

SCHEDULE 9

FEDERAL REQUIREMENTS

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 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 Sections 1.1 and 1.3 of the DBFO Agreement.

2. ADDITIONAL DEFINITIONS

These additional capitalized terms used in this Schedule have the following definitions:

“**Agreement Steering Committee**” means the Committee that will be struck by the Province and Canada to administer and manage the federal funding contribution agreement between the Province and Canada for the Project.

“**Canada**” or “**Government of Canada**” means Her Majesty the Queen in right of Canada as represented by the Minister of State (Infrastructure and Communities) and by the Minister of Transport.

“**Environmental Assessment Report**” means any report issued pursuant to the *Canadian Environmental Assessment Act* (Canada).

“**Fiscal Year**” means the twelve-month period beginning on April 1 of a year and ending on March 31 of the following year.

3. RELATIONSHIPS BETWEEN CANADA, THE PROVINCE AND THE CONTRACTOR

3.1. No Partnership, Agency or Delegation

The Province and the Contractor expressly disclaim any intention to create by the terms of the DBFO Agreement, as between themselves, or as between Canada, the Province and the Contractor, a partnership, a joint venture, joint enterprise, principal-agency or employer/employee relationship.

3.2 Third Party

No provision of the DBFO Agreement shall be construed as authorizing the Contractor to enter into a contract or to contract an obligation on behalf of Canada, or to sign as agent for Canada. No provision of the DBFO Agreement shall be construed as authorizing a claimant or a third party to enter into a contract or to contract an obligation on behalf of Canada.

3.3 Conflict of Interest

No person governed by the post-employment terms and conditions set out in the *2003 Values and Ethics Code for the Public Service and the Conflict of Interest and Post-Employment Code for Public Office Holders* (2003) shall derive a direct benefit from the DBFO Agreement unless that person complies with the applicable post-employment provisions.

3.4 No Lobbying

The Contractor warrants that any person it has hired, for payment, to speak to or correspond with any employee or other person representing Canada on the Contractor's behalf, concerning any matter relating to the DBFO Agreement or the Federal Funding and who is required to be registered pursuant to the Lobbyists Registration Act R.S.C 1985 c. 44 (4th Supplement), is registered pursuant to that Act.

Furthermore, the Contractor warrants that no payment or other compensation that is contingent upon or is calculated upon payment under the DBFO Agreement or the amount of the Federal Funding or negotiating the whole or any part of the terms of the DBFO Agreement will be paid to such a person described in the preceding paragraph.

4. ACCOUNTING AND RECORD KEEPING

4.1 Record Retention

The Contractor shall, from Execution until one year following Construction Completion, (i) maintain in an appropriate form full accounting and other records in respect of

performance by it of its obligations under the DBFO Agreement, and (ii) keep those records available for inspection by Canada (including the Auditor General of Canada or any other representative designated by Canada for that purpose) at all reasonable times upon reasonable notice, for the purpose of determining the Contractor's compliance with the DBFO Agreement.

Apart from this right of audit and inspection and the obligation of the Contractor under Section 17.5(c) of the DBFO Agreement upon termination of the DBFO Agreement, the records of the Contractor shall be in the exclusive custody and control of the Contractor, and the Province shall have no general right to access or obtain copies of such files and records.

4.2 Access to the New Infrastructure and Documentation for Audit Purposes

The Contract shall grant to Canada, to the extent possible under the legislation applicable in the Province, free access to the New Infrastructure, and to any documentation that is relevant for the purpose of audit and that a representative of Canada may, if necessary, actually conduct such audit.

5. ENVIRONMENTAL REQUIREMENTS

5.1 Environmental Screening Report

The Province and the Contractor acknowledge that an environmental screening report of the Project has been issued in accordance with the *Canadian Environmental Assessment Act*. The Contractor will comply with all of the terms or provisions of that environmental screening report attached as Appendix 1 and forming part of this Schedule. **NTD: This environmental screening report is expected shortly, and will be affixed as an Appendix to this Schedule as soon as it is available for distribution to the Proponents.]**

Formatted

5.2 Environmental Mitigation

In addition to the above, the Contractor shall implement all mitigation measures recommended in any Environmental Assessment Report. The Contractor shall provide reasonable access to Canada and its agents, employees or contractors to the New Infrastructure for the purpose of ensuring that all environmental mitigation measures as set out in the Environmental Assessment Report have been implemented.

5.3 Follow-up Program Implementation

If a follow-up program under the *Canadian Environmental Assessment Act* is also determined to be necessary, the Contractor shall co-operate with Canada in that

program's implementation. The Contractor, in order to achieve this co-operation with respect to the implementation of a follow-up program shall:

- a) make regular and periodic updates on the status of the implementation;
- b) report to both the Province and to Canada of any unknown environmental conditions during either Construction Period or the Operating Period;
- c) stop construction activities immediately if the Contractor finds that mitigation efforts are ineffective or if a change to the Project is expected to impact upon the Environmental Assessment Report.

If Canada concludes that the implementation of mitigation measures has not mitigated significant adverse environmental effects during the Construction Period, the Contractor shall undertake further such measures as may be necessary.

If Canada concludes that the implementation of mitigation measures has not mitigated significant adverse environmental effects after Construction Completion and during the Operating Period, the Province will undertake further such measures as may be necessary.

6. COMMUNICATION

6.1 General

All public information material or signage related to the Project under the *Canada Strategic Infrastructure Fund* shall be produced in accordance with the Federal Identity Program. All Project identification signage shall be in both official languages.

All communications concerning the Project shall be in a form approved by Canada and the Province. Public calls for tenders, notices and newspaper announcements shall note the contributions by the Government of Canada and the Government of Alberta.

6.2 Public Information Material

During the Construction Period, the Contractor may produce information kits, brochures, public reports, and an Internet Web Page providing information for private-sector interest groups, contractors and members of the public regarding the Project. The Contractor and the Agreement Steering Committee shall agree on the content of that information. All materials shall note the contributions by the Government of Canada and the Government of Alberta.

The day-to-day operation notifications during the Construction Period will not require the approval of the Agreement Steering Committee.

6.3 Media Releases

Media releases may be issued to announce the progress of the Project and may include quotations from elected representatives of the Government of Canada or the Government of Alberta. The parties shall agree on the content of the media releases related to the Project.

The preceding paragraph does not apply to media releases issued by the Province or its contractors if the media releases have to do with the operational, transportation management or highway safety activities that may result from the performance of the work under the DBFO Agreement.

6.4 Media Conferences, Public Announcements and other joint events

The parties shall co-operate in organizing media conferences, announcements and official ceremonies. The Table of Precedence for Canada, as established by Canadian Heritage (http://www.pch.gc.ca/progs/cpsc-ccsp/pe/precedence_e.cfm), or other mutually agreed protocol, should be respected. In addition, the parties must agree on the public statements and messages issued at these events. The Agreement Steering Committee may recommend that ceremonies or other special events be held at appropriate locations and times. Unless agreed to in advance by the parties, no public announcement concerning a Project covered by the DBFO Agreement shall be made by either of the parties or, where applicable, unless the other party has been given at least 30 days notice of the public announcement.

The Contractor may only organize a joint media conference or public ceremony pertaining to the Project with the prior consent of the Agreement Steering Committee. Unless agreed to in advance by the Agreement Steering Committee, the Contractor shall give the Agreement Steering Committee reasonable notice of 30 days of any proposed joint media conference regarding the Project. The Province and Canada may involve their respective Ministers in these media conferences, which shall be held at the agreed locations and on the agreed dates.

6.5 Signage

The Contractor agrees to supply, erect and maintain, on the direction of the Agreement Steering Committee:

- a) prior to the implementation of the Project under the DBFO Agreement, including new construction, a sign or signs measuring not less than 1.2 metres by 2.4 metres and visible by highway users travelling in either direction at both the eastern and western limits of the New Infrastructure at the discretion of the Agreement Steering Committee, to 12 months after Construction Completion. Signage shall be consistent with federal-provincial identity graphics guidelines, and in both official languages specifying that the Project is financed by contributions from the Government of Canada and the Government of Alberta or such wording as

may have been or may be agreed upon by the Agreement Steering Committee;

- b) where relevant, and at the request of Canada, a permanent sign or plaque to the effect set forth in paragraph (a) above;
- c) where a sign is to be erected by either the Contractor on behalf of the Province or by Canada referring to either the Province's or Canada's financial contribution, it shall include specific reference to the Canada's contribution;
- d) except for traffic control devices, no additional signage concerning the Project shall be erected by the Contractor unless it is first approved by the Agreement Steering Committee; and
- e) the Contractor shall not alter, remove or obstruct any signage referring to Canada's contribution as required in this subsection unless that removal is first approved by Canada.

7. ANNUAL REPORT ASSISTANCE

In order to facilitate the Province's reporting obligations to Canada, within 60 days of the end of each Fiscal Year, the Contractor shall provide the Province a Project update including the following:

- description, map and status of the work completed on the Project;
- component(s) started or completed and estimated date of completion of component(s);
- major component(s) completed (e.g. opening of a section of a Project, etc.);
- maps and photographs of the component locations showing the work in progress and the work completed on the Project;
- status of any ongoing or outstanding environmental issues;
- employment statistics from the work done on Project;
- the cost of the Project to date and how much has been paid into the Project by Canada;

- any public concerns regarding the Project; and,
- communications activities undertaken during the past Fiscal Year.

8. PROJECT EVALUATION ASSISTANCE

Following Construction Completion and within a reasonable time, when requested to do so by the Province and in order to facilitate the Province's obligations to Canada regarding Project evaluation assistance, the Contractor shall provide the Province the following data, if in the Contractor's control, necessary for the Province and Canada to jointly prepare a retrospective evaluation of the Project including:

- traffic volumes and growth, including percentage of commercial vehicles;
- changes in road conditions, capacity and levels of service;
- final cost-benefit analysis;
- follow-up programs as described in the environmental assessment reports;
- evaluation and description of any technology and innovative techniques used; and
- a description of the benefits of the Project, including social, economic and environmental factors such as:
 - assessment of safety improvements;
 - an assessment of community impacts, the outreach and mitigation activities taken and public satisfaction to the Project;
 - direct and indirect employment created; and
 - impact on economic development and tourism.

9. PROGRESS PAYMENTS PROCEDURE

9.1 Progress Payments for Eligible Costs

The Progress Payments shall only be paid to the Contractor for costs incurred during the Construction Period that fall within the definition of “Eligible Costs”, specified below.

“Eligible Costs” shall be all direct costs that were incurred properly and reasonably, and were reported to the Province and were necessary for the completion of the Project in accordance with the DBFO Agreement, including:

- a) capital costs, as defined and determined according to generally accepted accounting principles recognized in Canada for Alberta’s transportation sector, and relating to the acquisition, construction or renovation of a fixed capital asset that is a highway;
- b) the costs of surveying services, engineering services, architectural services, supervisory services, testing services, and management services, to a maximum of 15% of total Eligible Costs;
- c) the costs of environmental assessments, and follow-up actions as defined in the *Canadian Environmental Assessment Act* (Canada);
- d) the costs of signage, lighting, pavement marking and changes to public utilities;
- e) the costs of developing and implementing innovative techniques for carrying out the Project as approved in writing in advance by the Province and Canada;
- f) the costs of communication and signage recognition that have been approved in advance by the Agreement Steering Committee; and
- g) other costs that are considered to be direct and necessary for the successful implementation of the Project that have been approved in advance, in writing, by the Agreement Steering Committee.

9.2 No Progress Payments for Ineligible Costs

The Progress Payments shall not be paid for costs that fall within the definition of Ineligible Costs, specified below.

Costs related to the following items are “Ineligible Costs”:

- a) costs incurred before May 9, 2003 or after the date upon which Construction Completion is achieved;
- b) costs incurred in connection with or pursuant to calls for tenders issued before the May 9, 2003 joint project announcement;
- c) land acquisition, real estate fees and related costs, financing charges and loan interest payments;
- d) leasing land, buildings, equipment and other facilities;
- e) any goods and services cost which are paid by donations or in kind;
- f) services or works normally provided by the Province or any agency of the Province incurred in the course of implementation of the Project, except those specified as Eligible Costs, above, or works undertaken for relocation and installation of utilities, pavement markings, aggregate production or highway signing;
- g) the costs of repairs to or general maintenance of an existing roadway and related structures, unless previously approved in writing by the Agreement Steering Committee;
- h) the costs of the design, construction, or maintenance, if any, of the Service Roads;
- i) employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the Province, and more specifically costs relating to survey, engineering, architecture, supervision, management and other services delivered directly by permanent employees of the Province, or of a Crown corporation or corporation owned and controlled by the Province;
- j) provincial sales tax and goods and services tax under Part IX of the *Excise Tax Act* (Canada), for which the Province is eligible for a rebate, and any other costs eligible for rebates; and
- k) legal fees.

10. PROGRESS PAYMENT REQUEST

The Contractor shall submit three "Progress Payment Requests" in form and content acceptable to the Province, in which the Contractor shall identify the Eligible Costs incurred during the construction of the New Infrastructure to the date of the Progress Payment Request. The Contractor shall submit the Progress Payment Requests to the Province as follows:

- (a) the first Progress Payment Request shall be submitted to the Province on or before November 15, 2005;
- (b) the second Progress Payment Request shall be submitted to the Province on or before November 15, 2006; and
- (c) the final Progress Payment Request shall be submitted at least 15 Business Days prior to the date upon which the Contractor anticipates Traffic Availability will be achieved.

11. CO-OPERATION WITH THE INDEPENDENT ESTIMATOR

The Contractor shall provide such assistance as is required by the Province's and Canada's "Independent Estimator" to verify the value, the scope and the nature of the Eligible Costs incurred by the Contractor during the construction of the New Infrastructure. The Contractor, when requested by the Independent Estimator, shall provide information, including but not limited to the following, that would allow the Independent Estimator to make assessments regarding:

- a) what work was completed during the time period to which the Progress Payment Request relates;
- b) who performed the work referenced in a), above;
- c) whether or not the work was supervised and inspected by qualified staff;
- d) whether or not the Project conforms with the Contractor's Designs and the Project Requirements;
- e) whether or not the Project conforms with applicable environmental legislation and whether the terms of the Environmental Assessment Report and any appropriate mitigation measures have been implemented; and,
- f) whether or not the Project conforms with traffic, construction and engineering guidelines as recognized by the Transportation Association of Canada (TAC) or any other equivalent provincially sanctioned guidelines approved by the Agreement Steering Committee.

Such verification will be a prerequisite for the contribution to the Province by Canada of the value of the Progress Payments made by the Province to the Contractor.

For the purposes of this section, "Independent Estimator" shall mean that individual, firm, partnership, corporation, or employee engaged by the

Province and Canada to determine the value of the contribution payment from Canada to the Province.

12. MISCELLANEOUS FEDERAL REQUIREMENTS

12.1 Canada Not Involved in Development of Project Requirements

The Province and the Contractor acknowledge and confirm that Canada has not in any way contributed to or taken part in the preparation of the Project Requirements and shall not be held liable for any deficiency or lack of suitability in connection therewith.

12.2 Contractor's Representation Regarding Complying with the Law

The Contractor represents and warrants to the Province that during the Construction Period the Contractor will comply with all applicable labour, environmental and human rights legislation.

OCTOBER 22, 2004

APPENDIX 1
ENVIRONMENTAL SCREENING REPORT