

Schedule 9  
Progress Payments

## SCHEDULE 9

### PROGRESS PAYMENTS

#### SECTION A GENERAL

##### A1. Capitalized Terms

A1.1 Capitalized terms used in this Schedule 9 have the meanings set out in the Design Build Agreement, unless otherwise expressed in this Schedule 9.

##### A2. Definitions

- (a) “**Additional Operations Advisory Services**” has the meaning set out in Section D4.2(a)(i) in this Schedule 9;
- (b) “**Additional Spare Parts**” has the meaning set out in Section D4.2(c)(i) in this Schedule 9;
- (c) “**Additional Training**” has the meaning set out in Section D4.2(b)(i) in this Schedule 9;
- (d) “**Cash Allowance Items**” has the meaning set out in Section D4.1 in this Schedule 9;
- (e) “**DB Cost Schedule**” has the meaning set out in Section C1.1 in this Schedule 9;
- (f) “**Payment Item**” has the meaning set out in Section C2.1 in this Schedule 9;
- (g) “**Procurement Cost Advance**” has the meaning set out in Section D3.3.1 in this Schedule 9;
- (h) “**Progress Payment**” means the portion of the Contract Price payable by the City to Design Builder in accordance with the procedure as set out in this Schedule 9;
- (i) “**Progress Payment Application**” has the meaning set out in Section D2.1 in this Schedule 9;
- (j) “**Progress Payment Certificate**” has the meaning set out in Section D9.5 in this Schedule 9; and
- (k) “**Progress Payment Invoice**” has the meaning set out in Section D10.1 in this Schedule 9.

## **SECTION B PAYMENT OF MOBILIZATION AMOUNT**

### **B1. General**

- B1.1 The Independent Certifier will not be required to certify payment of the Mobilization Amount.
- B1.2 The intent of this payment is to reimburse Design Builder for some of the costs incurred in mobilization to the Lands.

### **B2. Mobilization Amount Payment Criteria**

- B2.1 Design Builder shall achieve, and provide evidence for, the following criteria to be eligible for payment of the Mobilization Amount:
- (a) all Contract Security requirements as set out in Schedule 16 – Contract Security and Labour and Material Payment Bond have been met;
  - (b) the Independent Certifier Agreement has been executed as per Schedule 10 – Independent Certifier Agreement;
  - (c) the Referee Agreement has been executed as per Schedule 20 – Referee Agreement;
  - (d) all requirements for the Document Management System have been met as set out in Schedule 13 – Document Management System, including all training and access requirements;
  - (e) submission of the first Submittal Schedule as outlined in Schedule 5 – Review Procedure and achieving a Submittal Endorsement of “Received” in accordance with Schedule 5 – Review Procedure;
  - (f) submission of the Project Management Plan as outlined in Schedule 18 – Technical Requirements and achieving a Submittal Endorsement of “Received” in accordance with Schedule 5 – Review Procedure; and
  - (g) submission of the first DB Cost Schedule as outlined in Section C3 of this Schedule 9 and achieving a Submittal Endorsement of “Received” in accordance with Schedule 5 – Review Procedure.

### **B3. Application for Payment of Mobilization Amount**

- B3.1 Design Builder may make application to the City Representative for payment of the Mobilization Amount after completion of all Work that will satisfy the Mobilization Amount payment criteria, and submitting all relevant evidence for achieving the Mobilization Amount payment criteria with the application.
- B3.2 The City Representative will, within 5 Business Days of receipt of Design Builder’s application for the payment of the Mobilization Amount, either:

- (a) concur that the Mobilization Amount payment criteria has been achieved by Design Builder and issue a certificate to the City that approves payment of the Mobilization Amount; or
- (b) advise Design Builder that the Mobilization Amount payment criteria has not been achieved.

**SECTION C DB COST SCHEDULE**

**C1. General**

C1.1 Design Builder shall develop a cost schedule (the “**DB Cost Schedule**”) based on, and consistent with, the Schedule of Prices and Project Schedule and expanded to include sufficient detail to allow the Independent Certifier to effectively monitor and evaluate the progress of the Project and certify Design Builder’s Progress Payment applications.

C1.2 Design Builder shall provide the DB Cost Schedule based on the example provided in Table 1.

**Table 1 – DB Cost Schedule, Example**

Payment Item No.	Task ID (from Project Schedule)	Payment Item Description	Price
		[populate based on Development Partner Proposal – high-level example shown below]	
<b>Design</b>			
D01		Detailed Design Submittal	
D01-01		Package 01	
D01-02		Package 02	
D01-03		Package 03	
D02		IFC Submittal	
D02-01		Package 01	
D02-02		Package 02	
D02-03		Package 03	
<b>Construction</b>			
C01		Temporary Works	
C02		Area Y – Yard	
C03		Area P – Primary Clarification	
C04		Area C – Centrate Treatment	
C05		Area N – Hauled Sludge Receiving	
C06		Area J – Phosphorus Release	
C07		Area T – Pre-digestion Sludge Treatment	
C08		Area D – Anaerobic Digestion	
C08-02		Division 02	
C08-03		Division 03	
C08-04		Division 04	

Payment Item No.	Task ID (from Project Schedule)	Payment Item Description	Price
C08-05		Division 05	
C08-07		Division 07	
C08-11		Division 11	
C08-11-01		Item 01	
C08-11-02		Item 02	
C08-11-03		Item 03	
C08-14		Division 14	
C08-15		Division 15	
C08-16		Division 16	
C08-17		Division 17	
C09		Area V – Biosolids Processing and Loading	
C10		Area K – Digester Gas Treatment	
C11		Return Pump Station	
C12		Flushing Water Pump Station	
<b>Post-Construction</b>			
P01		Training	
P02		Commissioning	
P03		As-Built Submittals	
P04		Substantial Completion	
P04-01		Item 01	
P04-02		Item 02	
P04-03		Item 03	
P05		Final Completion	
P06		Warranty	

**C2. DB Cost Schedule Requirements**

C2.1 Unless otherwise indicated, Design Builder may divide each item in the Schedule of Prices into as many sub-items reasonably needed to facilitate tracking progress, each a payment item (“**Payment Item**”).

C2.2 The Payment Items in the DB Cost Schedule are subject to the following requirements:

- (a) when subdividing items from the Schedule of Prices into multiple Payment Items, the sum of the prices of the Payment Items must equal the sum of the item in the Schedule of Prices;
- (b) the subdivision of prices must be reasonable and not be substantially weighted to Payment Items that are performed earlier and/or for lower cost;
- (c) the minimum price for a Payment Item shall be **[\$XX]**;

- (d) when subdividing the construction prices into multiple Payment Items, the Payment Items must be organized by applicable Technical Specification divisions;
- (e) for each Payment Item, Design Builder shall provide the associated task identification number from the Project Schedule (not necessarily unique to each Payment Item); and
- (f) Design Builder shall provide a brief and specific description of the Payment Item in the DB Cost Schedule that would allow the Independent Certifier and City to reasonably ascertain the scope and limits of the Payment Item.

### **C3. Submittal and Review of DB Cost Schedule**

#### **C3.1 First Submittal**

- C3.1.1 Prior to the certification of any Progress Payments, Design Builder shall submit a DB Cost Schedule to the City for review in accordance with Schedule 5 – Review Procedure.
- C3.1.2 The first submittal of the DB Cost Schedule will be reviewed by the City only.
- C3.1.3 At the time of the first submittal, Design Builder shall make every effort to provide a DB Cost Schedule that is as detailed as possible based on the current status of the design progress.
- C3.1.4 Design Builder shall revise and resubmit the DB Cost Schedule until it has received a Submittal Endorsement of “Received” from the City.

#### **C3.2 Subsequent Revisions and Submittals**

- C3.2.1 The DB Cost Schedule may be revised from time to time, but no more than once per month, based on the need to further breakdown the DB Cost Schedule to facilitate progress tracking.
- C3.2.2 The revisions to the DB Cost Schedule may be initiated by either Design Builder, the City or the Independent Certifier.
- C3.2.3 If the revision is initiated by Design Builder, then Design Builder shall submit the revised DB Cost Schedule to the City for review by the City and Independent Certifier in accordance with Schedule 5 – Review Procedure.
- C3.2.4 If the revision is initiated by the City or Independent Certifier, then the City will provide the revised DB Cost Schedule to Design Builder for review. Design Builder shall have 5 Business Days to provide comments on the DB Cost Schedule revisions:
  - (a) if Design Builder has comments, then Design Builder shall submit the comments with the revised DB Cost Schedule to the City for review by the

City and Independent Certifier in accordance with Schedule 5 – Review Procedure; or

- (b) if Design Builder has no further comments, the revised DB Cost Schedule will be given the Submittal Endorsement of “Received”.

C3.2.5 The revised DB Cost Schedule will supersede the existing DB Cost Schedule upon receipt of a Submittal Endorsement of “Received” for the revised DB Cost Schedule.

## **SECTION D PROGRESS PAYMENTS**

### **D1. General**

D1.1 No Progress Payments will be paid until the Mobilization Amount has been certified for payment by the City.

D1.2 No Progress Payments will be paid until the DB Cost Schedule had achieved a Submittal Endorsement of “Received”.

D1.3 Progress Payments are indented to include payment for the following:

- (a) Payment Items;
- (b) Cash Allowances;
- (c) Change Orders;
- (d) Relief Event claims;
- (e) Payment Adjustments; and
- (f) Liquidated Damages;

### **D2. Progress Payment Application**

D2.1 No later than the 5<sup>th</sup> Business Day of a month, Design Builder shall provide Independent Certifier a Progress Payment application (“**Progress Payment Application**”), with a copy to the City, detailing the Work progress from the previous month.

D2.2 Each Progress Payment Application shall include a certification by the Engineer of Record that the Works for related to the Progress Payment Application were completed in accordance with the Technical Requirements, and in the case for Construction Payments, the Works were completed in accordance with the Final Design.

D2.3 Each Progress Payment Application shall include a certification by the Quality Manager that the Works for related to the Progress Payment Application were completed in accordance with the Quality Management Plan.

- D2.4 If the total Progress Payment Application amount is less than **[\$XX]**, Design Builder shall defer the Progress Payment Application until the following month.
- D2.5 The Progress Payment Application shall include all documentation supporting the amount requested for the Progress Payment.
- D2.6 The Progress Payment Application shall be in the form as shown in Table 2 below:





### **D3. Payment Items**

D3.1 For each Payment Item, Design Builder shall provide an estimate of the percentage complete as of the end of the month and any Procurement Cost Advances.

D3.2 For each Payment Item in the Progress Payment Application, Design Builder shall provide as per Table 2:

- (a) % Complete: Design Builder's estimation of the percent complete;
- (b) Valuation: calculated as % Complete x price;
- (c) Previous Valuation: The total certified from the previous Progress Payment; and
- (d) Current Application: calculated as Valuation less Previous Valuation.

D3.3 Procurement Cost Advance

D3.3.1 Design Builder shall be eligible for payment of a portion of the Payment Item to cover for procurement costs ("**Procurement Cost Advance**") provided the Payment Item meets the following conditions:

- (a) does not relate to Temporary Works;
- (b) limited to construction items covered by Technical Specification divisions 11, 13, 14, 15, 16 and 17;
- (c) limited to supply contracts between Design Builder and supplier or manufacturer of more than **[\$500,000]**;
- (d) relates to specific equipment and material that can be associated with a specific installation and single Payment Item, and is not general material that is interchangeable in multiple installations (for example: piping and fittings, cabling, hangers and supports are not eligible, while valves and flowmeters can be eligible); and
- (e) is previously approved by the City prior to submission of the Procurement Cost Advance.

D3.3.2 The following schedule will be applied to the relative Payment Item for the Procurement Cost Advance:

- (a) Upon receipt of purchase order (or equivalent document) confirming purchase of the eligible procured equipment or material (commercial details may be redacted by Design Builder), up to **[20%]** of the Payment Item price may be advanced; and
- (b) Upon receipt of a record of delivery of the eligible procured equipment or material to the Lands and a record demonstrating storage of equipment

or material follows manufacturer's recommendations, up to **[50%]** of the Payment Item price may be advanced.

D3.3.3 For each Payment Item in the Progress Payment Application that Design Builder is claiming a Procurement Cost Advance, in addition to the amounts provided in Section D3.2, Design Builder shall provide:

- (a) Procurement Cost Advance: any Procurement Cost Advance associated with Payment Item; and
- (b) Procurement Cost Advance repayment: calculated as Procurement Cost Advance x % Complete.

D3.4 Payment Schedule for Schedule 5 Submittals

D3.4.1 Payment Items that are associated with Submittals that are reviewed in accordance with Schedule 5 – Review Procedure are intended to follow the payment schedule described below.

- (a) Up to **[20%]** of the Price quoted in the DB Cost Schedule may be certified upon submission of the Submittal;
- (b) Up to **[60%]** of the Price quoted in the DB Cost Schedule may be certified when a Submittal Endorsement of either "Proceed to Next Phase", "Construction Commencement Allowed", or "Observations" as the case may be, for the Submittal is returned to Design Builder; and
- (c) 100% of the Price quoted in the DB Cost Schedule may be certified when a Submittal Endorsement of "Received" for the Submittal is returned to Design Builder.

D3.4.2 Design Builder may apply for lower or interim percentages of progress if it can adequately demonstrate this progress to the Independent Certifier in its Progress Payment Application.

D3.4.3 Notwithstanding the procedure described in this Section D3.4, the Independent Certifier will have the final determination with respect to the percent complete for a Payment Item.

#### **D4. Cash Allowance**

D4.1 In its Progress Payment Application, Design Builder shall be eligible for payment from the Cash Allowance Amount for carrying out the following pursuant to the Design Build Agreement:

- (a) Additional Operations Advisory Services;
- (b) Additional Training;
- (c) Additional Spare Parts; and

**(d) [others, if any]**

referred to as the “**Cash Allowance Items**”.

D4.2 Further to D4.1 Design Builder shall only use the Cash Allowance Amount in whole or in part for work, materials or services applicable to the Cash Allowance Items and to the actual amounts paid, or due to be paid, by Design Builder, or the amounts owing to Design Builder for the Cash Allowance Items, in accordance with the following:

**(a) Additional Operations Advisory Services:**

- (i) shall provide payment for additional services requested by the City documented pursuant to Schedule 17 – Change Orders, in relation to the Operations Advisory Services over and above the requirements as set out in Schedule 18 – Technical Requirements (“**Additional Operations Advisory Services**”);
- (ii) will be paid based on the Fixed Daily Rate as given in Schedule 8 – Prices for each onsite day of Additional Operations Advisory Service, which includes all associated labour, material, travel and accommodation;

**(b) Additional Training:**

- (i) shall provide payment for all services after Substantial Completion in relation to additional training requested by the City and documented pursuant to Schedule 17 – Change Orders (“**Additional Training**”);
- (ii) will be paid based on the Fixed Daily Rate as given in Schedule 8 – Prices for each onsite day of Additional Training, which includes all associated labour, material, travel and accommodation;

**(c) Additional Spare Parts:**

- (i) shall provide payment for any additional spare parts requested by the City over and above the spare parts requirements set out in Schedule 18 – Technical Requirements, and documented pursuant to Schedule 17 – Change Orders (“**Additional Spare Parts**”);

**(d) [other Cash Allowance Items, if any]:**

- (i) shall provide payment for [**Cash Allowance description**]; and
- (ii) will be paid based on [**lump sum, unit rate, daily rate, etc.**];

**D5. Change Orders**

- D5.1 In its Progress Payment Application, Design Builder shall be eligible for payment for modifications to the Contract Price in accordance with Schedule 17 – Change Orders.
- D5.2 For each Change Order in the Progress Payment Application, Design Builder shall provide:
- (a) % Complete: Design Builder’s estimation of the percent complete;
  - (b) Valuation: calculated as % Complete x Change Order price;
  - (c) Previous Valuation: The total certified from the previous Progress Payment; and
  - (d) Current Application: calculated as Valuation less Previous Valuation.

**D6. Relief Events**

- D6.1 In its Progress Payment Application, Design Builder shall be eligible for payment for any Relief Event pursuant to Section K of the Design Build Agreement.

**D7. Payment Adjustments**

- D7.1 In its Progress Payment Application, Design Builder shall account for any Payment Adjustments applied pursuant to Section H7 of the Design Build Agreement, Schedule 14 – Payment Adjustments and the Payment Adjustment provisions in Schedule 18 – Technical Requirements.

**D8. Liquidated Damages**

- D8.1 In its Progress Payment Application, Design Builder shall account for any Liquidated Damages applied pursuant to Section B4, Section F1 and Section F2 of the Design Build Agreement.

**D9. Progress Payment Certificate**

- D9.1 The City will review the Progress Payment Application and provide its comments to the Independent Certifier and Design Builder within 3 Business Days based on its own inspection of the Works noted in Progress Payment Application.
- D9.2 Design Builder may provide the Independent Certifier and City with additional clarification on the City’s comments prior to the Independent Certifier issuing a revised Progress Payment Application as per Section D9.1.
- D9.3 The Independent Certifier will conduct its own independent review and inspection of the progress of the Works with respect to the Payment Items in the Progress Payment Application.

- D9.4 After review of the Progress Payment Application, and having regard to any comments by the City and/or Design Builder in accordance with Sections D9.1 and D9.2, the Independent Certifier shall within 3 Business Days after receiving any comments, provide a revised Progress Payment Application detailing any modifications from Design Builder's application.
- D9.5 The Independent Certifier shall promptly issue to Design Builder and to the City a certificate certifying the completion of the Works in respect to the revised Progress Payment Application (a "**Progress Payment Certificate**").
- D9.6 The Progress Payment Certificate will be in the form as shown in Table 3 below:

**Table 3 –Progress Payment Certificate**

<b><u>Payments and Cash Allowances</u></b>	
Mobilization Amount	
Payment Items	
Cash Allowances	
<b>Sub-Total Payments</b>	<b>Sum A</b>
<b><u>Procurement Cost Advances</u></b>	
Procurement Cost Advances	
Procurement Cost Advance Repayments	
<b>Sub-Total Procurement Cost Advance</b>	<b>Sum B</b>
<b><u>Adjustments</u></b>	
Change Orders	
Relief Events	
Payment Adjustments	
Liquidated Damages	
<b>Sub-Total Adjustments</b>	<b>Sum C</b>
<b>Sub-Total Payments / Procurement Cost Advances / Adjustments</b>	<b>D = A + B + C</b>
Lien Holdback	E
<b>Total Certified</b>	<b>F = D – E</b>
Less Total from Previous Certificates	G
<b>Net Certification</b>	<b>H = F - G</b>

**D10. Progress Payment Invoice**

D10.1 After receipt of Progress Payment Certificate, Design Builder may submit a Progress Payment invoice ("**Progress Payment Invoice**") to the City Representative for payment.

D10.2 The Progress Payment Invoice shall include the following documentation:

- (a) The associated Progress Payment Certificate;
  - (b) An invoice statement showing the Net Certification plus any applicable GST (including Design Builder's GST registration number);
  - (c) a statutory declaration of an officer or senior management employee of Design Builder stating that all accounts for labour, subcontracts, materials, construction machinery and equipment and other indebtedness which may have been incurred by Design Builder in performing the Works, which are due, and for which the City might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute; and
  - (d) a clearance letter from the Workers Compensation Board indicating that all current assessments due from Design Builder and all subcontractors have been paid.
- D10.3 The City Representative will, within 5 Business Days of the receipt of the Progress Payment Invoice, either:
- (a) concur that the requirements for payment have been achieved by Design Builder and issue a certificate to the City that approves the Progress Payment Invoice; or
  - (b) advise Design Builder that the requirements for payment have not been achieved.
- D10.4 The City will pay an approved Progress Payment Invoice to Design Builder within 30 Calendar Days from receipt of an approved Progress Payment Invoice.