

FRAMEWORK AGREEMENT

COPY

THIS FRAMEWORK AGREEMENT DATED THE 11th DAY OF MARCH, 2005.

BETWEEN:

Tsuu T'ina Nation, an Indian Band within the meaning of the *Indian Act*

(the "Nation")

- AND -

Her Majesty the Queen in Right of Alberta, as represented by the Minister of
Infrastructure and Transportation

(the "Minister")

WHEREAS

- A. The Parties entered into the AIP on or about April 30, 2004;
- B. The Parties are negotiating with a view to concluding and implementing the Final Agreements relating to the Controlled Access Freeway to be located on the Project Lands;
- C. The Parties have agreed on certain principles relating to the conduct of such negotiations and the Final Agreements, as further described in this Agreement;
- D. The Parties have agreed to utilize their best efforts to achieve the objectives and to fulfill their obligations pursuant to this Agreement, it being acknowledged by both Parties that certain of the items to be accomplished pursuant to the Final Agreements are not within the exclusive control of the Parties;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the Parties agree as follows:

DEFINITIONS

1. In this Agreement, including the Preamble, the following terms shall have the following meanings:
 - a. "Additional Lands" means the additional lands to be reserved for the use and benefit of the Nation as specified and more specifically referenced in Section 15, which lands shall be described in the Final Agreements;
 - b. "Additions to Reserve Policy" means the policy of the Government of Canada relating to adding lands to a reserve (as defined in the *Indian Act*);
 - c. "AIP" means the Agreement in Principle made between the Parties on or about April 30, 2004;
 - d. "Band Council Resolution(s)" means a resolution or resolutions of the Nation Council;
 - e. "Canada Land Surveyor" means a land surveyor duly qualified pursuant to the laws of the Province of Alberta;
 - f. "Controlled Access Freeway" means a highway which conforms to the standards set out in Appendix "A" to the AIP;
 - g. "Crown Land" means land for which a Certificate of Title has been granted to the Crown in Right of Alberta;
 - h. "*Expropriation Act*" means the *Expropriation Act*, R.S.A. 2000 c. E-13 and regulations thereto, as amended or replaced from time to time;
 - i. "Federal Minister" means the Minister of Indian Affairs and Northern Development, or any successor thereto;
 - j. "Final Agreements" means the full, final and enforceable agreements that may be negotiated by the Parties and by such other governments and entities as may be necessary to provide for the Transfer of Administration and Control and the carrying out of the Project;
 - k. "Governor in Council" means the Governor General of Canada acting by and with the advice of the Queen's Privy Council of Canada;
 - l. "Highway Purposes" means the construction, operation, maintenance, repair, improvement, reconstruction, replacement or removal of a Controlled Access Freeway by the Minister or his contractors or agents,

and includes the construction, operation, maintenance, repair, improvement, reconstruction, replacement, or removal of any additional device, structure, equipment, thing, work or matter necessary or incidental thereto that is made, built, constructed, erected, extended, enlarged, repaired, maintained, improved, excavated, operated, reconstructed, replaced, or removed by the Minister or his contractor or agent and which is contained within the Project Lands;

- m. “including” shall be deemed to be followed by the statement “without limitation” and neither of such terms shall be construed to limit any word or statement which it follows to the specific or similar items or matters immediately following it;
- n. “*Indian Act*” means the *Indian Act*, R.S.C. 1985 c. I-5 and regulations thereto, as amended or replaced from time to time, including for greater certainty any new legislation which may be passed to address Indian Band governance, reserve status and similar matters;
- o. “Nation Council” means the Nation’s “council of the band” as defined in the *Indian Act*;
- p. “Party” means the Nation or the Minister, and Parties means both of them;
- q. “Project” means the Controlled Access Freeway and all associated and related facilities and structures within the Project Lands, and the use of the Project Lands for Highway Purposes and Utility Purposes;
- r. “Project Lands” means the lands to be transferred to the Minister for the purposes of the Project, which lands:
 - i. currently form part of Indian Reserve No. 145; and
 - ii. will be a corridor located approximately as shown in Schedule “A” to this Agreement;
- s. “Transfer of Administration and Control” means the authorization by the Governor-in-Council, pursuant to Subsection 35(3) of the *Indian Act*, of the transfer of all right, title and interest of Canada in and to the Project Lands to the Minister for Highway Purposes and Utility Purposes, free and clear of all encumbrances, except:
 - i. mines and minerals shall be excepted from the transfer;
 - ii. any third party interests specified in the Final Agreements; and
 - iii. the Project Lands shall revert to Her Majesty the Queen in Right of Canada for the use and benefit of the Nation when the Project Lands are no longer used for Highway Purposes;

- t. "Utility Purposes" means the construction, operation, maintenance, repair, improvement, reconstruction, replacement or removal of any pipelines, wires, transmission towers, cable, fibre optics or other devices, equipment, structures, things or works for the purpose of transporting oil, gas, electricity, microwaves, telecommunications, water, storm water sewage, or any other form of energy or matter to, from, over, under or across the Project Lands as permitted by the laws of Alberta in force from time to time.

BEST EFFORTS

- 2. The Parties agree to utilize their best efforts and to cooperate, acting reasonably, to achieve the objectives described in this Agreement; provided that the Parties acknowledge that, notwithstanding the obligation to act reasonably and any other provision contained in this Agreement:
 - a. certain matters dealt with by this Agreement will require the approval, agreement or consent of third parties, including in particular the Government of Canada;
 - b. this Agreement is not intended to be contractually binding and shall not be enforceable by either Party against the other; and
 - c. either Party may, in its sole and absolute discretion, refuse to enter into the Final Agreements.

NEGOTIATION OF FINAL AGREEMENTS

- 3. The Parties agree to negotiate and work together in good faith with a view to concluding the Final Agreements as soon as reasonably possible, and in any event by November 1, 2005, it being agreed by both Parties that this date may be extended by mutual agreement.
- 4. The Parties shall establish such tables, committees and working groups, commission such studies and reports, and take such other steps as may be reasonably required to enable the negotiations to proceed in a timely manner.
- 5. The Final Agreements shall be consistent in all respects with the AIP.

FINAL AGREEMENTS: HEADS OF AGREEMENT

- 6. The Final Agreements shall address all necessary matters to enable the Project to proceed, including:

- a. the legal description of the Project Lands, which lands must be surveyed by a Canada Land Surveyor and approved by the Parties and by the Federal Minister and the Governor in Council;
- b. the terms of the Transfer of Administration and Control, including the proposed language of the Order-in-Council to be made by the Governor-in-Council;
- c. the Minister's obligations relating to the development, design, construction, operation, maintenance and decommissioning of the Project;
- d. the design of the Controlled Access Freeway, to the extent such design is complete;
- e. the compensation to be provided to the Nation or its designates for the Project Lands, which compensation shall include cash and Additional Lands;
- f. to the extent determinable by the time of the conclusion of the Final Agreements, the construction schedule and opening date for the Controlled Access Freeway;
- g. the legal description of the Additional Lands to be reserved to the Nation, and the steps to be taken to reserve the Additional Lands concurrently with the Transfer of Administration and Control;
- h. access by the Nation and other lawful users of Indian Reserve No. 145, and all lawful users of the Controlled Access Freeway, to the Controlled Access Freeway, including the development, design, construction, operation, maintenance and decommissioning of interchanges and access roads;
- i. covenants relating to non-interference by each of the Parties with the lawful exercise by the other Party and those claiming by, under or through them of the rights granted to the others by the Final Agreements, including the rights of lawful users of the Project Lands and lawful users of such access as may be provided to and from Indian Reserve No. 145 from the Project Lands;
- j. opportunities measures commitments in relation to jobs and contracts arising in the course of the Project, for the Nation, businesses owned by the Nation and Nation citizens, and for Nation citizens;
- k. the assessment and mitigation of impacts on the environmental, and on historical and archaeological resources;

- l. obtaining all necessary permits and approvals and otherwise complying with all applicable legislation; and
 - m. consultations with the public both at the Nation and in Calgary, and with any other necessary third parties.
- 7. The Final Agreements shall also provide for the carrying out of all steps necessary to enable ratification and implementation of the Final Agreements, including:
 - a. the approval and execution of the Final Agreements by the Nation Council and by the Minister in such manner as they deem necessary;
 - b. the approval of the Final Agreements, including the Transfer of Administration and Control, by Nation citizens in a referendum satisfactory to the Nation and the Federal Minister, conducted in the manner provided by the *Indian Referendum Regulations* passed pursuant to the *Indian Act*;
 - c. the passage by the Nation Council of a Band Council Resolution requesting the Transfer of Administration and Control;
 - d. the recommendation by the Federal Minister to the Governor in Council of the Transfer of Administration and Control;
 - e. the issuance by the Governor in Council of an order pursuant to Subsection 35(3) of the *Indian Act*.
- 8. The Final Agreements shall contain a timetable intended to ensure the completion of the steps specified in Section 7 soon as reasonably possible, and in any event by September 1, 2006.

OBLIGATION TO DEVELOP AND OPERATE

- 9. The Minister agrees that the Final Agreements shall provide for all matters necessary to ensure that:
 - a. the Minister will pay for and build a Controlled Access Freeway on the Project Lands, as and when provided by the Final Agreements;
 - b. the Controlled Access Freeway shall be operated and maintained on the Project Lands at all times, save and except for any temporary closures pursuant to the *Public Highways Development Act*. R.S.A. 2000 c. P-38; and

- c. the Nation, those authorized by the Nation and all other lawful users shall have appropriate access to the Controlled Access Freeway, in the manner specified in the Final Agreements, based on traffic simulation and engineering studies:
 - i. at Anderson Road;
 - ii. at 130th Avenue;
 - iii. at Strathcona Road;
 - iv. from Highway 8, at an access point known as the Westhills Interchange, to be located west of the intersection of Sarcee Trail and Glenmore Trail; and
 - v. by at least one additional access road from Southland Drive or 90th Avenue.

TRANSFER OF ADMINISTRATION AND CONTROL

- 10. The Final Agreements shall provide for all matters necessary to effect the Transfer of Administration and Control.
- 11. Without limiting the foregoing, the Final Agreements shall provide as follows:
 - a. that the Nation Council shall, subject to ratification of the Final Agreements by Nation citizens and the carrying out of any necessary conditions precedent pursuant to legislation or otherwise, pass such Band Council Resolutions as may be necessary to request that the Governor in Council take such steps as may be necessary to effect the Transfer of Administration and Control;
 - b. that the Project Lands shall be transferred to the Minister free and clear of all encumbrances for Highway Purposes and Utility Purposes, except only such encumbrances as may be permitted by the Final Agreements;
 - c. that the Nation Council shall, effective on the Transfer of Administration and Control, take such steps as may be necessary to ensure that the Project Lands are not subject to any lease, license or any other right of use or occupation in favour of any individual Nation citizen or other person or entity whatsoever.
- 12. For greater certainty, and without limiting the foregoing, the Nation agrees that the Final Agreements shall ensure that the Transfer of Administration and Control will result in:
 - a. the removal of the Project Lands from “reserve” status within the meaning of the *Indian Act*;

- b. the removal of the Project Lands from the scope of "Lands reserved for the Indians" pursuant to Section 91(24) of the *Constitution Act, 1867*;
- c. the application of provincial laws which do not apply on lands reserved for Indians due to their status as such, including laws relating to land which do not apply on reserve lands; and
- d. the removal of the Project Lands from the legislative authority of the Nation Council on lands reserved for the Nation, whether relating to traffic laws, trespass, taxation or otherwise.

CASH COMPENSATION FOR PROJECT LANDS

- 13. Subject to the provisions of Section 14, the Final Agreements shall provide for cash compensation to be paid or provided to Canada by the Minister in consideration for the Transfer of Administration and Control that shall:
 - a. be calculated on the basis of the principles contained in Sections 35, 39, and 41 to 58 of the *Expropriation Act*, with such changes as are necessary due to the unique circumstances of this negotiation;
 - b. notwithstanding Subsection 13.a, be at least equal to the amount necessary to meet the requirements of the policy of the Government of Canada relating to compensation payable in the event of a transfer of lands pursuant to Section 35 of the *Indian Act*, which policy, among other things, presently provides that such compensation should be shown to compensate for full fair market value and for the loss to the First Nation of the benefit of reserve status of the land transferred;
 - c. include compensation arising from and relating to the impact on Nation citizens and other third parties who use or occupy lands on or adjacent to the Project Lands, regardless of whether those lands are held pursuant to a designation and lease or are used or occupied solely by the consent of the Nation; and
 - d. be paid to Canada on or before the Transfer of Administration and Control, as and when required by the policies of the Government of Canada relating thereto, it being acknowledged by both Parties that no such compensation shall be paid by the Minister until all conditions precedent to such payment contained in the Final Agreements have been met.
- 14. Notwithstanding Section 13, the fair market value of the Additional Lands shall be deducted from the cash compensation payable by the Minister to Canada.

ADDITIONAL LANDS

15. The Final Agreements shall, in addition to the cash compensation specified in Section 13, provide that the Additional Lands described in the Final Agreements shall be reserved for the use and benefit of the Nation so as to constitute reserve land within the meaning of the *Indian Act*, effective on the Transfer of Administration and Control, it being understood and agreed that the Additional Lands:
- a. shall be in an amount and location to be agreed by the Parties, but shall in any event be in an amount not less than 4200 acres;
 - b. may be made up of Crown Lands or other lands, it being understood that the Minister is not obliged to identify or provide Crown Lands, but shall, subject to applicable policies of the Government of Alberta, make reasonable efforts to facilitate the availability and transfer of suitable Crown Lands identified by the Nation for this purpose;
 - c. may be made up of private lands identified and acquired by or on behalf of the Nation;
 - d. shall be subject to the approval of the Federal Minister, and to the Additions to Reserve Policy; and
 - e. shall be subject to the policies of the Government of Alberta relating to the approval of the creation of new reserve lands.

CALCULATING COMPENSATION

16. The value of the cash compensation payable by the Minister to Canada for the Project Lands, and the value of the Additional Lands, shall be calculated as follows:
- a. The Parties shall make reasonable efforts to agree on the terms of reference for appraisals of the Project Lands and the Additional Lands. If the Parties are unable to so agree by May 31, 2005, each of the Parties shall prepare its own terms of reference relating to either or both of them as may be required, by June 15, 2005;
 - b. The terms of reference for the appraisals shall be consistent with Sections 13 to 15. Without limiting the foregoing, the Parties shall consult with the Government of Canada as may be reasonably required to ensure that the terms of reference for the appraisals are consistent with Subsection 13.b;

- c. The Parties shall make reasonable efforts to agree on an appraiser to appraise the Project Lands and the Additional Lands. If the Parties are unable to so agree by May 31, 2005, each of the Parties shall retain its own appraiser, by June 15, 2005;
- d. The appraisals shall be carried out as soon as reasonably possible, taking account of the need to first reach substantial agreement on the description of the Project Lands;
- e. Notwithstanding the foregoing, neither Party shall be obliged to adopt the conclusions of an appraiser, whether that appraiser is selected jointly or solely by the Party in question, but shall retain the right to obtain a further appraisal to be completed within 60 days of receiving the initial appraisal;
- f. The Parties shall make reasonable efforts to negotiate the values of the Project Lands and the Additional Lands based on the appraisal or appraisals finally adopted by each of the Parties, which appraisal or appraisals shall be provided to the other Party for the purpose of such negotiations;
- g. Except as provided in Subsection 16.f, a Party shall not be required to disclose any of the contents of its files, including any interim or final report, nor any of its dealings of any kind, relating directly or indirectly to dealings between the Party and an appraiser. Such files and information shall be privileged and confidential and shall not be subject to disclosure in any proceeding whatsoever.

ARBITRATION

17. If the Parties are unable to agree on the value of the Project Lands or the Additional Lands by September 30, 2005, such issues as remain outstanding shall be referred for arbitration as follows:

The Parties, within ten (10) days of the delivery of the written notice of demand to arbitrate, will endeavour in good faith to agree upon the appointment of a single arbitrator, who shall be impartial, independent and shall not have a personal or financial interest in either party or the result of the arbitration.

If Parties cannot agree on a single arbitrator, the arbitration shall be conducted by a three person tribunal, all of the members of which shall be impartial, independent and shall not have a personal or financial interest in either Party or the result of the arbitration. Each Party shall nominate an individual to act as an arbitrator who is reasonably qualified by education, training or experience to pass upon the matters in dispute. If either Party refuses or neglects to nominate an arbitrator within twenty (20) days of the date of delivery of the demand for arbitration referred to above, the other Party may nominate the second arbitrator.

The two so nominated arbitrators shall then appoint a third arbitrator who shall chair the panel (the "Chairperson"). A Party shall be entitled to communicate with and make recommendations to the arbitrator nominated by it in respect of the appointment of the Chairperson. The Chairperson shall have practiced law in Canada for not less than fifteen (15) years and in Alberta for not less than five (5) years, or shall have sat as a justice of a superior court of record in Canada, and shall be qualified by education, training or experience to chair the panel. If the two nominated arbitrators do not agree on the Chairperson within twenty (20) days of the latest date upon which either was nominated, each of the arbitrators shall nominate two individuals. Each arbitrator shall then decline one of the nominations presented by the other arbitrator. The Chairperson shall then be chosen from the remaining two nominations by the Party nominated arbitrators drawing lots. The three arbitrators thus nominated shall then proceed to hear and determine the arbitration subject to the rights of the Parties to challenge the appointment of an arbitrator, which challenge shall be brought in the first instance before the arbitration panel.

The arbitration hearing(s) shall be held on Nation reserve land, or such other place as may be mutually agreed. The arbitrator(s) shall apply the laws of the Province of Alberta and Canada, including the *Arbitration Act*, R.S.A. 2000 c. A-43, as amended or replaced from time to time.

Each Party shall submit its case to the arbitrator(s) within sixty (60) days of the appointment of the single arbitrator by agreement, or the appointment of the third arbitrator, as the case may be, or within such other period as may be determined by the arbitrator(s). The written decision rendered by the arbitrator, or by a majority of the arbitrators, as the case may be, shall be final and binding on both Parties, provided however that:

- i. no such decision shall obligate a Party to proceed with the Final Agreements until all of the terms of the Final Agreements have been settled to the satisfaction of the Parties, in their sole and absolute discretion; and
- ii either Party may in its sole discretion refuse to enter into the Final Agreements;

Prior to delivery of the arbitrator's(s') decision, each Party shall pay one-half of the fee and expenses of the single arbitrator, or the fee and expenses of the arbitrator nominated by it and one-half of the fee and expenses of the Chairperson, as the case may be, and all other expenses of the arbitration shall be equally divided between the Parties.

In the event that the Parties are unable to agree on the amount of the Nation's costs as referenced in Section 18 of this Agreement, it is agreed that the determination of the amount of such costs to be paid by the Minister shall be referred for arbitration in accordance with the foregoing.

NATION COSTS

18. The Final Agreements shall provide for the payment of the reasonable professional, appraisal, consulting, communication and other out-of-pocket costs incurred by the Nation in relation to the negotiation, ratification, arbitration and implementation of the AIP, this Agreement and the Transfer of Administration and Control provided however that in the event that the Parties herein are unable to agree on the amount of such costs, they shall be determined by arbitration in accordance with Section 17 of this Agreement.

MISCELLANEOUS

19. The Parties agree that if they are unable to conclude the Final Agreements, subject only to such approvals as may be provided for by the Final Agreements, within thirty (30) days of receiving notice to that effect from either Party to the other, this Agreement shall terminate, and will be null and void and of no further force or effect.
20. The Parties agree that the breach or termination of this Agreement shall not constitute or give rise to any claim or cause of action for damages, costs or expenses of any kind or nature arising from or relating to the matters dealt with in this Agreement, whether based on contract, tort or otherwise, and that either Party may in its sole discretion refuse to enter into the Final Agreements.
21. Each of the Parties agrees that it will give notice to and consult with the other Party prior to making public statements in relation to these negotiations, provided that this obligation shall not apply to the provision of information to or consultations with Nation citizens by the Nation Council or its designates.
22. The Parties hereto acknowledge and agree that the Preamble to this Agreement is incorporated into and forms part of this Agreement.
23. This Agreement constitutes the entire agreement between the Parties concerning the subject matter of the Agreement and no other understandings or agreements verbal or otherwise, other than the AIP, exist between the Parties.
24. This Agreement shall be subject to and governed by the laws of Canada and Alberta applicable thereto.
25. This Agreement binds and enures to the benefit of the successors and assigns of the Parties.

26. Any noticed required or implied by this Agreement may be given, in writing,

To the Nation at:

Tsuu T'ina Nation
9911 Chiila Boulevard
Tsuu T'ina, AB T2W 6H6
Attention: Chief of the Tsuu T'ina Nation

To the Minister at:

Government of Alberta
Department of Infrastructure and Transportation
408 Legislature Building
Edmonton, AB T5K 2B6
Attention: Minister of Infrastructure and Transportation

IN WITNESS WHEREOF this Framework Agreement has been duly executed by the Parties hereto as of the day and year first above written.

) TSUU T'INA NATION

) Per: 

) Title: Chief

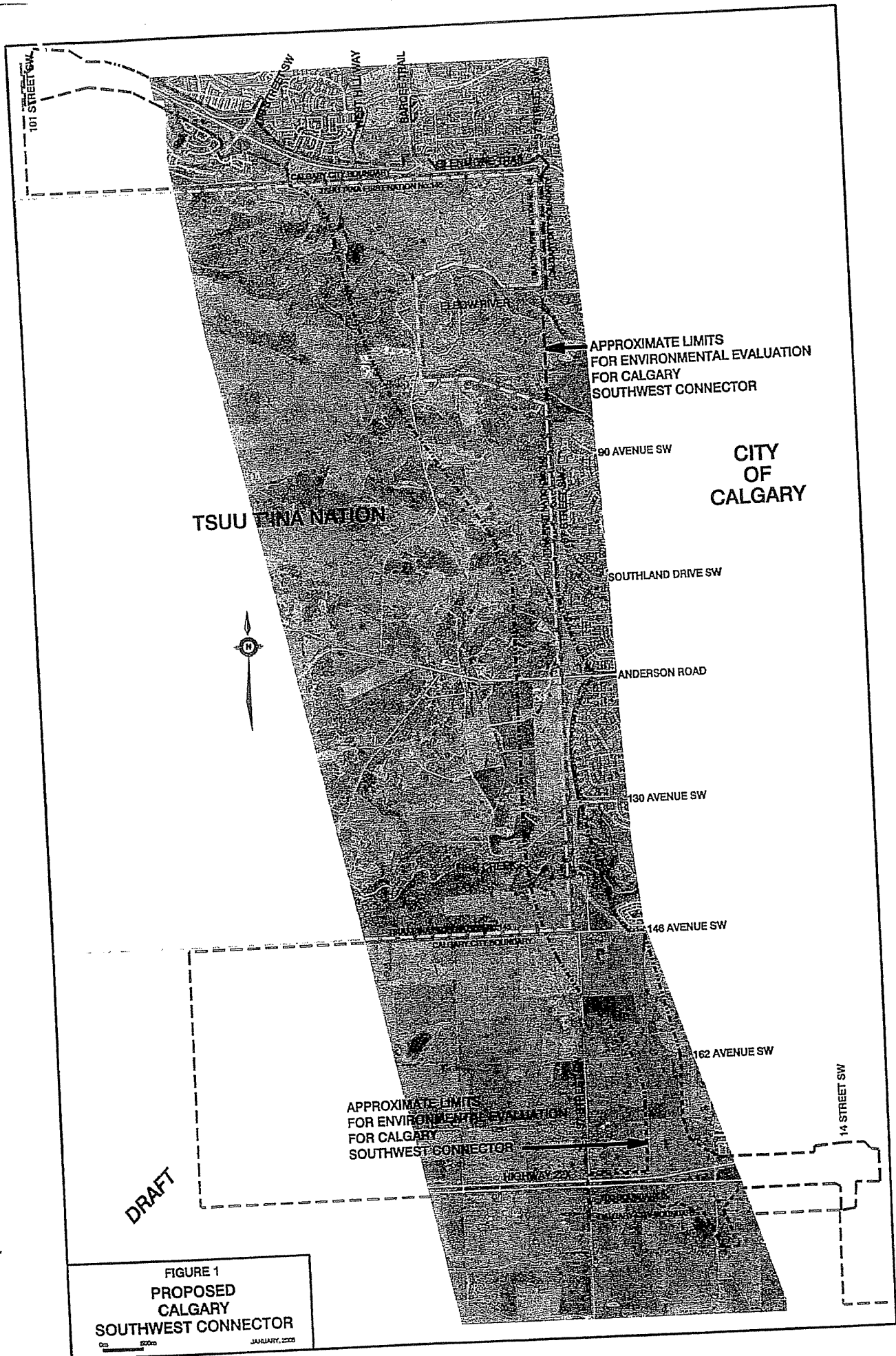
) Date: March 11, 2005

) HER MAJESTY IN RIGHT OF ALBERTA

) Per: 

) Title: Minister of Infrastructure & Transportation

) Date: March 11, 2005



DRAFT

FIGURE 1
 PROPOSED
 CALGARY
 SOUTHWEST CONNECTOR

0 5000

JANUARY, 2000