

SOUTH FRASER PERIMETER ROAD PROJECT

**SCHEDULE 10
PERFORMANCE MECHANISM**

DIVISION I PROVINCE PAYMENTS TO CONCESSIONAIRE..... 1

PART 1 PAYMENT OBLIGATIONS OF PROVINCE 1

 1.1 Obligation to make Federal Milestone Payments..... 1

 1.2 Obligation to make Provincial Milestone Payments 1

 1.3 Obligation to make Availability Payments 1

 1.4 Obligation to make Asphalt Cement Price Adjustment 2

PART 2 CALCULATION OF MILESTONE PAYMENTS..... 2

 2.1 Calculation of Federal Milestone Payments..... 2

 2.2 Calculation of Provincial Milestone Payments 2

 2.3 Maximum Aggregate Monthly Milestone Payment..... 3

PART 3 CALCULATION OF AVAILABILITY PAYMENTS 3

 3.1 Calculation of Availability Payments for Eastern Segment 3

 3.2 Calculation of Availability Payments for Both Segments..... 4

PART 4 NON-COMPLIANCE EVENT DEDUCTIONS 6

 4.1 Non-Compliance Event Deductions to be made 6

 4.2 Calculation of Non-Compliance Event Deductions 6

PART 5 NON-AVAILABILITY EVENT DEDUCTIONS 7

 5.1 Non-Availability Event Deductions to be made..... 7

 5.2 Calculation of Non-Availability Event Deductions 7

PART 6 END OF TERM RETENTIONS..... 10

 6.1 Establishment of Retention Account..... 10

 6.2 Monthly Retention..... 10

 6.3 Retention for Unresolved Claims at End of Term..... 11

 6.4 Release of Retention Account Monies 11

 6.5 Payments from Retention Account..... 11

 6.6 Provision of Security by Concessionaire..... 12

 6.7 Availability Payments Holdback at End of Term 12

PART 7 PAYMENT OBLIGATIONS OF CONCESSIONAIRE 13

 7.1 Obligation to make Performance Incentive Payments 13

 7.2 Calculation of Performance Incentive Payments 13

 7.3 Performance Incentive Payment Obligation Cumulative 14

PART 8 CALCULATION OF TRAFFIC MANAGEMENT PAYMENTS 14

 8.1 Calculation of Traffic Management Payments..... 14

PART 9 CALCULATION OF NON-COMPLIANCE EVENT PAYMENTS 16

 9.1 Calculation of Non-Compliance Event Payments..... 16

PART 10 NCE POINTS AND DEFAULT POINTS..... 17

 10.1 Assignment of NCE Points 17

 10.2 Calculation of NCE Points Balance 19

 10.3 Calculation of NCE Points (Default) Balance..... 20

 10.4 Assignment of Default Points 20

PART 11 CALCULATION OF INFLATION INDEX..... 21

 11.1 Calculation of Inflation Index 21

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

PART 12 MONTHLY REPORTS..... 22

- 12.1 Monthly Reports for Milestone Payments..... 22
- 12.1A Monthly Reports for Asphalt Cement Price Adjustments..... 23
- 12.2 Monthly Reports for Performance Incentive Payments 24
- 12.3 Reports for Availability Payments 25
- 12.4 Recording and Reporting on Non-Availability Events 29
- 12.5 Province can issue Reports and Invoices 30

PART 13 DUE DATES FOR PAYMENTS 30

- 13.1 Invoicing and Due Dates for Milestone Payments..... 30
- 13.1A Invoicing and Due Dates for Asphalt Cement Price Adjustments 31
- 13.2 Invoicing and Due Dates for Performance Incentive Payments..... 32
- 13.3 Invoicing and Due Dates for Availability Payments..... 32

- Appendix A Eligible Costs
- Appendix B Eligible Costs Certificate
- Appendix C Maximum Availability Payments
- Appendix D Assignment of NCE Points
- Appendix E Schedule of Road Sections
- Appendix F Asphalt Cement Price Adjustment

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

DIVISION I
PROVINCE PAYMENTS TO CONCESSIONAIRE

PART 1
PAYMENT OBLIGATIONS OF PROVINCE

1.1 Obligation to make Federal Milestone Payments

- (a) Subject to the provisions of this Schedule, the Province shall pay to the Concessionaire a Federal Milestone Payment in respect of Eligible Costs incurred by the Concessionaire in each month any portion of which occurs during the period commencing on the Effective Date and ending on the date that is 30 days after the Total Completion Date.
- (b) Subject to the provisions of Part 10 [Payments], each such Federal Milestone Payment shall be calculated in accordance with Section 2.1 [Calculation of Federal Milestone Payments] of this Schedule and shall be paid in accordance with Section 13.1 [Due Dates for Milestone Payments] of this Schedule.

1.2 Obligation to make Provincial Milestone Payments

- (a) Subject to the provisions of this Schedule, the Province shall pay to the Concessionaire a Provincial Milestone Payment in respect of Eligible Costs incurred by the Concessionaire in each month any portion of which occurs during the period commencing on the Effective Date and ending on the date that is 30 days after the Total Completion Date.
- (b) Subject to the provisions of Part 10 [Payments], each such Provincial Milestone Payment shall be calculated in accordance with Section 2.2 [Calculation of Provincial Milestone Payments] of this Schedule and shall be paid in accordance with Section 13.1 [Due Dates for Milestone Payments] of this Schedule.

1.3 Obligation to make Availability Payments

- (a) Subject to the provisions of this Schedule, the Province shall pay to the Concessionaire an Availability Payment for the Eastern Segment in respect of each month any portion of which occurs during the period commencing on the later to occur of:
 - (i) the Eastern Segment Required Substantial Completion Date; and
 - (ii) the Eastern Segment Substantial Completion Date;and ending on the day immediately preceding the Western Segment Substantial Completion Date.
- (b) Subject to the provisions of this Schedule, the Province shall pay to the Concessionaire an Availability Payment for Both Segments in respect of each month any portion of which occurs during the period commencing on the latest to occur of:
 - (i) the Eastern Segment Required Substantial Completion Date;
 - (ii) the Eastern Segment Substantial Completion Date; and

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 2 -

(iii) the Western Segment Substantial Completion Date;

and ending on the Termination Date.

(c) Subject to the provisions of Part 10 [Payments], each such Availability Payment shall be calculated in accordance with Part 3 [Calculation of Availability Payments] of this Schedule and shall be paid in accordance with Section 13.3 [Due Dates for Availability Payments] of this Schedule.

1.4 Obligation to make Asphalt Cement Price Adjustment

(a) Subject to the provisions of this Schedule, in respect of each month during the period commencing on the Effective Date and ending on (and including) the day immediately prior to the Western Segment Substantial Completion Date, there shall be a payment made in respect of the cost of asphalt cement used for the Project (the “**Asphalt Cement Price Adjustment**”).

(b) Subject to the provisions of this Schedule, each such Asphalt Cement Price Adjustment shall be calculated in accordance with Appendix F [Asphalt Cement Price Adjustment] to this Schedule and shall be paid in accordance with Section 13.1A [Invoicing and Due Dates for Asphalt Cement Price Adjustments] of this Schedule.

PART 2

CALCULATION OF MILESTONE PAYMENTS

2.1 Calculation of Federal Milestone Payments

(a) Subject to Section 2.1(b), each Federal Milestone Payment shall be an amount that is equal to 50% of the Eligible Costs incurred by the Concessionaire during the month (or portion thereof, as the case may be) in respect of which such Federal Milestone Payment is payable.

(b) The maximum aggregate amount payable by the Province in respect of Federal Milestone Payments pursuant to this Agreement shall be an amount equal to [REDACTED].

2.2 Calculation of Provincial Milestone Payments

Section 17 and 21

(a) The Provincial Milestone Payment payable in respect of any month shall be an amount that is equal to:

(i) in respect of each month (in this Section 2.2(a)(i), the “relevant month”) prior to the transition month (as defined in Section 2.2(a)(ii) of this Schedule 10), 40% of $(A - B)$, where A = the amount of Eligible Costs incurred by the Concessionaire during the relevant month and B = the amount of the Federal Milestone Payment payable in respect of the relevant month; and

(ii) in respect of the month during which the amount equal to 60% of $(X - Y)$, where X = the Cumulative Eligible Costs and Y = the Cumulative Federal Milestone Payments, first exceeds the amount of the Forecast Concessionaire Funded

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

Eligible Costs (the “**transition month**”), (A – B – C + D), where A = the amount of Eligible Costs incurred by the Concessionaire during the transition month, B = the amount of the Federal Milestone Payment payable in respect of the transition month, C = the amount of the Forecast Concessionaire Funded Eligible Costs and D = the amount of the Cumulative Concessionaire Funded Eligible Costs calculated in respect of the month prior to the transition month; and

(iii) in respect of each month (in this Section 2.2(a)(iii), the “**relevant month**”) after the transition month, 100% of (A – B), where A = the amount of Eligible Costs incurred by the Concessionaire during the relevant month and B = the amount of the Federal Milestone Payment payable in respect of the relevant month.

(b) The maximum aggregate amount payable by the Province in respect of Provincial Milestone Payments pursuant to this Agreement shall be an amount equal to

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2.3 Maximum Aggregate Monthly Milestone Payment

The sum of the Provincial Milestone Payment and the Federal Milestone Payment payable in respect of any month shall not exceed an amount that is equal to 100% of the Eligible Costs incurred by the Concessionaire during that month.

**PART 3
CALCULATION OF AVAILABILITY PAYMENTS**

3.1 Calculation of Availability Payments for Eastern Segment

(a) Subject to Section 3.1(c) of this Schedule, the Availability Payment for the Eastern Segment in respect of month *m* (or part of month *m*, as the case may be) in Contract Year *n* during the period described in Section 1.3(a) of this Schedule shall be determined in accordance with the following formula:

$$ESAP_{mn} = ESAP_{max\ mn} - NAED_{(m-2)}$$

where:

ESAP_{mn} = Availability Payment for the Eastern Segment in respect of month *m* (or part of month *m*, as the case may be) in Contract Year *n*

ESAP_{max mn} = Maximum Availability Payment for the Eastern Segment in respect of month *m* in Contract Year *n*, determined in accordance with Section 3.1(b) of this Schedule

NAED_(m-2) = the Non-Availability Event Deductions in respect of Relevant Non-Availability Events that have occurred on the Eastern Segment at any time during the month (or part thereof, as the case may be) that is two months prior to month *m*, determined in

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 4 -

accordance with Section 5.2 [Calculation of Non-Availability Event Deductions] of this Schedule

- (b) The Maximum Availability Payment for the Eastern Segment in respect of month m in Contract Year n shall be determined in accordance with the following formula:

$$ESAP_{max\ mn} = 0.15 \times [UAP_{mn} + [IAP_{mn} \times I_n]] \times E_m / D_m$$

where:

$ESAP_{max\ mn}$ = Maximum Availability Payment for the Eastern Segment in respect of month m in Contract Year n

UAP_{mn} = the portion of the Maximum Availability Payment in respect of month m in Contract Year n shown in column 1 of Appendix C [Maximum Availability Payments] of this Schedule

IAP_{mn} = the portion of the Maximum Availability Payment in respect of month m in Contract Year n shown in column 2 of Appendix C [Maximum Availability Payments] of this Schedule

I_n = the Inflation Index for Contract Year n

E_m = the number of days in month m in Contract Year n that occur during the period described in Section 1.3(a) of this Schedule

D_m = the number of days in month m in Contract Year n

- (c) If the Availability Payment for the Eastern Segment in respect of any month m (or part thereof, as the case may be), determined in accordance with the formula set out in Section 3.1(a) of this Schedule, is a negative amount, it shall be deemed to be zero.

3.2 Calculation of Availability Payments for Both Segments

- (a) Subject to Sections 3.2(c), 12.3(d) and 12.3(e) of this Schedule, the Availability Payment for Both Segments in respect of month m (or part of month m , as the case may be) in Contract Year n during the period described in Section 1.3(b) of this Schedule shall be determined in accordance with the following formula:

$$AP_{mn} = AP_{max\ mn} - TAP_{(m-2)} - [NCED_{(m-2)} + NAED_{(m-2)}]$$

where:

AP_{mn} = Availability Payment in respect of month m (or part of month m , as the case may be) in Contract Year n

$AP_{max\ mn}$ = Maximum Availability Payment in respect of month m in Contract Year n , determined in accordance with Section 3.2(b) of this Schedule

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 5 -

$TAP_{(m-2)}$ = the adjustment to the Availability Payment for late Total Completion in respect of the month (or part thereof, as the case may be) that is two months prior to month m , determined in accordance with Section 3.2(d) of this Schedule

$NCED_{(m-2)}$ = the Non-Compliance Event Deductions in respect of Non-Compliance Events that have occurred at any time during the month (or part thereof, as the case may be) that is two months prior to month m , determined in accordance with Section 4.2 [Calculation of Non-Compliance Event Deductions] of this Schedule

$NAED_{(m-2)}$ = the Non-Availability Event Deductions in respect of Relevant Non-Availability Events that have occurred on the Eastern Segment or the Western Segment at any time during the month (or part thereof, as the case may be) that is two months prior to month m , determined in accordance with Section 5.2 [Calculation of Non-Availability Event Deductions] of this Schedule

- (b) The Maximum Availability Payment in respect of month m in Contract Year n shall be determined in accordance with the following formula:

$$AP_{max\ mn} = [UAP_{mn} + [IAP_{mn} \times I_n]] \times S_m / D_m$$

where:

$AP_{max\ mn}$ = Maximum Availability Payment in respect of month m in Contract Year n

UAP_{mn} = the portion of the Maximum Availability Payment in respect of month m in Contract Year n shown in column 1 of Appendix C [Maximum Availability Payments] of this Schedule

IAP_{mn} = the portion of the Maximum Availability Payment in respect of month m in Contract Year n shown in column 2 of Appendix C [Maximum Availability Payments] of this Schedule

I_n = the Inflation Index for Contract Year n

S_m = the number of days in month m in Contract Year n that occur during the period described in Section 1.3(b) of this Schedule

D_m = the number of days in month m in Contract Year n

- (c) If the Availability Payment for Both Segments in respect of any month (or part thereof, as the case may be), determined in accordance with the formula set out in Section 3.2(a) of this Schedule, is a negative amount, it shall be deemed to be zero.

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 6 -

- (d) If the Total Completion Date does not occur by the Total Completion Target Date, then the adjustment to the Availability Payment for late Total Completion, in respect of the month that is two months prior to month m , shall be determined in accordance with the following formula:

$$TAP_{(m-2)} = [AP_{max (m-2)} \times T_{(m-2)} \times 0.1] / D_{(m-2)}$$

where:

$TAP_{(m-2)}$ = the adjustment to the Availability Payment for late Total Completion in respect of the month (or part thereof, as the case may be) that is two months prior to month m

$AP_{max (m-2)}$ = Maximum Availability Payment in respect of the month (or part thereof, as the case may be) that is two months prior to month m , determined in accordance with Section 3.2(b) of this Schedule

$T_{(m-2)}$ = the greater of zero and the number of days in the month that is two months prior to month m , after and excluding the Total Completion Target Date but before and excluding the Total Completion Date

$D_{(m-2)}$ = the number of days in the month that is two months prior to month m

PART 4
NON-COMPLIANCE EVENT DEDUCTIONS

4.1 Non-Compliance Event Deductions to be made

If a Non-Compliance Event occurs at any time during a month any portion of which occurs during the period described in Section 1.3(b) of this Schedule (in this Part 4, a “**Deductions Month**”), Non-Compliance Event Deductions shall be made in respect of such Deductions Month from the Maximum Availability Payment in respect of the month (in this Part 4, the “**Payment Month**”) that is two months after the Deductions Month.

4.2 Calculation of Non-Compliance Event Deductions

The total amount of the Non-Compliance Event Deductions to be made in respect of a Deductions Month during the period described in Section 1.3(b) of this Schedule shall be determined in accordance with the following formula:

$$NCED_{(m-2)} = \sum_{d=1}^D NCED_d \times I_n$$

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

where:

$NCED_{(m-2)}$ = the total Non-Compliance Event Deductions in respect of all Non-Compliance Events occurring during the Deductions Month (or part thereof, as the case may be)

$NCED_d$ = the Non-Compliance Event Deductions in respect of day d in the Deductions Month (or part thereof as the case may be) determined as follows:

Section 17 and 21



█ x [the greater of (i) $(NCE\ Points_d - █)$ and (ii) 0]

Section 17 and 21

where:

$NCE\ Points_d$ is the NCE Points Balance on day d

D = the number of days in the Deductions Month (or part thereof, as the case may be)

I_n = the Inflation Index for Contract Year n (Contract Year n being the year in which the Deductions Month occurs)

**PART 5
NON-AVAILABILITY EVENT DEDUCTIONS**

5.1 Non-Availability Event Deductions to be made

If a Relevant Non-Availability Event occurs:

- (a) on the Eastern Segment at any time during a month any portion of which occurs during the period described in Section 1.3(a) of this Schedule; or
- (b) on the Eastern Segment or the Western Segment at any time during a month any portion of which occurs during the period described in Section 1.3(b) of this Schedule;

(in either case, in this Part 5, a “**Deductions Month**”), Non-Availability Event Deductions shall be made in respect of such Deductions Month from the Maximum Availability Payment for the Eastern Segment or the Maximum Availability Payment, as the case may be, in respect of the month (in this Part 5, the “**Payment Month**”) that is two months after the Deductions Month.

5.2 Calculation of Non-Availability Event Deductions

- (a) Subject to Sections 5.2(b), (c) and (d) of this Schedule, the total amount of the Non-Availability Event Deductions to be made in respect of a Deductions Month during the periods respectively described in Section 1.3(a) and 1.3(b) of this Schedule shall be determined in accordance with the following formula:

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

$$NAED_{(m-2)} = \sum_{hs} NAEA_{hs} \times I_n$$

where:

$NAED_{(m-2)}$ = the total Non-Availability Event Deductions in respect of all Relevant Non-Availability Events occurring during the Deductions Month (or part thereof, as the case may be)

$NAEA_{hs}$ = the Non-Availability Event Amount payable in respect of each hour h in the Deductions Month (or part thereof, as the case may be) in respect of each Road Section s , calculated in accordance with the following formula:

$$NAEA_{hs} = DeemedDelayCost_{hs} \times DurationFactor_{hs}$$

where:

$DeemedDelayCost_{hs}$ is calculated with reference to the following Deemed Delay Cost Lookup Table, using the relevant part of the table for the number of lanes available in Road Section s (per direction) and Assumed Usage for Road Section s (per direction) during Clock-face Hour h :

Deemed Delay Cost Lookup Table*			
Deemed Delay Cost prior to indexation			
Lanes ** Open (per direction)	Assumed Usage (per direction)		

Section 17 and 21

* irrespective of Assumed Usage, the Deemed Delay Cost shall be zero for all periods during which both lanes are unaffected by any Relevant Non-Availability Event(s).

**excluding auxiliary lanes

where:

Assumed Usage of any Road Section s (per direction) during any Clock-face Hour h is the assumed number of vehicles which would, in ordinary circumstances, have used Road Section s (travelling in the relevant direction) during Clock-face Hour h , calculated as follows:

- (i) Assumed Usage shall be the Measured Usage of Road Section s (per direction) in the Clock-face Hour that corresponds to Clock-face Hour h on the same day of the week one week prior to the day on which Clock-face Hour h falls (the “**First Reference Clock-face Hour**”), unless an Unusual Event has occurred in the First Reference Clock-face Hour, in which case:

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- (ii) Assumed Usage shall be the Measured Usage of Road Section *s* (per direction) in the Clock-face Hour that corresponds to Clock-face Hour *h* on the same day of the week two weeks prior to the day on which Clock-face Hour *h* falls (the “**Second Reference Clock-face Hour**”), unless an Unusual Event has occurred in the Second Reference Clock-face Hour, in which case:
- (iii) Assumed Usage shall be determined by continuing to look back a further week on each iteration until a Clock-face Hour (the “**Other Reference Clock-face Hour**”) that corresponds to Clock-face Hour *h* on the same day of the week is found in which an Unusual Event has not occurred, and the Assumed Usage will be the Measured Usage of Road Section *s* (per direction) for that Clock-face Hour.

Measured Usage of Road Section s in the First Reference Clock-face Hour, the Second Reference Clock-face Hour or the Other Reference Clock-face Hour, as the case may be, is the average of the traffic volume counts for Road Section *s* (per direction) during such Clock-face Hour, as determined by the (functioning) traffic volume counters contemplated by Article 12 [Traffic Measurement Equipment] of Part 2 of Schedule 4.

DurationFactor_h is calculated with reference to the following Duration Factor Table:

Duration Factor Table	
Duration of each Relevant Non-Availability Event occurring during Clock-face Hour <i>h</i>	Duration Factor
Less than or equal to 15 mins	
More than 15 mins and less than or equal to 30 mins	
More than 30 mins and less than or equal to 45 mins	
More than 45 mins and less than or equal to 60 mins	

Section 17 and 21

I_n = the Inflation Index for Contract Year *n* (Contract Year *n* being the year in which the Deductions Month occurs).

- (b) A Relevant Non-Availability Event the duration of which spans portions of two or more Clock-face Hours shall be treated as a separate Relevant Non-Availability Event within each such Clock-face Hour.
- (c) Occurrence of Relevant Non-Availability Events shall be determined separately for each Road Section.
- (d) In calculating Non-Availability Event Deductions during the period described in Section 1.3(a), only those Relevant Non-Availability Events which have occurred on Road Sections in the Eastern Segment will be taken into account.
- (e) If more than one Relevant Non-Availability Event occurs during the same Clock-face Hour in the same Road Section, then the Duration Factors applicable to those Relevant

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 10 -

Non-Availability Events shall be summed together but shall not in any event exceed 1.00 in the aggregate for that Clock-face Hour.

- (f) No Non-Availability Event Deduction shall be made in respect of a Relevant Non-Availability Event that is a direct result of a Force Majeure Event, or a Relief Event referred to in subsections (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k) of the definition of Relief Event in Section 1.1 [Definitions] of Schedule 1, during the period:
- (i) while such Force Majeure Event or Relief Event, as the case may be, is continuing; and
 - (ii) thereafter, only as and for so long as the Concessionaire is complying with a plan to address the impact of such Force Majeure Event or Relief Event, as the case may be, on the Project Infrastructure and Project Site in accordance with Good Industry Practice, which plan has been prepared by the Concessionaire, submitted to the Province's Representative pursuant to the Consent Procedure within five days of the occurrence of such Force Majeure Event or Relief Event, and accepted by the Province's Representative, acting reasonably.

**PART 6
END OF TERM RETENTIONS**

6.1 Establishment of Retention Account

The Province shall, prior to the date the Province first retains any amount under Section 6.2 [Monthly Retention] of this Schedule, establish the Retention Account with a bank located in British Columbia (either as a new account or as segregated funds within an existing account of the Province). Any interest accrued on any money standing to the credit of the Retention Account shall be credited to the Retention Account. All sums standing to the credit of the Retention Account from time to time, including any accrued interest, shall be held in trust by the Province to be applied only in accordance with the provisions of Part 6 [End of Term Retentions] of this Schedule.

6.2 Monthly Retention

The Province shall withhold from any Availability Payment otherwise payable to the Concessionaire in respect of any month (or part thereof, as the case may be) during the period commencing on the first day of the month that is 36 months prior to the month in which the expected Expiry Date falls and ending on the Termination Date an amount (the "**Monthly Retention**") as security for the performance by the Concessionaire of its obligations under Part 3 [End of Term] of Schedule 5.

Unless the Province, in its discretion, agrees to a different schedule of Monthly Retentions proposed by the Concessionaire (and to any consequential amendments to the provisions and procedures contemplated by Part 6 [End of Term Retentions] of this Schedule), each Monthly Retention shall be an amount equal to 3% of the End of Term Work Amount agreed or determined following the Initial End of Term Audit in accordance with Section 7.2 [End of Term Program] of Schedule 7, until the balance of the Retention Account is equal to the End of Term Work Amount agreed or determined following the Initial End of Term Audit in accordance with Section 7.2 [End of Term Program] of Schedule 7.

The Province shall deposit each Monthly Retention retained by it into the Retention Account.

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 11 -

6.3 Retention for Unresolved Claims at End of Term

In addition to the Province's rights under Section 6.2 [Monthly Retention] of this Schedule, the Province may, by notice to the Concessionaire given at any time and from time to time during the period commencing on the first day of the month that is 36 months prior to the month in which the expected Expiry Date falls and ending on the Termination Date, withhold from any Availability Payment otherwise payable to the Concessionaire during such period an amount or amounts equal, in the aggregate, to the total amount of any bona fide Claims the Province or any Province Indemnified Person has against the Concessionaire that are outstanding at that time under this Agreement. The Province shall pay any and all such amounts so retained into the Retention Account pending resolution of the Claims, and shall, upon final resolution of the Claims, pay to the Concessionaire such portion of the total amount so held that is determined not to be owing or payable to the Province or the relevant Province Indemnified Person, together with interest on the amount so paid to the Concessionaire at the rate per annum equal to the Prime Rate calculated from the due date until paid.

6.4 Release of Retention Account Monies

If, following determination of the End of Term Completion Amount following the Final End of Term Audit in accordance with Section 7.5 [Final End of Term Audit and Certificate] of Schedule 7, the amount standing to the credit of the Retention Account (including any accrued interest but less any bank charges and less any deductions required by any Laws to be made from such account) exceeds the End of Term Completion Amount, the Province shall pay the difference to the Concessionaire.

6.5 Payments from Retention Account

Upon:

- (a) the occurrence of a Concessionaire Default;
- (b) the determination of the End of Term Completion Amount in accordance with Section 7.5 [Final End of Term Audit and Certificate] of Schedule 7; or
- (c) the exercise by the Province of any of its rights pursuant to and in accordance with Part 11 [Province's Access, Monitoring and Step-in Rights];

the Province may, at its option and without prejudice to any of its other rights or remedies, require that any amount standing to the credit of the Retention Account be applied in payment of any amount due from the Concessionaire to the Province or becoming due as a consequence of such Concessionaire Default, determination or exercise, as the case may be, or any termination of this Agreement (including any damages arising from such Concessionaire Default, determination, exercise or termination). The Province shall pay such sum to itself out of the Retention Account or, if the amount standing to the credit of the Retention Account is insufficient to pay such amount in full, the entire amount (including accrued interest but less any bank charges and less any deductions required by any Laws to be made) then standing to the credit of the Retention Account. If the Province exercises such right, the Concessionaire shall forthwith on demand pay to the Province an amount sufficient to restore the amount standing to the credit of the Retention Account to the level it was at prior to the exercise of such right by the Province, and the Province, upon receipt of such amount, shall deposit the same into the Retention Account.

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 12 -

6.6 Provision of Security by Concessionaire

The provisions of Sections 6.1 [Establishment of Retention Account] through 6.5 [Payments from Retention Account] of this Schedule shall not apply if and to the extent that the Concessionaire provides the Province with a letter of credit, guarantee or other form of security as security for:

- (a) the performance of the Concessionaire's obligations under Part 3 [End of Term] of Schedule 5;
- (b) the payment by the Concessionaire of any bona fide Claims the Province [or any Province Indemnified Person] has against the Concessionaire from time to time during the period referred to in the first sentence of Section 6.3 [Retention for Unresolved Claims at End of Term] of this Schedule;
- (c) the payment by the Concessionaire of any amount due or becoming due from the Concessionaire to the Province as a consequence of the occurrence of a Concessionaire Default at any time during the period referred to in the first sentence of Section 6.3 [Retention for Unresolved Claims at End of Term] of this Schedule; and
- (d) the payment by the Concessionaire of any amount due or becoming due from the Concessionaire to the Province as a consequence of the exercise by the Province of any of its rights pursuant to and in accordance with Part 11 [Province's Access, Monitoring and Step-In Rights] at any time during the period referred to in the first sentence of Section 6.3 [Retention for Unresolved Claims at End of Term] of this Schedule;

issued by a bank or other institution approved by the Province and in form and substance acceptable to the Province (in each case in the Province's discretion).

6.7 Availability Payments Holdback at End of Term

The Province shall withhold from any Availability Payment otherwise payable to the Concessionaire in respect of any month (or part thereof, as the case may be) (a "**Holdback Month**") that commences during the period commencing on the first day of the month that is two months prior to the month in which the expected Expiry Date falls and ending on the Termination Date an amount equal to [REDACTED] of the Maximum Availability Payment in respect of each Holdback Month (collectively, the "**AP Holdback**"). Upon final determination of:

- (a) all Non-Availability Event Deductions in respect of any Relevant Non-Availability Events occurring during all Holdback Months; and
- (b) all Non-Compliance Event Deductions in respect of any Non-Compliance Events occurring during all Holdback Months;

the Province shall:

- (c) be entitled to retain such portion, if any, of the AP Holdback as is equal to the total amount of the Non-Availability Event Deductions and Non-Compliance Event Deductions in respect of all Holdback Months; and

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 13 -

- (d) pay to the Concessionaire an amount equal to the AP Holdback less any amount retained by the Province pursuant to Section 6.7(c) of this Schedule, together with interest on the amount so paid to the Concessionaire at the rate per annum equal to the Prime Rate calculated from the due date until paid.

DIVISION II
CONCESSIONAIRE PAYMENTS TO PROVINCE

PART 7
PAYMENT OBLIGATIONS OF CONCESSIONAIRE

7.1 Obligation to make Performance Incentive Payments

- (a) The Concessionaire shall pay to the Province a Performance Incentive Payment in respect of each month any portion of which occurs during the period commencing on the Effective Date and ending on the Western Segment Substantial Completion Date.
- (b) Subject to the provisions of Part 10 [Payments], each such Performance Incentive Payment shall be determined in accordance with Section 7.2 [Calculation of Performance Incentive Payments] of this Schedule and shall be paid in accordance with Section 13.2 [Due Dates for Performance Incentive Payments] of this Schedule.

7.2 Calculation of Performance Incentive Payments

The Performance Incentive Payment in respect of month m (or part of month m , as the case may be) in Contract Year n during the period described in Section 7.1(a) of this Schedule shall be determined in accordance with the following formula:

$$PIP_{mn} = TMP_{mn} + NCEP_{mn}$$

where:

PIP_{mn} = the Performance Incentive Payment in respect of month m (or part of month m , as the case may be) in Contract Year n during the period described in Section 7.1(a) of this Schedule

TMP_{mn} = the Traffic Management Payment payable in respect of month m (or part of month m , as the case may be) in Contract Year n during the period described in Section 7.1(a) of this Schedule, determined in accordance with Section 8.1 [Calculation of Traffic Management Payments] of this Schedule

$NCEP_{mn}$ = the Non-Compliance Event Payment payable in respect of such month m (or part of month m , as the case may be) in Contract Year n during the period described in Section 7.1(a) of this Schedule, determined in accordance with Section 9.1 [Calculation of Non-Compliance Event Payments] of this Schedule

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 14 -

7.3 Performance Incentive Payment Obligation Cumulative

The obligation of the Concessionaire to make Performance Incentive Payments under this Part 7 [Payment Obligations of Concessionaire] of this Schedule is cumulative and in addition to, and not in substitution for or to the exclusion of, each or any other payment obligation of the Concessionaire hereunder, and no amount that may from time to time be or become owing by the Province to the Concessionaire under this Agreement may be set off against any amount payable by the Concessionaire to the Province in respect of any such payment obligation of the Concessionaire.

PART 8
CALCULATION OF TRAFFIC MANAGEMENT PAYMENTS

8.1 Calculation of Traffic Management Payments

- (a) Subject to Sections 8.1(d) through (f) of this Schedule, the amount of the Traffic Management Payment payable in respect of each month m (or part of month m , as the case may be) in Contract Year n in respect of which a Performance Incentive Payment is payable in accordance with Section 7.1 [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formula:

$$TMP_{mn} = \sum_{t=1}^T \text{TrafficManagementAmount}_t$$

where:

T = the number of Non-Permitted (Payment) Traffic Disruption Events occurring in month m (or part of month m , as the case may be) in Contract Year n during the period described in Section 7.1(a) of this Schedule, but excluding any Non-Permitted (Payment) Traffic Disruption Events which occur on any Road Sections in the Eastern Segment during the period described in Section 1.3(a) of this Schedule

$\text{Traffic Management Amount}_t$ = the Traffic Management Amount in respect of Non-Permitted (Payment) Traffic Disruption Event t , calculated in accordance with Section 8.1(b) of this Schedule

- (b) The Traffic Management Amount in respect of Non-Permitted (Payment) Traffic Disruption Event t shall be determined in accordance with the following formula:

$$\text{TrafficManagementAmount}_t = LTDE_t \times DTDE_t \times [TDECC_t \times I_t]$$

where:

$LTDE_t$ = the number of lanes closed by Non-Permitted (Payment) Traffic Disruption Event t provided that, if the total number of lanes

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

unaffected by Non-Permitted (Payment) Traffic Disruption Event *t* in the relevant Other Provincial Highway, Interchange Ramp, Deltaport Way or Specified Road, as the case may be, is greater than or equal to the total number of lanes available in that Other Provincial Highway, Interchange Ramp, Deltaport Way or Specified Road, as the case may be, as at the date of this Agreement, then $LTDE_t$ shall be deemed to be zero

$DTDE_t =$ the duration (in minutes) of Non-Permitted (Payment) Traffic Disruption Event *t*

$TDECC_t =$ the Traffic Disruption Event Charge in respect of Non-Permitted (Payment) Traffic Disruption Event *t*, determined in accordance with Section 8.1(c) of this Schedule

$I_n =$ the Inflation Index for Contract Year *n*

- (c) The Traffic Disruption Event Charge for any Non-Permitted (Payment) Traffic Disruption Event *t* occurring on a Road Section in either the Eastern Segment or the Western Segment shall be calculated with reference to the following Traffic Disruption Event Charge Lookup Table, using the relevant part of the table for the period during which Non-Permitted (Payment) Traffic Disruption Event *t* occurs:

Traffic Disruption Event Charge Lookup Table (for Non-Permitted (Payment) Traffic Disruption Events)			
Traffic Disruption Event Charge (per minute, per lane) prior to indexation			
	Period during which Non-Permitted (Payment) Traffic Disruption Event <i>t</i> occurs		
Duration of Non-Permitted (Payment) Traffic Disruption Event <i>t</i>	≥ Two years prior to Western Segment Required Substantial Completion Date	< 2 years and ≥ 1 year prior to Western Segment Required Substantial Completion Date	< 1 year prior to Western Segment Required Substantial Completion Date*
First 15 minutes	■	■	■
Next 45 minutes after the first 15 minutes	■	■	■
Next 60 minutes after the first 60 minutes	■	■	■
After the first 120 minutes	■	■	■

Section 17 and 21

*If Western Segment Substantial Completion is not achieved by the Western Segment Required Substantial Completion Date, the Traffic Disruption Event Charges set out in this column will continue to apply during the period from (and including) the Western Segment Required Substantial Completion Date until (and including) the Western Segment Substantial Completion Date.

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- (d) If a Non-Permitted (Payment) Traffic Disruption Event affects more than one lane and the duration of the Non-Permitted (Payment) Traffic Disruption Event in respect of each such lane is different, the Traffic Management Amount in respect of the Non-Permitted (Payment) Traffic Disruption Event shall be calculated separately for each such lane pursuant to Section 8.1(b) of this Schedule.
- (e) No Traffic Management Amount is payable in respect of a Non-Permitted (Payment) Traffic Disruption Event that is the direct result of:
 - (i) an Excluded Event;
 - (ii) a Relief Event;
 - (iii) a Force Majeure Event; or
 - (iv) the Concessionaire’s failure to meet any of the requirements set out in Section 12.3 [Incident Response] of Appendix A to Schedule 5.
- (f) A Non-Permitted (Payment) Traffic Disruption Event the occurrence of which spans portions of:
 - (i) two or more months during the Term; or
 - (ii) two or more periods described in the Traffic Disruption Event Charge Lookup Table set out in Section 8.1(c) of this Schedule;

shall be treated as a separate Non-Permitted (Payment) Traffic Disruption Event within each such month or period, as the case may be.

**PART 9
CALCULATION OF NON-COMPLIANCE EVENT PAYMENTS**

9.1 Calculation of Non-Compliance Event Payments

The amount of the Non-Compliance Event Payment payable by the Concessionaire in respect of each month *m* (or portion thereof, as the case may) in Contract Year *n* in respect of which a Non-Compliance Event Payment is payable in accordance with Section 7.1 [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formula:

$$NCEP_{mn} = \sum_{d=1}^D NCEPayment_d \times I_n$$

where:

NCEPayment_d = the NCE Payment in respect of day *d* of month *m* (or part of month *m*, as the case may be) in Contract Year *n*, calculated as follows:

[REDACTED] x [the greater of (i) (NCE Points_d - [REDACTED]) and (ii) 0]

Section 17 and 21
Section 17 and 21

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 17 -

where:

NCE Points_a is the NCE Points Balance on day *d*

D = the number of days in month *m* (or part of month *m*, as the case may be) in Contract Year *n*

I_n = the Inflation Index for Contract Year *n*

DIVISION III
PROVISIONS OF GENERAL APPLICATION

PART 10
NCE POINTS AND DEFAULT POINTS

10.1 Assignment of NCE Points

- (a) Upon any occurrence of a Non-Compliance Event, whether such occurrence is first identified and reported to the other party by the Concessionaire or the Province, NCE Points shall be assigned by the Province on the basis set out in Appendix D [Assignment of NCE Points] to this Schedule and in accordance with this Section 10.1.
- (b) If the occurrence of a Non-Compliance Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Concessionaire ought to have identified and reported the occurrence of the Non-Compliance Event before the Province did so, the Province may assign one additional NCE Point in respect of that Non-Compliance Event.
- (c) No NCE Points shall be assigned by the Province in respect of a Non-Compliance Event that is the direct result of a Province Non-Excusable Event.
- (d) If, after the date of occurrence of a Non-Compliance Event (other than a Non-Compliance Event that has been identified as a result of a traffic management audit process conducted pursuant to Section 4.8 [Traffic Management Auditing] of Schedule 7), such Non-Compliance Event subsists for a period of 28 calendar days, then (in addition to any NCE Points assigned upon the initial occurrence of the Non-Compliance Event) the applicable number of NCE Points shall thereupon again be assigned by the Province in respect of that Non-Compliance Event.

For each successive 28 calendar day period that such Non-Compliance Event subsists, the applicable number of NCE Points shall again be assigned by the Province in respect of that Non-Compliance Event, so that the aggregate number of NCE Points outstanding in respect of that Non-Compliance Event at any time shall be determined by application of the following formula:

***NCE Points outstanding
in respect of any subsisting
Non-Compliance Event*** = ***Points × (1 + Compounding Periods)***

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 18 -

where:

Points = the number of NCE Points applicable to the Non-Compliance Event, as assigned by the Province on the basis set out in Appendix D [Assignment of NCE Points] to this Schedule and in accordance with this Section 10.1 (including in accordance with Section 10.1(b) of this Schedule).

Compounding Periods = the total number of successive 28 calendar day periods having elapsed since the date of initial occurrence of the Non-Compliance Event, as at the date of determination of the number of NCE Points outstanding.

- (e) The Province expressly reserves the right to refrain from assigning all or any portion of the NCE Points set out in Appendix D [Assignment of NCE Points] to this Schedule in respect of any Non-Compliance Event, and the Province may do so without prejudice to any of its other available rights and remedies in respect of that Non-Compliance Event, and without prejudice to its right to assign NCE Points, and to exercise any of its other available rights and remedies, in respect of any other Non-Compliance Event. Any such refraining by the Province from assigning any NCE Points shall not excuse the Concessionaire from performing, nor otherwise affect the Concessionaire's obligation to perform, all of its obligations under this Agreement.
- (f) The Province shall notify the Concessionaire of the assignment by the Province of any NCE Points pursuant to this Section 10.1 promptly after such assignment.
- (g) The Concessionaire shall be entitled to dispute the assignment of any NCE Points only if:
 - (i) the number of such NCE Points assigned by the Province pursuant to Section 10.1(a) of this Schedule in respect of a Non-Compliance Event is greater than the number of NCE Points identified by the Concessionaire in the relevant monthly report delivered under Part 12 [Monthly Reports] of this Schedule as being assignable in respect of that Non-Compliance Event; or
 - (ii) it is disputing the reasonableness of the Province's determination pursuant to Section 10.1(b) of this Schedule; and
 - (iii) the Concessionaire refers any such dispute referred to in Section 10.1(g)(i) or (ii) of this Schedule to the Dispute Resolution Procedure within 10 Business Days after its receipt from the Province of notice of such assignment.
- (h) The assignment of NCE Points as contemplated by this Section 10.1 is in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Province under this Agreement or any of the other Project Documents or at law or in equity, and the Province may have recourse to any one or more of all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 19 -

10.2 Calculation of NCE Points Balance

- (a) For purposes of Section 4.2 [Calculation of Non-Compliance Event Deductions] of this Schedule and Section 9.1 [Calculation of Non-Compliance Event Payments] of this Schedule:
- (i) NCE Points that have been assigned pursuant to Section 10.1 [Assignment of NCE Points] of this Schedule (other than as a result of a traffic management audit process conducted pursuant to Schedule 4.8 [Traffic Management Auditing] of Schedule 7) shall subsist for the duration of the period from the date of occurrence of the Non-Compliance Event in respect of which such NCE Points have been assigned until the date on which the Nonconformity Report in respect of such Non-Compliance Event is “closed” in accordance with Section 6.1 [Nonconformity Reporting Process] of Schedule 7, whereupon such NCE Points shall be deducted from the then current NCE Points Balance (as hereinafter defined);
 - (ii) NCE Points that have been assigned pursuant to Section 10.1 [Assignment of NCE Points] of this Schedule as a result of a traffic management audit process conducted pursuant to Section 4.8 [Traffic Management Auditing] of Schedule 7 shall subsist until 11:59 pm on the date of occurrence of the Non-Compliance Event in respect of which such NCE Points have been assigned (and shall be included in the calculation of the NCE Points Balance (as hereinafter defined) as at any time on that date after their assignment), whereupon such NCE Points shall be deducted from the then current NCE Points Balance (as hereinafter defined); and
 - (iii) NCE Points that have been assigned pursuant to Section 10.1 [Assignment of NCE Points] of this Schedule in respect of a Non-Permitted (Points) Traffic Disruption Event shall subsist for the duration of the period from the date of occurrence of the Non-Permitted (Points) Traffic Disruption Event until the date that is 7 days thereafter, whereupon such NCE Points shall be deducted from the then current NCE Points Balance (as hereinafter defined).
- (b) At all times during the Term, the Province shall maintain a record of:
- (i) the aggregate number of NCE Points assigned pursuant to Section 10.1 [Assignment of NCE Points] of this Schedule at any time during the period from the Effective Date until such time; and
 - (ii) the aggregate number of NCE Points assigned pursuant to Section 10.1 [Assignment of NCE Points] of this Schedule at any time during the period from the Effective Date until such time, which NCE Points are still outstanding as at such time as determined pursuant to Section 10.2(a) of this Schedule (the “**NCE Points Balance**”).

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 20 -

10.3 Calculation of NCE Points (Default) Balance

- (a) For purposes of Section 10.4 [Assignment of Default Points] of this Schedule, NCE Points that have been assigned pursuant to Section 10.1 [Assignment of NCE Points] of this Schedule shall subsist for the duration of the period from the date of occurrence of the Non-Compliance Event in respect of which such NCE Points have been assigned until the earlier of:
- (i) the date on which the Province assigns one or more Default Points in respect of such NCE Points pursuant to Section 10.4(a) of this Schedule; and
 - (ii) the end of the Contract Year in which such NCE Points were assigned;
- whereupon such NCE Points shall be deducted from the then current NCE Points (Default) Balance (as hereinafter defined).
- (b) At all times during the Term, the Province shall maintain a record of the aggregate number of NCE Points assigned pursuant to Section 10.1 [Assignment of NCE Points] of this Schedule at any time during the period from the commencement of the then current Contract Year until such time, which NCE Points are still outstanding as at such time as determined pursuant to Section 10.3(a) of this Schedule (the “**NCE Points (Default) Balance**”).

10.4 Assignment of Default Points

Default Points shall be assigned to the Concessionaire on the basis set out in this Section 10.4.

- (a) For each 150 NCE Points assigned to the Concessionaire during a Contract Year the Province shall assign to the Concessionaire one Default Point. Upon any such assignment of a Default Point, the then current NCE Points (Default) Balance shall be reduced by 150 NCE Points.
- (b) If the Concessionaire fails to perform or observe any of its material obligations under this Agreement (other than its obligations referred to in Section 10.4(c) of this Schedule, but including First Nations Requirements) then the Province may, in its discretion, assign to the Concessionaire up to a maximum of 5 Default Points for each such failure.
- (c) If there occurs:
- (i) a Nonconformity in respect of a Quality Audit of the Quality Management System, and such Nonconformity is not remedied within the required time set out in the relevant Nonconformity Report; or
 - (ii) a Nonconformity in respect of a Quality Audit of the Quality Management System (a “**Repeat Nonconformity**”) that relates to a requirement in respect of which a Nonconformity has occurred previously, whether or not such Repeat Nonconformity is remedied;

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 21 -

then the Province may, in its discretion, assign to the Concessionaire up to a maximum of 3 Default Points for each such Nonconformity or Repeat Nonconformity, as the case may be.

- (d) Once assigned pursuant to this Section 10.4, Default Points shall subsist for the remainder of the Term (but, for the purposes of Section 10.4(e)(ii) of this Schedule, shall be in effect only for the period of three years from the date of their assignment).
- (e) At all times during the Term, the Province shall maintain a record of
 - (i) the aggregate number of Default Points assigned pursuant to this Section 10.4 at any time during the period from the Effective Date until such time; and
 - (ii) the aggregate number of Default Points assigned pursuant to this Section 10.4 at any time during the period from (but excluding) the date that is three years prior to such time until such time (the “**Default Points Balance**”).
- (f) The Province shall notify the Concessionaire of the assignment of any Default Points pursuant to this Section 10.4 promptly after such assignment.
- (g) The Concessionaire shall be entitled to dispute the assignment of any Default Point only if (i) the number of such Default Points assigned by the Province in respect of any month is greater than the number of Default Points identified by the Concessionaire in the relevant monthly report delivered under Part 12 [Monthly Reports] of this Schedule as being assignable in respect of that month and (ii) the Concessionaire refers such dispute to the Dispute Resolution Procedure within 10 Business Days after its receipt from the Province of notice of such assignment.
- (h) The Province’s right to assign Default Points as contemplated by this Section 10.4 is in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Province under this Agreement or any of the other Project Documents or at law or in equity, and the Province may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

PART 11
CALCULATION OF INFLATION INDEX

11.1 Calculation of Inflation Index

The Inflation Index for Contract Year n shall be calculated in accordance with the following formula:

$$I_n = \frac{CPI_n}{CPI_0}$$

where:

I_n = the Inflation Index for Contract Year n

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 22 -

CPI_n = the CPI published in the month of November prior to the start of Contract Year n

CPI_0 = the CPI published in the month of November, 2008, being 114.5

**PART 12
MONTHLY REPORTS**

12.1 Monthly Reports for Milestone Payments

- (a) Not later than 10 days after the last day of each month (or part thereof, as the case may be) in each Contract Year during the period described in Sections 1.1(a) and 1.2(a) of this Schedule, the Concessionaire shall deliver to the Province's Representative a written report setting out the Concessionaire's calculation of each of the following (each stated separately):
- (i) the total of all Eligible Costs incurred by the Concessionaire during that month (or part thereof, as the case may be), or any Eligible Costs incurred by the Concessionaire in a prior month which have not been included in a prior monthly report;
 - (ii) any Federal Milestone Payment payable by the Province in respect of that month (or part thereof, as the case may be);
 - (iii) any Provincial Milestone Payment payable by the Province in respect of that month (or part thereof, as the case may be);
 - (iv) the aggregate of all Federal Milestone Payments made by the Province during the period prior to that month;
 - (v) the aggregate of all Provincial Milestone Payments made by the Province during the period prior to that month;
 - (vi) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) in respect of Federal Milestone Payments made by the Province during the period prior to that month (for which adjustment has not already been made);
 - (vii) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) in respect of Provincial Milestone Payments made by the Province during the period prior to that month (for which adjustment has not already been made);
 - (viii) any interest payable in respect of any amounts owed;
 - (ix) the net amount owing by the Province to the Concessionaire or by the Concessionaire to the Province in respect of the Province's obligation to make Federal Milestone Payments pursuant to Section 1.1 [Obligation to make Federal Milestone Payments] of this Schedule; and

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 23 -

- (x) the net amount owing by the Province to the Concessionaire or by the Concessionaire to the Province in respect of the Province's obligation to make Provincial Milestone Payments pursuant to Section 1.2 [Obligation to make Provincial Milestone Payments] of this Schedule.
- (b) A report delivered pursuant to this Section 12.1 shall be accompanied by work papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule, and shall also be accompanied by a certificate of the Independent Engineer substantially in the form set out in Appendix B [Eligible Costs Certificate] to this Schedule.
- (c) A report delivered pursuant to this Section 12.1 shall include or be accompanied by a statement of the amount (if any) that:
 - (i) the Senior Lenders have advanced or the Concessionaire is intending to request, or has requested, that the Senior Lenders advance; and
 - (ii) has been contributed as an equity contribution pursuant to the Equity Contribution Agreement (as referred to in paragraph 2 of Part 3 of Schedule 25 [Financing and Partnership Agreements]);

in the case of (i) and (ii), in respect of:

- (A) Eligible Costs; and
- (B) costs that are not Eligible Costs;

in the case of (A) and (B), incurred by the Concessionaire during that month (or portion thereof, as the case may be) and (to the extent not previously the subject-matter of a statement pursuant to this Section 12.1(c)) any previous month.

Each such statement shall identify separately the amount (if any) that falls within each of Sections 12.1(c)(i)(A), (i)(B), (ii)(A) and (ii)(B).

12.1A Monthly Reports for Asphalt Cement Price Adjustments

- (a) Not later than 10 days after the last day of each month (or part thereof, as the case may be) in each Contract Year during the period commencing on the Effective Date and ending on the Western Segment Substantial Completion Date, the Concessionaire shall deliver to the Province's Representative a written report setting out the Concessionaire's calculation of each of the following (each stated separately):
 - (i) the quantity (expressed in tonnes) of asphalt mix laid for the Project during that month (or part thereof, as the case may be);
 - (ii) the aggregate quantity (expressed in tonnes) of asphalt mix laid for the Project during the period up to and including that month;

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 24 -

- (iii) the Asphalt Cement Price Adjustment in respect of that month, calculated in accordance with Appendix F [Asphalt Cement Price Adjustment] to this Schedule;
 - (iv) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) in respect of Asphalt Cement Price Adjustments made in respect of any month during the period prior to that month (for which adjustment has not already been made);
 - (v) any interest payable in respect of any amounts owed; and
 - (vi) the net amount owing by the Province to the Concessionaire or by the Concessionaire to the Province in respect of the Asphalt Cement Price Adjustments payable pursuant to Section 1.4 [Obligation to make Asphalt Cement Price Adjustments] of this Schedule.
- (b) A report delivered pursuant to this Section 12.1A shall be accompanied by work papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule.

12.2 Monthly Reports for Performance Incentive Payments

- (a) On the same date that the Concessionaire delivers a report pursuant to Section 12.1(a) of this Schedule, the Concessionaire shall deliver to the Province's Representative a written report setting out the Concessionaire's calculation of the payments payable by it in respect of that month (or portion thereof, as the case may be) in accordance with Section 7.1 [Obligation to make Performance Incentive Payments] of this Schedule. Specifically, the report shall show the Concessionaire's calculation of each of the following (each stated separately):
- (i) any Performance Incentive Payment payable in respect of that month (or part thereof, as the case may be);
 - (ii) any Traffic Management Payment payable in respect of that month (or part thereof, as the case may be);
 - (iii) any Non-Compliance Event Payment payable in respect of that month (or part thereof, as the case may be);
 - (iv) the NCE Points assignable to the Concessionaire in respect of each Non-Compliance Event occurring during that month (or part thereof, as the case may be) (which shall be the number of NCE Points set out in Appendix D [Assignment of NCE Points] to this Schedule in respect of such Non-Compliance Event), and the total of all such NCE Points;
 - (v) the NCE Points Balance as at the end of that month (or part thereof, as the case may be);

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 25 -

- (vi) the NCE Points (Default) Balance as at the end of that month (or part thereof, as the case may be);
 - (vii) the total of all Default Points assignable to the Concessionaire during that month (or part thereof, as the case may be) (which shall be the aggregate Default Points assignable to the Concessionaire in accordance with Section 10.4 [Assignment of Default Points] of this Schedule);
 - (viii) the Default Points Balance as at the end of that month (or part thereof, as the case may be);
 - (ix) any HST payable in respect of any of the Concessionaire Payments referred to in paragraphs (i) through (iii) above in respect of that month (or part thereof, as the case may be);
 - (x) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) in respect of Performance Incentive Payments made by the Concessionaire during the period prior to that month (for which adjustment has not already been made);
 - (xi) any interest payable in respect of any amounts owed; and
 - (xii) the net amount owing by the Concessionaire to the Province or by the Province to the Concessionaire in respect of the Concessionaire's obligation to make Performance Incentive Payments pursuant to Section 7.1 [Obligation to make Performance Incentive Payments] of this Schedule.
- (b) A report delivered pursuant to this Section 12.2 shall be accompanied by work papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule.

12.3 Reports for Availability Payments

- (a) On the first day of the period described in Section 1.3(a) of this Schedule (the "**First ES Date**"), the Concessionaire shall deliver to the Province's Representative a written report setting out the Concessionaire's calculation of the Maximum Availability Payment for the Eastern Segment in respect of the month in which the First ES Date occurs, determined in accordance with Section 3.1(b) of this Schedule.
- (b) On the later to occur of:
 - (i) the First ES Date; and
 - (ii) the tenth day of the month in which the First ES Date occurs;(the "**Second ES Date**") the Concessionaire shall deliver to the Province's Representative a written report setting out the Concessionaire's calculation of the Maximum Availability Payment for the Eastern Segment in respect of the month that

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 26 -

immediately follows the month in which the Second ES Date occurs, determined in accordance with Section 3.1(b) of this Schedule.

- (c) Not later than the tenth day of each month (an **“Invoicing Month”**) after the month in which the First ES Date occurs during the period described in Section 1.3(a) of this Schedule, the Concessionaire shall deliver to the Province’s Representative a written report setting out the Concessionaire’s calculation of the payments payable by the Province in respect of the month (or part thereof, as the case may be) that immediately follows the Invoicing Month (the **“Payment Month”**) in accordance with Section 1.3 [Obligation to make Availability Payments] of this Schedule. Specifically, the report shall show the Concessionaire’s calculation of each of the following (each stated separately):
- (i) the Maximum Availability Payment for the Eastern Segment payable in respect of the Payment Month (or part thereof, as the case may be) (provided that, to the extent that the amount reported pursuant to this Section 12.3(c)(i) is payable in respect of any period commencing on or after the WS Date, then such amount, to such extent, shall be deemed in respect of such period to be 15% of the Maximum Availability Payment payable in respect of such period);
 - (ii) any Availability Payment for the Eastern Segment payable in respect of the Payment Month (or part thereof, as the case may be) (provided that, to the extent that the amount reported pursuant to this Section 12.3(c)(ii) is payable in respect of any period commencing on or after the WS Date, then such amount, to such extent, shall be deemed in respect of such period to be 15% of the Availability Payment for both Segments payable in respect of such period);
 - (iii) any Non-Availability Event Deductions in respect of Relevant Non-Availability Events that have occurred at any time during the month (or part thereof, as the case may be) that is immediately prior to the Invoicing Month (the **“Deductions Month”**);
 - (iv) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) made by the Province during the period prior to the Invoicing Month (for which adjustment has not already been made);
 - (v) any interest payable in respect of any amounts owed; and
 - (vi) the net amount owing by the Province to the Concessionaire or by the Concessionaire to the Province in respect of the Province’s obligation to make Availability Payments pursuant to Section 1.3 [Obligation to make Availability Payments] of this Schedule.
- (d) On the first day of the period described in Section 1.3(b) of this Schedule (the **“WS Date”**), the Concessionaire shall deliver to the Province’s Representative a written report setting out the Concessionaire’s calculation of the Availability Payment for Both Segments in respect of the month in which the WS Date occurs (the **“WS Month”**), determined in accordance with Section 3.2(a) of this Schedule (except that for this purpose: (i) the term $AP_{max\ mn}$ in the formula set out in Section 3.2(a) of this Schedule

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 27 -

shall be deemed to be replaced by the term " $AP_{max\ mn} \times 0.85$ "; and (ii) the value for " $NAED_{(m-2)}$ " shall take into account only those Non-Availability Event Deductions not already made, as a result of the application of Section 3.1(c) of this Schedule, in the determination of the Availability Payment for the Eastern Segment in respect of the month that is immediately prior to the WS Month (the "**Excess Non-Availability Event Deductions**"). Specifically, the report shall show the Concessionaire's calculation of each of the following (each stated separately):

- (i) 85% of the Maximum Availability Payment payable in respect of the WS Month (or part thereof, as the case may be);
 - (ii) the Availability Payment for Both Segments payable in respect of the WS Month (or part thereof, as the case may be);
 - (iii) any Excess Non-Availability Event Deductions;
 - (iv) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) made by the Province during the period prior to the WS Month (for which adjustment has not already been made);
 - (v) any interest payable in respect of any amounts owed; and
 - (vi) the net amount owing by the Province to the Concessionaire or by the Concessionaire to the Province in respect of the Province's obligation to make Availability Payments pursuant to Section 1.3 [Obligation to make Availability Payments] of this Schedule.
- (e) If the WS Date occurs:
- (i) on or before the tenth day of the WS Month, then on the tenth day of the WS Month the Concessionaire shall deliver to the Province's Representative a written report setting out the Concessionaire's calculation of the Availability Payment for Both Segments in respect of the month that immediately follows the WS Month, determined in accordance with Section 3.2(a) of this Schedule; or
 - (ii) after the tenth day of the WS Month, then on such WS Date the Concessionaire shall deliver to the Province's Representative a written report setting out the Concessionaire's calculation of the Availability Payment for Both Segments in respect of the month that is immediately after the WS Month, determined in accordance with Section 3.2(a) of this Schedule (except that for this purpose: (i) the term " $AP_{max\ mn}$ " in the formula set out in Section 3.2(a) of this Schedule shall be deemed to be replaced by the term " $AP_{max\ mn} \times 0.85$ "; and (ii) the value for " $NAED_{(m-2)}$ " shall take into account only those Non-Availability Event Deductions not already made, as a result of the application of Section 3.1(c) of this Schedule, in the determination of the Availability Payment for the Eastern Segment in respect of the WS Month (the "**Excess Non-Availability Event Deductions**").

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 28 -

Specifically, in either case, the report shall show the Concessionaire's calculation of each of the following (each stated separately):

- (iii) 85% of the Maximum Availability Payment payable in respect of the month that is immediately after the WS Month (or part thereof, as the case may be);
 - (iv) the Availability Payment for Both Segments payable in respect of the month that is immediately after the WS Month (or part thereof, as the case may be);
 - (v) any Excess Non-Availability Event Deductions;
 - (vi) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) made by the Province during the period prior to the month that is immediately after the WS Month (for which adjustment has not already been made);
 - (vii) any interest payable in respect of any amounts owed; and
 - (viii) the net amount owing by the Province to the Concessionaire or by the Concessionaire to the Province in respect of the Province's obligation to make Availability Payments pursuant to Section 1.3 [Obligation to make Availability Payments] of this Schedule.
- (f) Not later than the tenth day of each Invoicing Month after the WS Month during the period described in Section 1.3(b) of this Schedule, the Concessionaire shall deliver to the Province's Representative a written report setting out the Concessionaire's calculation of the payments payable by the Province in respect of the Payment Month in accordance with Section 1.3 [Obligation to make Availability Payments] of this Schedule. Specifically, the report shall show the Concessionaire's calculation of each of the following (each stated separately):
- (i) the Maximum Availability Payment payable in respect of the Payment Month (or portion thereof, as the case may be);
 - (ii) any Availability Payment for Both Segments payable in respect of the Payment Month (or part thereof, as the case may be);
 - (iii) any Non-Compliance Event Deductions in respect of relevant Non-Compliance Events that have occurred at any time during the Deductions Month;
 - (iv) any Non-Availability Event Deductions in respect of Relevant Non-Availability Events that have occurred at any time during the Deductions Month;
 - (v) any Monthly Retention (as defined in Section 6.2 [Monthly Retention] of this Schedule) in respect of the Payment Month (or part thereof, as the case may be);
 - (vi) any amount required to be held back pursuant to Section 6.7 [Availability Payments Holdback at End of Term] of this Schedule in respect of the Payment Month (or part thereof, as the case may be);

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 29 -

- (vii) the NCE Points assignable to the Concessionaire in respect of each Non-Compliance Event occurring during the Deductions Month (which shall be the number of NCE Points set out in Appendix D [Assignment of NCE Points] to this Schedule in respect of such Non-Compliance Event), and the total of all such NCE Points;
 - (viii) the NCE Points Balance as at the end of the Deductions Month (or part thereof, as the case may be);
 - (ix) the NCE Points (Default) Balance as at the end of the Deductions Month (or part thereof, as the case may be);
 - (x) the total of all Default Points assignable to the Concessionaire during the Deductions Month (or part thereof, as the case may be) (which shall be the aggregate Default Points assignable to the Concessionaire in accordance with Section 10.4 [Assignment of Default Points] of this Schedule);
 - (xi) the Default Points Balance as at the end of the Deductions Month (or part thereof, as the case may be);
 - (xii) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) made by the Province during the period prior to the Invoicing Month (for which adjustment has not already been made);
 - (xiii) any interest payable in respect of any amounts owed; and
 - (xiv) the net amount owing by the Province to the Concessionaire or by the Concessionaire to the Province in respect of the Province's obligation to make Availability Payments pursuant to Section 1.3 [Obligation to make Availability Payments] of this Schedule.
- (g) A report delivered pursuant to this Section 12.3 shall be accompanied by work papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule.
- (h) The Concessionaire's obligation to deliver a written report pursuant to any paragraph of this Section 12.3 shall not affect the Concessionaire's obligation to deliver any other written report pursuant to any other paragraph of this Section 12.3.

12.4 Recording and Reporting on Non-Availability Events

- (a) The Concessionaire shall implement a system to measure accurately and record all Non-Availability Events occurring on the Concession Highway. The system shall be based on the requirements of Article 5.1 [Highway Condition Reporting] of Appendix A to Schedule 5. The Concessionaire will maintain in electronic format a log recording the start/end times and relevant details for all such Non-Availability Events, in which shall be a form which can be audited by the Province for conformity.

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 30 -

- (b) Not later than 10 days after the last day of each month (or portion thereof, as the case may be) in each Contract Year during the periods described in Section 1.3(a) and Section 1.3(b) of this Schedule, the Concessionaire shall deliver to the Province a highway condition report that shall include information regarding any Non-Availability Events that have occurred on the Concession Highway at any time during that month (or portion thereof, as the case may be).
- (c) Each monthly highway condition report to be delivered pursuant to Section 12.4(a) of this Schedule shall include details of all Non-Availability Events (including the time, date, duration, cause and location of each Non-Availability Event and the number of lanes affected thereby) which have occurred during the month (or portion thereof, as the case may be) in respect of which the report is produced.

12.5 Province can issue Reports and Invoices

If the Concessionaire fails to deliver any report or invoice within the time period required pursuant to this Part 12 [Monthly Reports], the Province may itself prepare and deliver to the Concessionaire such report or invoice. Any such report or invoice delivered pursuant to this Section 12.5 shall be accompanied by work papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule.

**PART 13
DUE DATES FOR PAYMENTS**

13.1 Invoicing and Due Dates for Milestone Payments

- (a) If any monthly report delivered pursuant to Section 12.1 [Monthly Reports for Milestone Payments] of this Schedule shows a net amount owing by the Concessionaire to the Province then, without prejudice to Section 10.8 [Payment of Disputed Amounts], the Concessionaire shall pay and remit to the Province such amount simultaneously with the delivery of such monthly report to the Province.
- (b) If any monthly report delivered pursuant to Section 12.1 [Monthly Reports for Milestone Payments] of this Schedule shows a net amount owing by the Province to the Concessionaire then the Concessionaire shall deliver to the Province simultaneously with such report an invoice for such net amount (which invoice will separately identify any HST included in the calculation of such amount). Without prejudice to Section 10.8 [Payment of Disputed Amounts], the Province shall pay to the Concessionaire such amount not later than the later of:
 - (i) the last day of the month following the month (or portion thereof, as the case may be) to which the invoice relates; or
 - (ii) the 10th Business Day after the Province has received each of:
 - (A) the said invoice in respect of such month (or part thereof, as the case may be);

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 31 -

- (B) the said monthly report (together with the work papers referred to in Section 12.1(b) of this Schedule and (if separate) the statements referred to in Section 12.1(c) of this Schedule) in respect of such month (or part thereof, as the case may be);
- (C) a confirmation from the Agent that states: (1) that all conditions precedent to advances under the Senior Lending Agreements have been satisfied (or waived by the Senior Lenders) and (2) the amount advanced or to be advanced, if any, under the Senior Lending Agreements in respect of such month to which the confirmation relates and (3) that the Agent has issued a written instruction addressed to the Concessionaire's account bank to disburse the proceeds of any such advance and/or the proceeds of funds in respect of Provincial Milestone Payments and/or Federal Milestone Payments received in the Concessionaire's Proceeds Account (as defined in the Credit Agreement referred to in paragraph 1 of Part 1 [Initial Senior Lending Agreements] of Schedule 25) (the "**Proceeds Account**") on the date that the Account Bank receives such funds, each in accordance with the Concessionaire's notice of advance; and
- (D) a confirmation from the Agent that states that the equity contributions required under the Equity Contribution Agreement (as referred to in paragraph 2 of Part 3 of Schedule 25 [Financing and Partnership Agreements]) have been made and, to the extent that any such contributions will be used to fund Eligible Costs incurred in the period to which the said invoice relates, the Agent has issued a written instruction addressed to the Concessionaire's account bank to disburse the proceeds of any such contribution from the Proceeds Account.

13.1A Invoicing and Due Dates for Asphalt Cement Price Adjustments

- (a) If any monthly report delivered pursuant to Section 12.1A [Monthly Reports for Asphalt Cement Price Adjustments] of this Schedule shows a net amount owing by the Concessionaire to the Province then, without prejudice to Section 10.8 [Payment of Disputed Amounts], the Concessionaire shall pay and remit to the Province such amount simultaneously with the delivery of such monthly report to the Province.
- (b) If any monthly report delivered pursuant to Section 12.1A [Monthly Reports for Asphalt Cement Price Adjustments] of this Schedule shows a net amount owing by the Province to the Concessionaire then the Concessionaire shall deliver to the Province simultaneously with such report an invoice for such net amount. Without prejudice to Section 10.8 [Payment of Disputed Amounts], the Province shall pay to the Concessionaire such amount not later than the later of:
 - (i) the last day of the month following the month (or portion thereof, as the case may be) to which the invoice relates; or
 - (ii) the tenth Business Day after the Province has received both the said invoice and the monthly report.

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 32 -

13.2 Invoicing and Due Dates for Performance Incentive Payments

- (a) If any monthly report delivered pursuant to Section 12.2 [Monthly Reports for Performance Incentive Payments] of this Schedule shows a net amount owing by the Concessionaire to the Province then, without prejudice to Section 10.8 [Payment of Disputed Amounts], the Concessionaire shall pay and remit to the Province such amount simultaneously with the delivery of such monthly report to the Province.
- (b) If any monthly report delivered pursuant to Section 12.2 [Monthly Reports for Performance Incentive Payments] of this Schedule shows a net amount owing by the Province to the Concessionaire, it shall be accompanied by an invoice from the Concessionaire to the Province in respect of such amount (which invoice will separately identify any HST included in the calculation of such amount). Without prejudice to Section 10.8 [Payment of Disputed Amounts], the Province shall pay to the Concessionaire the amount of any such invoice issued by the Concessionaire not later than the later of:
 - (i) the last day of the month following the month (or part thereof, as the case may be) to which the invoice relates; and
 - (ii) the tenth Business Day after the Province has received both the said invoice and the monthly report in respect of such month (or part thereof, as the case may be).

13.3 Invoicing and Due Dates for Availability Payments

- (a) On the First ES Date the Concessionaire shall deliver to the Province an invoice for the Maximum Availability Payment for the Eastern Segment in respect of the month in which the First ES Date occurs, calculated in accordance with Section 3.1(a) of this Schedule. Without prejudice to Section 10.8 [Payment of Disputed Amounts], the Province shall pay such invoice not later than the fifth Business Day after the Province has received both the said invoice and the applicable monthly report.
- (b) On the Second ES Date the Concessionaire shall deliver to the Province an invoice for the Maximum Availability Payment for the Eastern Segment in respect of the month that immediately follows the month in which the Second ES Date occurs, calculated in accordance with Section 3.1(a) of this Schedule. Without prejudice to Section 10.8 [Payment of Disputed Amounts], the Province shall pay such invoice not later than the later to occur of:
 - (i) the first day of the month immediately following the month in which the Second ES Date occurs; and
 - (ii) the fifth Business Day after the Province has received both the said invoice and the applicable monthly report.
- (c) If any monthly report delivered pursuant to Section 12.3(c) of this Schedule shows:
 - (i) a net amount owing by the Concessionaire to the Province then, without prejudice to Section 10.8 [Payment of Disputed Amounts], the Concessionaire

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

- 33 -

shall pay and remit to the Province such amount simultaneously with the delivery of such monthly report to the Province; or

- (ii) a net amount owing by the Province to the Concessionaire then the Concessionaire shall deliver to the Province simultaneously with such report an invoice for such net amount and, without prejudice to Section 10.8 [Payment of Disputed Amounts], the Province shall pay to the Concessionaire such amount not later than the later of:
 - (A) the first day of the Payment Month; and
 - (B) the tenth Business Day after the Province has received both the said invoice and the applicable monthly report.
 - (d) On the WS Date the Concessionaire shall deliver to the Province an invoice for the Availability Payment for Both Segments in respect of the WS Month, calculated in accordance with Section 3.2(a) of this Schedule (except as provided in Section 12.3(d) of this Schedule). Without prejudice to Section 10.8 [Payment of Disputed Amounts], the Province shall pay such invoice not later than the fifth Business Day after the Province has received both the said invoice and the applicable monthly report.
 - (e) If the WS Date occurs:
 - (i) on or before the tenth day of the WS Month, then on the tenth day of the WS Month the Concessionaire shall deliver to the Province's Representative an invoice for the Availability Payment for Both Segments in respect of the month that is immediately after the WS Month, calculated in accordance with Section 3.2(a) of this Schedule; or
 - (ii) after the tenth day of the WS Month, then on such WS Date the Concessionaire shall deliver to the Province an invoice for the Availability Payment for Both Segments in respect of the month that is immediately after the WS Month, calculated in accordance with Section 3.2(a) of this Schedule (except as provided in Section 12.3(e) of this Schedule).
- Without prejudice to Section 10.8 [Payment of Disputed Amounts], in either case the Province shall pay such invoice not later than the later of:
- (A) the first day of the month that is immediately after the WS Month; and
 - (B) the fifth Business Day after the Province has received both the said invoice and the applicable monthly report.
- (f) If any monthly report delivered pursuant to Section 12.3(f) of this Schedule shows:
 - (i) a net amount owing by the Concessionaire to the Province then, without prejudice to Section 10.8 [Payment of Disputed Amounts], the Concessionaire shall pay and remit to the Province such amount simultaneously with the delivery of such monthly report to the Province; or

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

- 34 -

- (ii) a net amount owing by the Province to the Concessionaire then the Concessionaire shall deliver to the Province simultaneously with such report an invoice for such net amount and, without prejudice to Section 10.8 [Payment of Disputed Amounts], the Province shall pay to the Concessionaire such amount not later than the later of:
 - (A) the first day of the Payment Month; and
 - (B) the tenth Business Day after the Province has received both the said invoice and the applicable monthly report.

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

**APPENDIX A
ELIGIBLE COSTS**

(reference: Sections 2.1(a) and 2.2(a))

Eligible Costs means all direct costs properly and reasonably incurred and paid by the Concessionaire, and which have been invoiced against a contract for goods and/or services necessary to carry out any portion of the Design or the Construction components of the Project Work, including.

- (a) capital costs, as defined and determined according to generally accepted accounting principles, and relating to the construction, rehabilitation or improvement of highways, roads, bridges, multi-modal facilities, grade crossings/separations and intelligent transportation systems;
- (b) costs related to signage, lighting, highway markings and utility adjustments;
- (c) all planning (including plans and specifications) and evaluation costs, including the costs of environmental planning, surveying, engineering, architectural, supervision, testing and management consulting services, to a maximum of 15% of total Eligible Costs;
- (d) costs of engineering and environmental reviews, including environmental assessments and follow-up programs as defined in the Canadian Environmental Assessment Act and the costs of remedial activities, mitigation measures and follow-up identified in any environmental assessment;
- (e) costs of developing and implementing innovative techniques for carrying out the Project Work; and
- (f) other costs that, in the opinion of the Province, are considered to be direct and necessary for the successful implementation of the Project Work and have been approved in writing prior to being incurred.

For greater certainty, Eligible Costs shall not include the following:

- (a) costs incurred prior to the Effective Date and after the Total Completion Date;

Note: It is intended that “Eligible Costs” will not exclude those costs incurred on behalf of the Concessionaire prior to the Effective Date that are reimbursed by the Concessionaire on or after the Effective Date (so long as such costs otherwise fall within the scope of paragraphs (a) through (f) above).

- (b) costs of developing a proposal;
- (c) costs of purchasing land, associated real estate and other fees, financing charges and interest payments on loans;
- (d) costs of leasing land, buildings, and other facilities;
- (e) HST for which the recipient or a third party is eligible for a tax rebate and all other costs eligible for rebates;

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM
Appendix A: Eligible Costs

- 2 -

- (f) costs that have been shared under federal statutes or programs other than as contemplated in the Federal Cost Contribution Agreement;
- (g) legal fees;
- (h) costs of Operation or Maintenance;
- (i) services or works normally provided by the Ministry incurred in the course of implementation of the Project Work except those specified as Eligible Costs; and
- (j) employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs of the Province and more specifically these costs as related to survey, engineering, architecture, supervision, management and other services provided, or contracted for, by the Province's permanent staff;

and, in any event, Eligible Costs shall not include any costs not recoverable as "Eligible Costs" pursuant to the Federal Cost Contribution Agreement.

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

**APPENDIX B
ELIGIBLE COSTS CERTIFICATE**

(reference: Section 12.1(a) of this Schedule)

Certificate Ref. No. []

Form of Certificate to be used by the Independent Engineer for certifying the completion of milestones and/or partial milestones and Eligible Costs.

PROJECT NO. _____

Section 17 and 21 applied to column

PROJECT DESCRIPTION _____

Reporting Period: From _____, 20__ To _____, 20__

MILESTONE (ITEM)	Cost of Complete Milestone	Portion of Total Cost Representing Eligible Costs	ELIGIBLE COSTS: Last Reporting Period	ELIGIBLE COSTS: This Reporting Period	ELIGIBLE COSTS: To Date	Percentage of Milestone Complete This Reporting Period	Percentage of Milestone Complete Last Reporting Period	Total Percentage of Milestone Complete to Date
1 GENERAL Mobilization Demobilization Utility Relocations Traffic Detours and Traffic Control Interface Costs Environmental Total	██████							
2 DESIGN AND APPROVALS Site Survey Geotechnical Investigations Highway Design Bridge Design Wall Design All other work Design Approvals Design Folders and Record Drawings Total	██████							
3 HIGHWAY CONSTRUCTION Clearing and Grubbing Grading and Drainage Granulage Layers New and Rehabilitated Asphalt Pavements Total	██████							
4 BRIDGE STRUCTRES: Excavation and Drainage Backfill Foundations Substructure Superstructure Total	██████							

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM
Appendix B: Eligible Costs Certificate

MILESTONE (ITEM)	Cost of Complete Milestone	Portion of Total Cost Representing Eligible Costs	ELIGIBLE COSTS: Last Reporting Period	ELIGIBLE COSTS: This Reporting Period	ELIGIBLE COSTS: To Date	Percentage of Milestone Complete This Reporting Period	Percentage of Milestone Complete Last Reporting Period	Total Percentage of Milestone Complete to Date
5 RETAINING WALLS: Excavation and Drainage Backfill Foundations Walls Total	██████							
6 CONSTRUCTION ENGINEERING Construction Management Quality Management General Engineering During Construction Total	██████							
7 FINISHING WORKS: Barriers and Finishing Work Traffic and Guide Signs Highway Lighting Final Line Painting Landscaping Total	██████							
8 DEMOLITIONS AND REMOVALS Removal of Existing Pavement All other Removals Total	██████							
9 CONCESSIONAIRE CONSTRUCTION OVERSIGHT Management Quality assurance program Technical Advisors Independent Certifier Insurance Total	██████							

Total Eligible Costs incurred to date: _____

Less: Eligible Costs incurred during all previous reporting periods _____

Equals: Eligible Costs for this reporting period _____

All work has been completed in accordance with the Concession Agreement.

Certified Correct: _____
 Independent Engineer

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

APPENDIX C
MAXIMUM AVAILABILITY PAYMENTS

[See separate document]

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM

APPENDIX D
ASSIGNMENT OF NCE POINTS

(reference: Section 10.1(a) of this Schedule)

(see attached)

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

Section 17 and 21 applied to column

Assignment of NCE Points

Performance Requirement	Performance Category	Basis of Assessment	NCE Points Assigned
Concession Agreement and All Schedules			
Document Deliverables submitted to the Authority	Timeliness	As specified in this Agreement (including the relevant Schedules)	■
	Completeness	Either a Review Procedure (Schedule 2) resulting in repeat 'comments' on re-submitted submission documents specified in this Agreement (including the relevant Schedules), or a Consent Procedure (Schedule 2) resulting in repeat 'rejected' (other than a "deemed" rejection under Section 2.2(e) of Schedule 2 or a rejection on the merits of a submission) on submission documents specified in this Agreement (including the relevant Schedules)	■
Schedule 4 : Design and Construction			
Traffic Management	Implementation of Traffic Management requirements in respect of Schedule 4	Where a "Marginal" Site Condition Rating is assigned, or where a follow-up audit discloses that such "Marginal" Site Condition Rating has not been remedied within the applicable response time specified in accordance with Section 4.8 of Schedule 7	■
		Where a "Needs Improvement" Site Condition Rating is assigned, or where a follow-up audit discloses that such "Needs Improvement" Site Condition Rating has not been remedied within the applicable response time specified in accordance with Section 4.8 of Schedule 7	■
		Where an "Unacceptable" Site Condition Rating is assigned, or where a follow-up audit discloses that such "Unacceptable" Site Condition Rating has not been remedied within the applicable response time specified in accordance with Section 4.8 of Schedule 7	■
		Where there occurs a Non-Permitted (Points) Traffic Disruption Event having a duration of less than or equal to 15 minutes	■
		Where there occurs a Non-Permitted (Points) Traffic Disruption Event having a duration of more than 15 minutes but less than or equal to 30 minutes	■
		Where there occurs a Non-Permitted (Points) Traffic Disruption Event having a duration of more than 30 minutes	■
Schedule 5 : Operations, Maintenance and Rehabilitation			
Performance Measures	Key Performance Measures	Specified in Schedule 5, Appendix A, Table 3.2 and Appendix B, Table 3.6	■
	Operation and Maintenance Performance Measures	All other measures (identified as POXXX, PAXXX) specified in Schedule 5	■

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM
Appendix D: Assignment of NCE Points

- 2 -

Performance Requirement	Performance Category	Basis of Assessment	NCE Points Assigned
Schedule 6 : Environmental Obligations			
Environmental Commitments & Assurances	Implementation	As designated as "Minor" in Schedule 6, Appendix B	■
		As designated as "Moderate" in Schedule 6, Appendix B	■
		As designated as "Major" in Schedule 6, Appendix B	■
		As designated as "Severe" in Schedule 6, Appendix B	■
Performance Measures	Environmental Performance Measures	All other measures (identified as PEXXX) specified in Schedule 6	■
Schedule 7 : Quality Management			
Unresolved NCR's	Implementation	Where an NCE is not resolved within the response time specified on the NCR in accordance with Schedule 7, Part 6.	■
Performance Measures	Quality Performance Measures	All other measures (identified as PQXXX) specified in Schedule 7	■
Document Deliverables submitted to the Authority	Implementation	Where an NCE occurs in relation to the implementation of any deliverable (where appropriate) required by this Agreement (including the relevant Schedules)	■
Traffic Management	Implementation of Traffic Management requirements in respect of Schedule 5	Where a "Marginal" Site Condition Rating is assigned, or where a follow-up audit discloses that such "Marginal" Site Condition Rating has not been remedied within the applicable response time specified in accordance with Section 4.8 of Schedule 7	■
		Where a "Needs Improvement" Site Condition Rating is assigned, or where a follow-up audit discloses that such "Needs Improvement" Site Condition Rating has not been remedied within the applicable response time specified in accordance with Section 4.8 of Schedule 7	■
		Where an "Unacceptable" Site Condition Rating is assigned, or where a follow-up audit discloses that such "Unacceptable" Site Condition Rating has not been remedied within the applicable response time specified in accordance with Section 4.8 of Schedule 7	■
Schedule 9 : Communication and Consultation			
Performance Measures	Implementation	All other measures (identified as PCXXX) specified in Schedule 9	■

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

**APPENDIX E
SCHEDULE OF ROAD SECTIONS**

Table 1: Prior to Western Segment Substantial Completion Date

East-bound

Section No.	Start	End
1e	Deltaport Way at Highway 17	Crescent Slough
2e	Crescent Slough	Burlington Northern Santa Fe (BNSF) Railway mainline tracks at River Road beneath the Alex Fraser Bridge
3e	Burlington Northern Santa Fe (BNSF) Railway mainline tracks at River Road beneath the Alex Fraser Bridge	136 Street
4e	136 Street	104 Avenue

West-bound

Section No.	Start	End
1w	104 Avenue	136 Street
2w	136 Street	Burlington Northern Santa Fe (BNSF) Railway mainline tracks at River Road beneath the Alex Fraser Bridge
3w	Burlington Northern Santa Fe (BNSF) Railway mainline tracks at River Road beneath the Alex Fraser Bridge	Crescent Slough
4w	Crescent Slough	Deltaport Way at Highway 17

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM
Appendix E: Schedule of Road Sections**

Table 2: After Western Segment Substantial Completion Date

East-bound

Section No.	Start	End
1e	Deltaport Way at Highway 17	Crescent Slough
2e	Crescent Slough	Burlington Northern Santa Fe (BNSF) Railway mainline tracks at River Road beneath the Alex Fraser Bridge
3e	Burlington Northern Santa Fe (BNSF) Railway mainline tracks at River Road beneath the Alex Fraser Bridge	112 Avenue
4e	112 Avenue	104 Avenue

West-bound

Section No.	Start	End
1w	104 Avenue	112 Avenue
2w	112 Avenue	Burlington Northern Santa Fe (BNSF) Railway mainline tracks at River Road beneath the Alex Fraser Bridge
3w	Burlington Northern Santa Fe (BNSF) Railway mainline tracks at River Road beneath the Alex Fraser Bridge	Crescent Slough
4w	Crescent Slough	Deltaport Way at Highway 17

**SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM**

**APPENDIX F
ASPHALT CEMENT PRICE ADJUSTMENT**

(reference: Section 1.4 of this Schedule)

- (a) Subject to paragraph (f) of this Appendix F, the Asphalt Cement Price Adjustment in respect of each month during the period described in Section 1.4(a) of this Schedule shall be determined in accordance with the following formula:

$$AC\ Price\ Adjustment_m = \sum_{l=1}^L \left[Q_{Mix} \times \left[\frac{AC}{100 + AC} \right] \times [INDEX_{Periodic} - INDEX_{Base}] \right]$$

where:

AC Price Adjustment_m = the Asphalt Cement Price Adjustment in respect of month *m* during the period described in Section 1.4(a) of this Schedule

L = the total number of Lots the laying of which is completed in month *m*

Q_{Mix} = the total quantity of the asphalt mix laid in the applicable Lot, expressed in tonnes

AC = the asphalt cement content of the asphalt mix laid in the applicable Lot, as a percentage, by weight, of the total aggregate contained in such asphalt mix, as determined in accordance with DBSS Section 502.53.03 (So, for example, if the asphalt cement content of the asphalt mix laid in a Lot is 5%, by weight, of the total aggregate contained in such asphalt mix, then AC = 5)

INDEX_{Base} = the “Asphalt Cement Base Price Index” (expressed in \$/tonne), being the Edmonton Rack Price in effect as at the Financial Submittal Date, namely [redacted] /tonne Section 17 and 21

INDEX_{Periodic} = the “Asphalt Cement Periodic Price Index” (expressed in \$/tonne), being the Edmonton Rack Price in effect as at the commencement of the laying of the applicable Lot

where:

“aggregate” means crushed or screened gravel;

“asphalt cement” means a bitumen-based liquid binder used in asphalt pavement;

“asphalt mix” means a hot plant mixture of asphalt cement and aggregate;

SOUTH FRASER PERIMETER ROAD PROJECT
SCHEDULE 10: PERFORMANCE MECHANISM
Appendix F: Asphalt Cement Price Adjustment

- 2 -

“Job Mix Formula” means the asphalt mix “recipe”, proposed by the Concessionaire in accordance with DBSS 502.08.04, establishing the aggregate proportions, gradation, and the asphalt cement content to be used for production of asphalt mix;

“Lot” means one day’s scheduled production of asphalt mix of at least seven hours’ plant production of asphalt mix where no changes have occurred to the accepted Job Mix Formula, and in any case shall be no more than two days’ production.

- (b) For the purposes of this Appendix F:
- (i) the “Edmonton Rack Price in effect” as at any particular date shall be deemed to be the Edmonton Rack Price set out in the “Price Change Notice CRP Rack Index” which Husky Oil has then most recently provided to its customers by electronic or other means; and
 - (ii) each “Price Change Notice CRP Rack Index” provided by Husky Oil to its customers shall be deemed to be effective from 12:00:00 am on the date specified in such “Price Change Notice CRP Rack Index” as the effective date thereof until 11:59:59 pm on the date that immediately precedes the date specified in the next succeeding “Price Change Notice CRP Rack Index” provided by Husky Oil to its customers as the effective date thereof.

(For greater certainty, the times referred to in this paragraph (b) shall be as determined pursuant to Section 2.9 [Time] of Schedule 1.)

- (c) The Asphalt Cement Price Adjustment shall be applied only to the first [REDACTED] of asphalt mix laid for the Project. Section 17 and 21
- (d) If the Asphalt Cement Price Adjustment for any month during the period described in Section 1.4(a) of this Schedule is a positive amount, then the Province shall pay such amount to the Concessionaire.
- (e) If the Asphalt Cement Price Adjustment for any month during the period described in Section 1.4(a) of this Schedule is a negative amount, then the Concessionaire shall pay such amount to the Province.
- (f) If the Asphalt Cement Periodic Price Index is changed, is no longer published or is replaced by some other index, then for the purposes of this Appendix F the parties shall use such substitute index as is agreed by the Province and the Concessionaire (and, failing such agreement, as determined in accordance with the Dispute Resolution Procedure) as most closely approximating the Asphalt Cement Periodic Price Index.