

APPENDIX 2A

INDEPENDENT CERTIFIER AGREEMENT

TABLE OF CONTENTS

1. DEFINITIONS	3
1.1 Definitions	3
2. INTERPRETATION	4
2.1 Interpretation.....	4
2.2 Obligations and Exercise of Rights by the PA Parties	5
3. ROLE OF THE INDEPENDENT CERTIFIER	5
3.1 Engagement	5
3.2 Acknowledgement by Independent Certifier.....	5
3.3 Standard of Care	5
3.4 Duty of Independent Judgment	5
3.5 Authority to Act	6
3.6 Knowledge of the PA Parties' Requirements	6
3.7 Co-ordination by Independent Certifier	7
3.8 Conflict of Interest.....	7
3.9 Independent Certifier Personnel.....	7
4. ROLE OF THE PA PARTIES	8
4.1 Assistance	8
4.2 Instructions in Writing	8
4.3 Information and Services.....	8
4.4 Additional Information	8
4.5 Right to Enter and Inspect.....	8
4.6 PA Parties Not Relieved	9
4.7 PA Parties not Liable	9
5. SUSPENSION	9
5.1 Notice.....	9
5.2 Costs of Suspension.....	9
5.3 Recommencement	10
6. INSURANCE AND LIABILITY	10
6.1 Independent Certifier's Professional Indemnity Insurance.....	10
6.2 Workers' Compensation Insurance	11
7. PAYMENT FOR SERVICES	11
7.1 Fee.....	11
7.2 Payment of Fee	11

8. FUNCTIONS VARIATIONS	11
8.1 Notice of Functions Variation.....	11
8.2 No Adjustment	12
8.3 Functions Variation Procedure	12
8.4 Cost of Functions Variation	12
9. TERM AND TERMINATION.....	13
9.1 Term	13
9.2 Notice of Breach	13
9.3 Termination for Breach	13
9.4 Termination for Financial Difficulty	13
9.5 Termination for Convenience	13
9.6 Independent Certifier's Rights upon Termination for Convenience.....	14
9.7 Procedure upon Termination	14
9.8 Effect of Termination	14
9.9 Survival	14
10. INDEMNITY	15
10.1 Indemnity	15
11. GENERAL	15
11.1 Entire Agreement.....	15
11.2 Negation of Employment	15
11.3 Waiver.....	15
11.4 Notices.....	15
11.5 Transfer and Assignment	16
11.6 Governing Laws and Attornment.....	17
11.7 Confidentiality	17
11.8 Project Material.....	17
11.9 Personal Information	18
11.10 Time of the Essence.....	18
11.11 Amendment	18
11.12 Severability	18
11.13 Enurement	18
11.14 Counterparts.....	19

SCHEDULE 1 FUNCTIONS

SCHEDULE 2 FEE

SCHEDULE 3 INDEPENDENT CERTIFIER PERSONNEL

APPENDIX 2A

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the [•] day of [•], 2021

AMONG:

[•]

(the “**Authority**”)

AND:

[•]

(“**Project Co**”)

AND:

[•]

(the “**Independent Certifier**”)

WHEREAS:

- A. the Authority and Project Co have entered into the Project Agreement;
- B. the Authority and Project Co wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement; and
- C. the Authority, Project Co and the Independent Certifier wish to enter into this Agreement in order to record the terms by which the Independent Certifier will perform such services.

NOW THEREFORE in consideration of the mutual promises and agreements of the Authority, Project Co and the Independent Certifier herein expressed and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Authority, Project Co and the Independent Certifier covenant and agree as follows:

1. DEFINITIONS

1.1 Definitions

In this Agreement including the recitals and Schedules, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Agreement) will have meanings given to them in the Project Agreement and the following terms will have the following meanings:

“**Agreement**” means this Independent Certifier Agreement and its schedules;

“Fee” means the fees payable by the PA Parties to the Independent Certifier for the Functions, as such fees are specified and made payable in Schedule 2 [Fee];

“Functions” means:

- (a) all of the functions and obligations conferred on the Independent Certifier under the Project Agreement;
- (b) all of the functions and obligations conferred on the Independent Certifier under this Agreement, including the functions described in Schedule 1 [Functions]; and
- (c) all other things or tasks which the Independent Certifier is required to do to comply with its obligations under this Agreement;

“Functions Variation” means any change to the Functions;

“Intellectual Property” means any and all intellectual property rights throughout the world, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names;

“PA Parties” means, collectively, the Authority and Project Co;

“Project Agreement” means that certain agreement entitled “Project Agreement” and made between the Authority and Project Co as of the [•] day of [•], 2021 with respect to the design, construction and partial financing for the Facilities, as the same may be amended, supplemented or replaced from time to time; and

“Project Material” means all material:

- (a) provided to the Independent Certifier or created by or required to be created by any PA Party; and
- (b) provided by or created by or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Functions,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).

2. INTERPRETATION

2.1 Interpretation

The division of this Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Agreement and will not be used to affect the construction or interpretation of this Agreement. The word "including" will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this Agreement to "**Section**" and "**Schedule**" is to a Section of, and a Schedule to, this Agreement;
- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Burnaby, British Columbia;
- (e) all references to amounts of money mean lawful currency of Canada; and
- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied.

2.2 Obligations and Exercise of Rights by the PA Parties

The obligations of the PA Parties under this Agreement will be several. Except as specifically provided for in this Agreement, the rights of the PA Parties under this Agreement will be jointly exercised by each of the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Functions in accordance with this Agreement. The Independent Certifier will perform the Functions in accordance with this Agreement.

3.2 Acknowledgement by Independent Certifier

The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

The Independent Certifier will exercise the standard and skill, care and diligence in the performance of the Functions that would be expected of an expert professional experienced in providing services in the nature of the Functions for projects similar to the Project.

3.4 Duty of Independent Judgment

In exercising the Functions, the Independent Certifier will act:

- (a) impartially, honestly and independently;
- (b) reasonably and professionally; and

- (c) in a timely manner:
- (1) in accordance with the times prescribed in this Agreement or the Project Agreement, as applicable; or
 - (2) where no times are prescribed, within five Business Days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement.

Although the Independent Certifier should take account of any opinions or representations made by the PA Parties, the Independent Certifier will not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.

The Independent Certifier acknowledges that, as set out under the Project Agreement, the Independent Certifier's certifications will be final and binding on the PA Parties in respect of the issuance of the Certificate of SFB Expansion Substantial Completion and the Certificate of New Tower Substantial Completion, and that the Independent Certifier will use its best skill and judgment in providing the Functions and making any certifications. A PA Party may dispute any other decision made by the Independent Certifier, including any list of Deficiencies or list of incomplete Design and Construction that must be completed prior to either of SFB Expansion Substantial Completion or New Tower Substantial Completion.

3.5 Authority to Act

The Independent Certifier:

- (a) is an independent consultant and is not, and will not purport to be, a partner, joint venturer or agent of any PA Party;
- (b) other than as may be expressly set out in the Project Agreement, has no authority to give any directions to a PA Party or its directors, officers, employees, contractors, consultants or agents; and
- (c) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a PA Party from any of its obligations under the Project Agreement unless jointly agreed in writing by the PA Parties.

3.6 Knowledge of the PA Parties' Requirements

The Independent Certifier warrants that:

- (a) it has and will be deemed to have informed itself fully of the requirements of the Project Agreement;
- (b) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Functions;

- (c) without limiting Sections 3.6(a) or 3.6(b), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Function which the Independent Certifier carries out under the Project Agreement and this Agreement;
- (d) it has and will be deemed to have informed itself fully of the nature of the work necessary for the performance of the Functions and the means of access to and facilities at the Facilities and Site, including restrictions on any such access or protocols that are required; and
- (e) it has satisfied itself as to the correctness and sufficiency of its proposal for the Functions and that the Fee covers the cost of complying with all of the obligations under this Agreement and of all matters and things necessary for the due and proper performance and completion of the Functions.

3.7 Co-ordination by Independent Certifier

The Independent Certifier will:

- (a) fully co-operate with the PA Parties;
- (b) carefully co-ordinate the Functions with the work and services performed by the PA Parties;
- (c) without limiting its obligations under Section 3.4 (Duty of Independent Judgment) and Section 3.7(b), perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
- (d) provide copies to all PA Parties of all reports, communications, certificates and other documentation that it provides to any PA Party.

3.8 Conflict of Interest

The Independent Certifier warrants that:

- (a) at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement; and
- (b) if, during the term of this Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by each of the PA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) Subject to Section 3.9(b), the Independent Certifier will use the partners, directors or employees described in Schedule 3 [Independent Certifier Personnel] in connection with the performance of the Functions and such individuals' services will be available for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Functions. Such individuals will have full authority to act on behalf of the Independent Certifier for all purposes in connection with this Agreement.

- (b) None of the individuals listed in Schedule 3 [Independent Certifier Personnel] will be removed or replaced unless he/she ceases to work as a partner in or director or employee of the Independent Certifier or he/she is unable to work because of death or illness. The Independent Certifier will notify the PA Parties of any such circumstances and will be responsible for finding a replacement who will previously have been approved in writing by the PA Parties.

4. ROLE OF THE PA PARTIES

4.1 Assistance

The PA Parties agree to co-operate with, and provide reasonable assistance to, the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Agreement.

4.2 Instructions in Writing

All instructions to the Independent Certifier by the PA Parties will be given in writing.

4.3 Information and Services

The PA Parties will each make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Functions, including such information, documents and particulars required in order for the Independent Certifier to determine whether the criteria for SFB Expansion Substantial Completion or New Tower Substantial Completion have been achieved, and will provide copies of all such information, documents and particulars to the other PA Party.

4.4 Additional Information

If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Functions and have not been provided by Project Co or the Authority, as the case may be, then:

- (a) the Independent Certifier will give notice in writing to Project Co's Representative or the Authority's Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
- (b) Project Co or the Authority, as the case may be, will arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

Upon giving reasonable notice to Project Co's Representative, the Independent Certifier (and any Person authorized by it) may enter and inspect the Site, Facilities and work in progress at any reasonable time in connection with the exercise or proposed exercise of rights under this Agreement, subject to:

- (a) observance of the reasonable rules of Project Co as to safety and security for the Site, Facilities and work in progress;
- (b) not causing unreasonable delay to the carrying out of the Construction by reason of its presence at the Site or Facilities; and
- (c) not causing any damage to the Site, Facilities or work in progress.

4.6 PA Parties Not Relieved

Neither PA Party will be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Agreement or otherwise, provided that any such act or omission will not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. SUSPENSION

5.1 Notice

The Functions (or any part) may be suspended at any time by the PA Parties:

- (a) if the Independent Certifier fails to comply with its obligations under this Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
- (b) in any other case, by the PA Parties giving seven days' joint notice in writing to the Independent Certifier.

5.2 Costs of Suspension

The Independent Certifier will:

- (a) subject to the Independent Certifier complying with Section 8 (Functions Variation), be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 5.1(b) (Notice) valued as a Functions Variation under Section 8 (Functions Variation); and
- (b) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 5.1(a) (Notice).

5.3 Recommencement

The Independent Certifier will immediately recommence the carrying out of the Functions (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

6. INSURANCE AND LIABILITY

6.1 Independent Certifier's Professional Indemnity Insurance

- (a) The Independent Certifier will, at its cost, have in place:
- (1) professional errors and omissions insurance:
 - (A) in the amount of _____ per claim and in the aggregate, a deductible of not more than _____ per claim and from an insurer and on terms satisfactory to each of the PA Parties;
 - (B) with a term and extended reporting period from the date of this Agreement until the expiration of _____ from the cessation of the Functions; and
 - (C) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations or any breach of a duty owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Agreement or the provision of the Functions; and
 - (2) at all times during the term of this Agreement, comprehensive general liability insurance in the amount of _____ per claim and in the aggregate, with no deductible for personal injury or bodily injury, and with a deductible of not more than _____ per occurrence for property damage, naming the Authority as an additional insured and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier will:
- (1) ensure that each of the insurance policies described in Section 6.1(a):
 - (A) bears an endorsement to the effect that the insurer will not effect any adverse material change or amendment to the policy or any cancellation of the policy without first giving at least 30 days prior written notice by registered mail to the Authority; and
 - (B) is obtained and maintained with reputable and Qualified Insurers licensed in British Columbia; and
 - (2) provide copies of each of the insurance policies described in Section 6.1(a) to each of the PA Parties upon request.

6.2 Workers' Compensation Insurance

The Independent Certifier will, at its own cost and at all times during the term of this Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Functions.

7. PAYMENT FOR SERVICES

7.1 Fee

- (a) In consideration of the Independent Certifier performing the Functions in accordance with this Agreement, the PA Parties will pay the Independent Certifier the Fee.
- (b) The Fee includes all taxes (except for Goods and Services Tax), disbursements and expenses (including accommodation, car rental, equipment and travel expenses), overheads and profit to perform the Functions.

7.2 Payment of Fee

- (a) Subject to Section 7.2(c), the PA Parties will each pay half the Fee to the Independent Certifier in accordance with the payment schedule specified in Schedule 2 [Fee]. The Independent Certifier will invoice each of the PA Parties separately. The obligation on Project Co and the Authority to each pay its portion of the Fee to the Independent Certifier is not subject to joint and several liability and neither the Authority nor Project Co will have any liability whatsoever for the non-payment by the other of any fees or costs payable by such other party under this Agreement.
- (b) Project Co acknowledges and agrees that if any amount due and payable by Project Co to the Independent Certifier is outstanding, the Independent Certifier will not have any obligation to Project Co to make any certification under the Project Agreement.
- (c) Project Co will bear the full cost related to certification of the Cost to Date for any Construction, including equipment and materials, that is located off-Site where such off-Site Construction is not identified in the Project Schedule and the cost of such certification has neither been agreed to nor included in the Fee.

8. FUNCTIONS VARIATIONS

8.1 Notice of Functions Variation

- (a) If the Independent Certifier believes, other than a "Functions Variation Order" under Section 8.3 (Functions Variation Procedure), that any direction by the PA Parties constitutes or involves a Functions Variation, it will:
 - (1) within seven days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers that the direction constitutes or involves a Functions Variation; and

- (2) within 21 days after giving the notice under Section 8.1(a)(1), submit a written claim to each of the Authority's Representative and Project Co's Representative, which includes detailed particulars of the claim, the amount of the claim, and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Functions Variation, the Independent Certifier will continue to perform the Functions in accordance with this Agreement and all directions, including any direction in respect of which notice has been given under this Section 8.1.

8.2 No Adjustment

If the Independent Certifier fails to comply with Section 8.1 (Notice of Functions Variation), the Fee will not be adjusted as a result of the relevant direction.

8.3 Functions Variation Procedure

- (a) The Authority's and Project Co's Representatives may jointly issue a document titled "Functions Variation Price Request" to the Independent Certifier, which will set out details of a proposed Functions Variation which the PA Parties are considering.
- (b) Within seven days after the receipt of a "Functions Variation Price Request", the Independent Certifier will provide each of the Authority's and Project Co's Representatives with a written notice in which the Independent Certifier sets out the effect which the proposed Functions Variation will have on the Fee.
- (c) Each of the Authority's and Project Co's Representatives may then jointly direct the Independent Certifier to carry out a Functions Variation by written document titled "Functions Variation Order", which will state either that:
 - (1) the Fee is adjusted as set out in the Independent Certifier's notice; or
 - (2) the adjustment (if any) to the Fee will be determined under Section 8.4 (Cost of Functions Variation).

8.4 Cost of Functions Variation

- (a) Subject to Section 8.2 (No Adjustment), the Fee will be adjusted for all Functions Variations or suspensions under Section 5.1(b) (Notice) carried out by the Independent Certifier by:
 - (1) the amount (if any) stated in the "Functions Variation Order" in accordance with Section 8.3(c) (Functions Variation Procedure);
 - (2) if Section 8.4(a)(1) is not applicable, an amount determined pursuant to the fee schedule for Functions Variations in Schedule 2 [Fee]; or
 - (3) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement,

determined by the Authority's and Project Co's Representatives jointly, acting reasonably.

- (b) Any reductions in the Fee will be calculated on the same basis as any increases in the Fee.

9. TERM AND TERMINATION

9.1 Term

Subject to earlier termination, this Agreement will commence on the Effective Date and continue in full force until:

- (a) 60 days after the Substantial Completion Date; or
- (b) such later date as may be mutually agreed between the PA Parties and the Independent Certifier.

9.2 Notice of Breach

If the Independent Certifier commits a breach of this Agreement, the PA Parties may give written notice to the Independent Certifier:

- (a) specifying the breach; and
- (b) directing its rectification in the period specified in the notice, being a period not less than seven days from the date of service of the notice.

9.3 Termination for Breach

If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 9.2 (Notice of Breach), the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Agreement.

9.4 Termination for Financial Difficulty

The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Agreement immediately if:

- (a) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in insolvency or the control of the Independent Certifier passing to another body or corporation; or
- (b) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

9.5 Termination for Convenience

Notwithstanding anything to the contrary in this Agreement, the PA Parties may at any time terminate this Agreement upon 30 days written notice to the Independent Certifier.

9.6 Independent Certifier's Rights upon Termination for Convenience

Upon a termination under Section 9.5 (Termination for Convenience), the Independent Certifier will:

- (a) be entitled to be reimbursed by the PA Parties for the value of the Functions performed by it to the date of termination; and
- (b) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (1) the lost opportunity to earn a profit in respect of the Functions not performed at the date of termination; and
 - (2) any lost opportunity to recover overheads from the turnover which would have been generated under this Agreement but for it being terminated.

9.7 Procedure upon Termination

Upon completion of the Independent Certifier's engagement under this Agreement or earlier termination of this Agreement (whether under Sections 9.3 (Termination for Breach), 9.4 (Termination for Financial Difficulty) or 9.5 (Termination for Convenience) or otherwise) the Independent Certifier will:

- (a) co-operate with the PA Parties;
- (b) hand to the PA Parties all Project Material and all other information concerning the Project held or prepared by the Independent Certifier; and
- (c) as and when required by the PA Parties, meet with them and such other Persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the Persons nominated to provide the Functions.

9.8 Effect of Termination

Except as otherwise expressly provided in this Agreement, termination of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination (including the right of Project Co and the Authority to recover damages from the Independent Certifier).

9.9 Survival

Termination of this Agreement will not affect the continuing rights and obligations of Project Co or the Authority and the Independent Certifier under Sections 6 (Insurance and Liability), 7 (Payment for Services), 9.6 (Independent Certifier's Rights upon Termination for Convenience), 9.7 (Procedure upon Termination), 9.8 (Effect of Termination), 10 (Indemnity), 11.7 (Confidentiality), 11.8 (Project Material) and this Section 9.9 or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

10. INDEMNITY

10.1 Indemnity

The Independent Certifier will indemnify and save harmless the PA Parties, and each of them, and their respective employees, agents, officers and directors from and against any and all losses incurred or suffered by any of them by reason of, resulting from, in connection with, or arising out of:

- (a) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Certifier set out in or arising under this Agreement or the Project Agreement; or
- (b) any act or omission of the Independent Certifier in connection with the subject matters of this Agreement.

11. GENERAL

11.1 Entire Agreement

This Agreement and the Project Agreement constitute the entire agreement between the PA Parties and the Independent Certifier and supersede all communications, arrangements and agreements, either oral, written, made or entered into prior to the date of this Agreement between the PA Parties and the Independent Certifier with respect to the subject matter of this Agreement.

11.2 Negation of Employment

- (a) The Independent Certifier, its directors, officers, employees, servants and agents and any other individuals engaged by the Independent Certifier in the performance of the Functions will not by virtue of this Agreement or the performance of the Functions become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such directors, officers, employees, servants and agents and other individuals who are engaged by the Independent Certifier.

11.3 Waiver

Failure by any PA Party or the Independent Certifier to enforce a provision of this Agreement will not be construed as a waiver by that PA Party or the Independent Certifier of any right in respect of that provision, or any other provisions of this Agreement.

11.4 Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

if to Project Co:

[•]

Attention: [•]

E-mail: [•]

if to the Authority:

[•]

Attention: [•]

E-mail: [•]

if to the Independent Certifier:

[•]

Attention: [•]

E-mail: [•]

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

11.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (1) will not assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
 - (2) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Agreement.

- (b) For the purposes of this Section 11.5, an assignment will be deemed to have occurred where there is a Change In Control of the Independent Certifier after the date of this Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement in accordance with the terms of the Project Agreement.

11.6 Governing Laws and Attornment

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein without regard to conflicts of law principles that would apply a different body of law, and the Authority, Project Co and the Independent Certifier hereby irrevocably submit and attorn to the exclusive jurisdiction of the courts of that Province and all courts competent to hear appeals therefrom with respect to any action, suit, proceeding or dispute in connection with this Agreement.

11.7 Confidentiality

- (a) The Independent Certifier will ensure that:
 - (1) neither it nor any of its directors, officers, employees, servants and agents disclose, or otherwise make public, any Project Material or any other information or material acquired in connection with or during the performance of the Functions without prior written approval of the PA Parties; and
 - (2) no Project Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its directors, officers, employees, servants and agents engaged in the performance of the Functions to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier will promptly arrange for such agreements to be executed and delivered.

11.8 Project Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Project Material provided to the Independent Certifier or created or required to be created by any PA Party.
- (b) All title and ownership, including all Intellectual Property, in and to the Project Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Functions, is hereby assigned jointly to the Authority and Project Co, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Project Material, it will be assigned to the Authority and Project Co on creation. In addition, to the extent that copyright may subsist in such Project Material so created by the Independent Certifier, the Independent Certifier hereby waives all past,

present and future moral rights therein and the Independent Certifier will ensure that any agent or employee of Independent Certifier will have waived all such moral rights.

- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Project Material referred to in Section 11.8(b).

11.9 Personal Information

The Independent Certifier will, and will require its directors, officers, employees, servants and agents to, only collect, hold, process, use, store and disclose Personal Information:

- (a) with the prior written consent of the PA Parties; and
- (b) only to the extent necessary to perform the Independent Certifier's obligations under this Agreement and in circumstances where the PA Parties themselves, could collect, hold, process, use, store and disclose Personal Information if the PA Parties themselves performed the Functions,

in accordance with applicable Laws, including the *Freedom of Information and Protection of Privacy Act* (British Columbia), as if the provisions of such Laws applied directly to the Independent Certifier and its directors, officers, employees, servants and agents.

The Independent Certifier will allow the PA Parties on reasonable notice to inspect the measures of the Independent Certifier and its directors, officers, employees, servants and agents to protect Personal Information.

11.10 Time of the Essence

Time will be of the essence of this Agreement and of the transactions contemplated by this Agreement.

11.11 Amendment

No change or modification of this Agreement will be valid unless it is in writing and signed by each party to this Agreement.

11.12 Severability

If any provision of this Agreement will be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

11.13 Enurement

Subject to the restrictions on transfer contained in this Agreement, this Agreement will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

11.14 Counterparts

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by electronic transmission will be deemed to be as effective as delivery of a manually executed copy and delivery of an original.

[signature page follows]

IN WITNESS WHEREOF the Authority, Project Co and the Independent Certifier have executed this Agreement as of the day and year first above written.

[AUTHORITY]

Per: [FORM; NOT FOR EXECUTION]

Name:

Title:

[PROJECT CO]

Per: [FORM; NOT FOR EXECUTION]

Name:

Title:

[INDEPENDENT CERTIFIER]

Per: [FORM; NOT FOR EXECUTION]

Name:

Title:

Per: _____

Name:

Title:

SCHEDULE 1

FUNCTIONS

The Independent Certifier will, subject to the provisions of the Project Agreement, provide the services as set out below. In the event of a conflict between any provision of this Agreement, including this Schedule 1, and a provision of the Project Agreement, the Project Agreement will prevail.

- (a) The Independent Certifier will:
- (1) consult with Project Co, the Authority, the Design-Builder and others involved in the Design; and
 - (2) conduct monthly inspections of the Construction; and
 - (3) raise any quality concerns and investigate those identified by Project Co and/or the Authority,

as the Independent Certifier determines is required for purposes of the Independent Certifier's functions under this Agreement and, no later than the 10th day of each month, prepare and deliver to the Authority and Project Co a monthly written report containing a description of:

- (4) the Design and the Construction completed in the previous month; and
 - (5) the progress of the Design and the Construction relative to the Project Schedule, with an overview analysis of variances and investigations of quality concerns.
- (b) The Independent Certifier will prepare and deliver to the Authority and Project Co a certificate certifying the Cost to Date as described in Section 4 of Schedule 8 [Payments] no later than the 10th day of each month. The Authority and Project Co specifically agree to the following with respect to the preparation and delivery of the payment certificates by the Independent Certifier:
- (1) the certificate certifying the Cost to Date will certify actual costs incurred by or on behalf of Project Co; and
 - (1) except as required under (a) of this Schedule, the Independent Certifier will have no role in monitoring or inspecting, or in giving any directions or instructions, with respect to any aspect of the Design or the Construction.

The certificate of Cost to Date will not include costs for any design, construction or other work that does not comply with the Project Agreement and the Reviewed Drawings and Specifications, and such design, construction or other work does not form part of the Design and the Construction for purposes of calculating the Cost to Date in Schedule 8 [Payments] and may not be taken into account in determining the Construction Period Payments under Schedule 8 [Payments] and the determination of each of SFB Expansion Substantial Completion and New Tower Substantial Completion.

- (c) The Independent Certifier will, in cooperation with Project Co's Representative and the Authority's Representative:
- (1) with respect to an application for a Certificate of SFB Expansion Substantial Completion, review and comment on the list of Deficiencies in the SFB Expansion; and
 - (2) with respect to an application for a Certificate of New Tower Substantial Completion, review and comment on the list of Deficiencies in the New Tower.
- (d) No later than five Business Days after application by Project Co for a Certificate of SFB Expansion Substantial Completion, the Independent Certifier will, in cooperation with Project Co's Representative and the Authority's Representative, make an inspection of the SFB Expansion, review the basis for Project Co's application for SFB Expansion Substantial Completion, and then within a further five Business Days after such inspection and review:
- (1) if SFB Expansion Substantial Completion has been achieved, issue a Certificate of SFB Expansion Substantial Completion, together with comments on the list of Deficiencies in the SFB Expansion (if any); or
 - (2) if SFB Expansion Substantial Completion has not been achieved, provide Project Co and the Authority's Representative with a list of all incomplete Design and Construction that must be completed prior to SFB Expansion Substantial Completion.
- (e) No later than five Business Days after application by Project Co for a Certificate of New Tower Substantial Completion, the Independent Certifier will, in cooperation with Project Co's Representative and the Authority's Representative, make an inspection of the New Tower and the Energy Centre, review the basis for Project Co's application for New Tower Substantial Completion, and then within a further five Business Days after such inspection and review:
- (1) if New Tower Substantial Completion has been achieved, issue a Certificate of New Tower Substantial Completion, together with comments on the list of Deficiencies in the New Tower (if any); or
 - (2) if New Tower Substantial Completion has not been achieved, provide Project Co and the Authority's Representative with a list of all incomplete Design and Construction that must be completed prior to New Tower Substantial Completion.

SCHEDULE 2

FEE

[This Schedule will include a fee schedule for Functions Variations.]

Total Fixed Fee: **[\$•]** Canadian Dollars (excluding GST/HST)

SCHEDULE 3

INDEPENDENT CERTIFIER PERSONNEL

Name and Title	Credentials	Firm	Address	Role and Proponent Team
[•]	[•]	[•]	[•]	[•]