

## SCHEDULE 9

### PROVINCIAL FUNDING PROGRESS PAYMENTS

#### 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 Southwest Calgary 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 sections 1.1, 1.3, 9.1, and 16.8(g) of the DBFO Agreement.

#### 2. PAYMENT

##### 2.1 Percentage Completion of Project

For the purposes of this Schedule, the Contractor shall be considered to have completed a particular percentage of the PNI Project when an appropriate certifier selected by the Contractor and approved by the Province, acting reasonably, has certified in writing to the Province, having regard to the following, that such percentage of the PNI Project has been completed:

- (a) subject to clause (b) and (c), percentage completion shall be determined in a manner generally consistent with similar determinations customarily made by lenders providing project financing;
- (b) percentage completion shall mean the percentage of the PNI Project, on a cost basis, actually completed, taking into account engineering and design work, but excluding stockpiled materials not yet incorporated into the PNI Project;
- (c) percentage completion of individual components of the PNI Project shall be calculated in a manner consistent with Appendix 1 to this Schedule 9;
- (d) percentage completion may be certified by tenths of a percentage, that is, percentage completion may be expressed to a single decimal place; and
- (e) PNI Traffic Availability shall be deemed for the purposes of this Schedule to be 100% completion of the PNI Project and RNI Traffic Availability shall be

deemed for the purposes of this Schedule to be 100% completion of the RNI Project.

The Contractor shall provide to the Province copies of all relevant materials, records and calculations as may reasonably be requested by the Province, each time that a percentage of the PNI Project is certified as completed.

## **2.2 Progress Payment**

The Province shall pay the Provincial Funding to the Contractor by progress payments in accordance with the following:

- (a) within 10 Business Days from the date the Province receives a determination and certification pursuant to Section 2.1 of this Schedule that the PNI Project has been 40% completed, the Province shall pay to the Contractor a progress payment in the amount of \$● million [**NOTE TO DRAFT: INSERT 32% OF THE PROVINCIAL FUNDING**];
- (b) following payment of the progress payment in clause (a), the Province shall thereafter make progress payments quarterly to the Contractor, based on the following:
  - (i) the quarterly progress payments shall be based on percentage completion of the PNI Project (as determined and certified pursuant to Section 2.1 of this Schedule) as of each November 1, February 1, May 1 and August 1 until PNI Traffic Availability;
  - (ii) each quarterly progress payment shall be payable by the Province within 10 Business Days from the date the Province receives the determination and certification of percentage completion of the PNI Project as of November 1, February 1, May 1 or August 1, as the case may be;
  - (iii) the amount of each quarterly progress payment shall be \$● for each [**NOTE TO DRAFT: INSERT 0.08% OF THE PROVINCIAL FUNDING**] tenth of a percentage of completion of the PNI Project in excess of 40% until PNI Traffic Availability,  
  
less the sum of all previous quarterly payments under this clause (b);  
and
- (c) within 10 Business Days from RNI Traffic Availability, the Province shall pay to the Contractor the final progress payment in the amount of \$●. [**NOTE TO DRAFT: INSERT AMOUNT THAT EQUALS 20% OF PROVINCIAL FUNDING.**]

### **2.3 Illustration**

For greater certainty, the following schedule, pro-rated to the actual percentage of completion as of November 1, February 1, May 1 or August 1, or upon PNI Traffic Availability or RNI Traffic Availability, as the case may be, and the example following thereafter, illustrate the intended operation of Section 2.2:

\$● million (per clause (a))	40% completion of PNI Project
\$● million	50% completion of PNI Project
\$● million	60% completion of PNI Project
\$● million	70% completion of PNI Project
\$● million	80% completion of PNI Project
\$● million	90% completion of PNI Project
\$● million	PNI Traffic Availability
\$● million	RNI Traffic Availability

Example:

- PNI Project is certified to be 40% complete on December 1, 2017; initial progress payment of \$● million follows within 10 Business Days;
- PNI Project is certified to be 45% complete as of February 1, 2018; progress payment of \$● million is due within 10 Business Days;
- PNI Project is certified to be 50% complete as of May 1, 2018; progress payment of \$● million is due within 10 Business Days;
- PNI Project is certified to be 65% complete as of August 1, 2018; progress payment of \$● million is due within 10 Business Days;
- PNI Project is certified to be 75% complete as of November 1, 2018; progress payment of \$● million is due within 10 Business days;
- PNI Project is certified to be 78.5% complete as of February 1, 2019; progress payment of \$● million is due within 10 Business Days;
- etc.
- PNI Traffic Availability is achieved October 1, 2020; progress payment of \$● million is due within 10 Business Days;
- RNI Traffic Availability is achieved October 1, 2021; progress payment of \$● million is due within 10 Business Days.

### **2.4 Right to Withhold Progress Payments**

Notwithstanding Sections 2.2 and 2.3, the Province may withhold any progress payment if and so long as a Termination Event has occurred and continues without the circumstances giving rise to the Termination Event being fully cured, rectified or remedied by the Contractor.

***[NOTE TO DRAFT: ACTUAL AMOUNTS WILL BE INPUT INTO THIS SCHEDULE 9 BASED UPON THE DETERMINATION OF THE PROVINCIAL FUNDING BASED UPON THE PREFERRED PROPONENT'S PROPOSAL.]***

## APPENDIX 1

(Section 2.1(c) of Schedule 9 - Progress of Individual Components of the PNI Project)

The roadway segment portions of the PNI Project constitute, in aggregate, 60% of the PNI Project and the bridge structures constitute, in aggregate, 40% of the PNI Project. Partial completion of activities below shall be accounted for in determining progress for individual components of the PNI Project.

### Roadway Segment

Activity	Percentage Complete Represented by Completing Activity	Cumulative Percentage Complete of a Given Roadway Segment
Remove and stockpile topsoil	5%	5%
Complete grading	30%	35%
Complete base course	20%	55%
Complete paving	20%	75%
Complete appurtenances (drainage, pedestrian walks, fencing, utility relocations/protections, lighting, signing, line painting, guardrail, fencing, topsoil, seeding, etc.)	25%	100%

### Bridge Structures

Activity	Percentage Complete Represented by Completing Activity	Cumulative Percentage Complete of a Bridge Structure
Complete piling (below ground level)	10%	10%
Complete substructure foundation (above ground)	15%	25%
Complete girder erection	30%	55%
Complete deck pour	30%	85%
Complete remaining work (guide sign structures, retaining walls, barrier, rail, deck joints, waterproofing, deck surfacing etc.)	15%	100%