for ensuring that any changes to the requirements of the *Marine Liability Act* (Canada) and/or the regulations of the *Marine Liability Act* (Canada) are reflected in the insurance coverage provided.

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(c) If aircraft (including helicopters) are used in the performance of the DB Work and are owned, leased, rented, or used by the Constructor or any Subcontractor, then third party Aircraft liability coverage with limits of not less than [REDACTED] for bodily injury or death and property damage arising from any one accident or occurrence and in the annual aggregate (or such lower limit that the Authority’s Representative determines in its discretion is acceptable and of which the Authority’s Representative so advises the Constructor in writing), must be provided, together with a waiver of subrogation on the hull. Unless the insurance contemplated by this Section 1.1(c) of this Schedule has already been obtained and is in effect, the Constructor shall give the Authority’s Representative 30 days prior notice of any use of aircraft (including helicopters) in the performance of the DB Work and shall request in such notice that the Authority obtain the insurance contemplated by this Section 1.1(c) of this Schedule.

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(d) Extensions of Coverage

The liability insurance referred to in Sections 1.1(a), (b) and (c) of this Schedule will cover liability assumed by the Authority and liability assumed by the Constructor in connection with and applicable to this Agreement and will include the following coverage extensions applicable to the following liability policies:

(i) Coverage Extensions Applicable to the "Wrap-Up" Commercial General Liability Policy

- Canada and USA coverage territory
- Products/Completed Operations
- Occurrence Property Damage
- Broad Form Property Damage
- Broad Form Completed Operations
- Contingent Employers Liability
- Medical Payments
- Incidental Medical Malpractice
- Blanket Written Contractual
- Cross Liability
- Attached Machinery
- Non Owned Automobile
- Legal Liability for damage to hired automobiles
- Hazardous Operations (XCU)
- [REDACTED] Products and Completed Operations (as more fully outlined under Section 1.5(b) of this Schedule)
- Sudden and Accidental Pollution with coverage of not less than [REDACTED] (IBC Form #2313) subject to [REDACTED]
- 60 days notice of Cancellation or Limitation of cover (as more fully outlined under Section 1.6 of this Schedule)
- Blanket Additional Insureds

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(ii) Coverage Extensions Applicable to the Marine and Aviation Policies

- Canada and USA coverage territory
- 60 days notice of Cancellation or Limitation of cover (as more fully outlined under Section 1.6 of this Schedule)

(e) Inclusions / Exclusions Not Permitted

The following inclusions/exclusions are not permitted for any insurance referred to in Sections 1.1(a), (b) and (c) of this Schedule, except in the case of any insurance referred to in Sections 1.1(b) and (c) of this Schedule where such insurance is obtained under policies that are separate from the policy for the insurance referred to in Section 1.1(a) of this Schedule, as such separate policies are described in Sections 1.1(b) and 1.1(c) of this Schedule:

- (i) Hazardous operations, including excavation, pile driving, shoring, blasting, under-pinning or demolition work or any other operation or work to be

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performed as part of or in the course of the DB Work will not be excluded from insurance coverage.

- (ii) Claims arising out of the legal liability imposed upon the insured at common law and/or by statute for bodily injury or death to employees of the insured will not be excluded. However, exclusions applicable to liability imposed upon or assumed by the insured under Health and Safety Laws or for assessment by any Workers Compensation Board will be permitted.
- (iii) Liability assumed by the insureds under contract with railroad companies for the use and operation of railway sidings or crossings will not be excluded.
- (iv) Liability assumed by the Constructor under and applicable to any Gravel Licenses will not be excluded.
- (v) Liability arising out of all products where the Constructor supplies the material will not be excluded.
- (vi) Tort liability assumed by the Constructor under this Agreement will not be excluded.
- (vii) Exclusions for design/build, design/build/finance, design/build/finance/operate, or joint venture projects will not be permitted.
- (viii) Other types of services not listed above, to be performed by or on behalf of the Constructor under this Agreement, will not be excluded.

(f) Deductible

A maximum deductible on the primary insurance policy will be allowed for any one accident or occurrence of up to [REDACTED]

(g) Self-Insured Retention

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A maximum self-insured retention of up to [REDACTED] for any one accident or per occurrence will be permitted for the Authority providing umbrella/excess liability insurance subject to having a minimum primary insurance policy of [REDACTED] underlying the umbrella/excess.

1.2 Professional Liability Insurance (Errors & Omissions)

- (a) Single Project Specific Professional Liability insurance with minimum limits of [REDACTED] per claim and [REDACTED] aggregate insuring against all insured loss or damage including coverage for third party property damage, bodily injury or death, arising out of the professional services rendered by the Constructor or Subcontractors, and/or any engineers, architects, surveyors, and any of their respective employees including personnel on loan to the Constructor or Subcontractors and personnel who perform normal services of the Constructor under this Agreement. The named insureds shall also include all architectural firms and all engineering firms, including project

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managers, construction managers and applied science technologists, and all land surveyors, quantity surveyors and others engaged in providing professional services to the DB Work.

- (b) Coverage will be maintained:
 - (i) subject to Section 1.2(b)(ii) of this Schedule, for a period of [REDACTED] after the Total Completion Date; and
 - (ii) in the case of any Construction Activities carried out by the Constructor after the Total Completion Date, for a period of [REDACTED] following completion of the work that is the subject of the Construction Activity;

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provided that coverage shall not be required to be maintained for longer than [REDACTED] after the effective date of the policy.

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- (c) The deductible permitted for the insurance referred to in this Section 1.2 [Professional Liability Insurance (Errors & Omissions)] of this Schedule shall not exceed [REDACTED]

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- (d) Exclusions for design/build, design/build/finance/, design/build/finance/operate, or joint venture projects will not be permitted.

- (e) The insurance referred to in this Section 1.2 [Professional Liability Insurance (Errors & Omissions)] of this Schedule shall not be cancelled, removed, or endorsed to restrict coverage or limits of liability, without 60 days' notice in writing by registered mail to the Constructor and the Authority's Representative with a copy by registered mail to "The Corporate Insurance and Bonds Manager" at Ministry of Transportation and Infrastructure, P.O. Box 9850 STN PROV GOVT, 4th Floor, 940 Blanshard Street, Victoria, BC, V8W 9T5 (or at such other address as the Authority's Representative may from time to time by notice to the Constructor advise).

- (f) The insurance referred to in this Section 1.2 [Professional Liability Insurance (Errors & Omissions)] will be effected on the Effective Date but shall have a "retroactive date" (as such term is understood by the insurance industry with respect to "claims made" policies) of August 7, 2007, the date of the start of design for the work to be covered by such insurance, and shall not invalidate or otherwise compromise the ability or extent of the Designer's or Designer's subconsultant's normal practice Professional Liability Insurance policies, or the ability of such policy to respond as secondary to the Project-Specific Professional Liability Insurance policy.

1.3 Automobile Insurance

Automobile Liability coverage providing third party liability and accident benefits insurance coverage must be provided for all vehicles required by law to be licensed that are owned, leased or rented by the Constructor or any Subcontractor and are used in the performance of the DB Work contemplated by this Agreement, with limits of not less than [REDACTED] for each accident for vehicles owned, leased or rented by the Constructor and limits of not less than [REDACTED] for each accident for vehicles owned, leased or rented by any Subcontractor. The Constructor or Subcontractor shall be responsible for

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paying in full or otherwise ensuring payment in full of all deductibles on the Automobile Liability coverage referred to in this Section.

1.4 Property Insurance

(a) **Builders' Risk**

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Builders' Risk Property Insurance (for certainty, including delay in start up insurance with a limit of [REDACTED] and a waiting period of up to 60 days, but excluding any extra expense, business interruption, loss of income and loss of profits insurance) insuring against all risks (including but not limited to flood, structural collapse and transit risks by any conveyance to and/or from the site, while there, awaiting and/or during erection, installation and testing, occurring anywhere within Canada and the United States) of direct physical loss of or damage to (including full resultant loss or damage (LEG 3 or equivalent)) all Project Infrastructure (including all Structures forming part thereof but specifically excluding the Cassiar Connector) including the value of any material and/or structure and/or property destined for or entering into or forming part of the Project Infrastructure, whether belonging to the Constructor or any of the Subcontractors and/or the Authority, the Province and/or BCTFA and/or the engineers and/or otherwise and including automatically any changes in design or method of construction occurring during the term of the policy, such insurance to specify a policy limit of not less than [REDACTED]

(b) **Equipment Insurance**

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"All Risks" Equipment Insurance, including flood and waterborne coverages, satisfactory to the Authority covering all Construction Plant, including Construction Plant owned, rented or leased by the Constructor or any Subcontractor and used in the performance of any DB Work or for which the Constructor may be responsible.

(c) **Deductibles Per Occurrence**

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The permitted deductible for the insurance referred to in Section 1.4(a) shall not exceed [REDACTED] per occurrence. The permitted deductible for the insurance referred to in Section 1.4(b) shall not exceed [REDACTED] per occurrence.

(d) **Waiver of Subrogation**

The following Waiver of Subrogation is to be added to the Builders' Risk Property Insurance Policies and the Equipment Insurance Policies:

"In the event of any physical loss or damage to property, or contractors' equipment, the settlement or payment of the subsequent claim shall be made without the right of subrogation against Kiewit / Flatiron, General Partnership, the Transportation Investment Corporation, Her Majesty the Queen in right of the Province of British Columbia, the BC Transportation Financing Authority or Vancouver Fraser Port Authority, or any of their employees, agents and servants, or the architects, engineers, consultants, contractors, or any of their servants, agents, employees, volunteers, directors, parent, subsidiary,

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affiliated or related firms, engaged in or connected with the design, construction and related operations known as the "Port Mann/Highway 1 Project".

1.5 Additional Conditions In Property and Liability Policies in this Part

- (a) Each of the Authority, the Province and BCTFA will be named as an additional named insured in all policies for the property insurance referred to in Section 1.4(a) of this Schedule by an endorsement as follows:

"Her Majesty the Queen in Right of the Province of British Columbia, the BC Transportation Financing Authority and the Transportation Investment Corporation are added as Additional Named Insureds."

If required by the Authority, Vancouver Fraser Port Authority will also be named as an insured in the Builders' Risk Property Insurance policies as its interest may appear.

- (b) Notwithstanding any other terms, conditions or exclusions elsewhere in the policies or in this Schedule, it is understood and agreed that all policies for the liability insurance referred to in Section 1.1(a) of this Schedule shall be extended to include insurance coverages and clauses as follows:

"Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority, and the Transportation Investment Corporation, together with all their employees, agents and servants, and all architects, engineers, consultants, contractors and any of their servants, agents, employees, volunteers, directors, parent, subsidiary, affiliated or related firms, engaged in or connected with the design, construction and related operations known as the "Port Mann/Highway 1 Project" (all the foregoing being referred to in this Section as "Additional Named Insureds"), are added as additional named insureds in respect of liability arising from the work or operations of the Insured and the Additional Named Insureds, in connection with contracts entered into between the Insured and the Additional Named Insureds.

The insurance provided by this policy shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured and Additional Named Insured. Any breach of a condition of the policy by any Insured or Additional Named Insured shall not affect the protection given by this policy to any other Insured or Additional Named Insured. The inclusion herein of more than one Insured and Additional Named Insured shall not operate to increase the limit of liability under this policy.

Products and Completed Operations Hazard coverage shall be provided and such cover shall remain in full force and effect for a period of [REDACTED] after the work has been completed, irrespective of the expiry date of the policy."

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1.6 Cancellation/Limitation

- (a) The insurance coverages referred to in this Part (except owned automobile insurance and professional liability insurance) shall not be cancelled, removed, or endorsed to restrict coverage or limits of liability, without 60 days' notice in writing by registered mail to:

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- (i) the Constructor with a copy by registered mail to Risk Management, Kiewit Corporation, 3555 Farnham Street, Omaha, Nebraska, USA, 68131 (or at such other address as the Constructor may from time to time by notice to the Authority advise).
- (ii) the Authority's Representative with a copy by registered mail to "The Corporate Insurance and Bonds Manager" at Ministry of Transportation and Infrastructure, P.O. Box 9850 STN PROV GOVT, 4th Floor, 940 Blanshard Street, Victoria, BC, V8W 9T5 (or at such other address as the Authority's Representative may from time to time determine); and
- (iii) Vancouver Fraser Port Authority;

except in the case of non-payment of premiums, in which case the minimum statutory notice requirements shall apply. In the case of Marine and Aviation Policies the Authority shall use all reasonable efforts to fulfill the 60 days' notice requirement, but if, after using all reasonable efforts, the Authority cannot fulfill the 60 days' notice requirement, the notice requirement in this subsection for Marine and Aviation Policies may be reduced to not less than 30 days.

- (b) The insurance coverages referred to in this Part shall not be lapsed without at least 30 days' notice in writing by registered mail to:
 - (i) the Constructor with a copy by registered mail to Risk Management, Kiewit Corporation, 3555 Farnham Street, Omaha, Nebraska, USA, 68131 (or at such other address as the Constructor may from time to time by notice to the Authority advise).
 - (ii) the Authority's Representative with a copy by registered mail to "The Corporate Insurance and Bonds Manager" at Ministry of Transportation and Infrastructure, P.O. Box 9850 STN PROV GOVT, 4th Floor, 940 Blanshard Street, Victoria, BC, V8W 9T5 (or at such other address as the Authority's Representative may from time to time determine); and
 - (iii) Vancouver Fraser Port Authority.

1.7 Loss Payable

The insurance policies under Section 1.4(a) of this Schedule must contain a loss payable clause directing payment to the Authority in accordance with the provisions of Section 6.18 [Application of Proceeds of Insurance] of this Agreement.

1.8 Use and Occupancy

Use and occupancy of any Project Infrastructure or any part thereof prior to any applicable date of completion shall not be cause for any termination of insurance coverage shown in the applicable sections of this Part.

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1.9 Construction Activities after the Total Completion Date

The insurance described in Sections 1.1 to 1.8 of this Schedule inclusive will apply *mutatis mutandis* in connection with any Construction Activities carried out after the Construction Period and any warranty period extending beyond the Total Completion Date as provided in Section 6.1A(b) of this Agreement, in each case until Total Completion of the relevant Construction Activity, provided that the Authority shall have the right to make, and the Constructor shall comply with, any reasonable variations in such insurance requirements, including adjustments in policy limits and additions of coverages in connection with any particular Construction Activity. Any such variations made by the Authority will not impose more stringent or less stringent requirements than those imposed by the Province for construction contracts of a similar nature or value to the relevant Construction Activity undertaken after the Construction Period and any warranty period extending beyond the Total Completion Date and will be based on the Authority's reasonably assessment of the risks involved, based on the then current version of the Ministry Form INS152 or INS172, as appropriate. If the Constructor disputes the reasonableness of the Authority's assessment of the relevant risks and any resulting variation to the insurance requirements under this Section with respect to any particular Construction Activity, the Constructor will notify the Authority of its dispute within 10 days after the Authority having notified the Constructor of the insurance requirements that will apply to the relevant Construction Activity. If the Authority, and the Constructor have not resolved the dispute with 10 days after the Constructor's notice of disagreement, the dispute will be referred for resolution under the Dispute Resolution Procedure.

If the Authority does not propose any variation or adjustment to the insurance requirements in respect of any particular Construction Activity, then the insurance described in Sections 1.1 to 1.8 of this Schedule inclusive shall be required pursuant to the provisions of Section 6.1A(b) of this Agreement.

**PART 2
[INTENTIONALLY DELETED]**

**PART 3
[INTENTIONALLY DELETED]**

**PART 4
GENERAL PROVISIONS**

4.1 Amendments to Insurance Coverages

The Authority may from time to time, acting reasonably, and on written notice to the Constructor, amend or vary the insurance coverages described in Part 1 of this Schedule, including by adjusting the policy limits and by changing the scope of coverages. Any such amendment will be considered an Authority Change unless the amendment or variation is contemplated by the other provisions of this Schedule.

4.2 Primary and Excess Coverage

Limit requirements may be satisfied through the use of primary and excess insurance programs.