

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 Southeast Stoney Trail, Calgary (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 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 Project has been completed:

- (a) subject to clause (b), 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 Project, on a cost basis, actually completed, taking into account engineering and design work, but excluding stockpiled materials not yet incorporated into the Project;
- (c) percentage completion may be certified by tenths of a percentage, that is, percentage completion may be expressed to a single decimal place; and
- (d) Traffic Availability shall be deemed for the purposes of this Schedule to be 100% completion.

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 Project is certified as completed.

2.2 Progress Payments

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

- (a) within seven Business Days from the date the Province receives a determination and certification pursuant to Section 2.1 of this Schedule that the Project has been 30% completed, the Province shall pay to the Contractor a progress payment in the amount of \$● million **[NOTE TO DRAFT: INSERT 15% 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 (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 Traffic Availability;
 - (ii) each quarterly progress payment shall be payable by the Province within seven Business Days from the date the Province receives the determination and certification of percentage completion 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:
 - (A) \$● for each **[NOTE TO DRAFT: INSERT .125% OF THE PROVINCIAL FUNDING]** tenth of a percentage of completion in excess of 30%, until 90% completion; and
 - (B) \$● for **[NOTE TO DRAFT: INSERT .1% OF THE PROVINCIAL FUNDING]** each tenth of a percentage of completion in excess of 90%, until Traffic Availability;
- (c) within seven Business Days from Traffic Availability, the Province shall pay to the Contractor the final progress payment.

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, as the case may be, and

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the example following thereafter, illustrate the intended operation of Section 2.2:

\$● million (per clause (a))	30% completion
\$● million	40% completion
\$● million	50% completion
\$● million	60% completion
\$● million	70% completion
\$● million	80% completion
\$● million	90% completion
\$● million	Traffic Availability

Example:

- Project is certified to be 30% complete on December 1, 2011; initial progress payment of \$● million follows within five Business Days;
- Project is certified to be 35% complete as of February 1, 2012; progress payment of \$● million is due within five Business Days;
- Project is certified to be 40% complete as of May 1, 2012; progress payment of \$● million is due within five Business Days;
- Project is certified to be 50% complete as of August 1, 2012; progress payment of \$● million is due within five Business Days;
- Project is certified to be 55% complete as of November 1, 2012; progress payment of \$● million is due within five Business days;
- Project is certified to be 57.5% complete as of February 1, 2013; progress payment of \$● million is due within five Business Days;
- etc.

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.]