

**SCHEDULE 8**

**PAYMENTS**

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## SCHEDULE 8

### PAYMENTS

#### 1. DEFINITIONS

In this Schedule, in addition to the definitions set out in Schedule 1 [Definitions and Interpretation] to this Agreement:

“**Adverse Claim**” has the meaning set out in Section 7.4 (Adverse Claims) of this Schedule;

“**Agent**” means the Person appointed by the Senior Lenders from time to time to act as the agent for the Senior Lenders with respect to the Senior Financing Agreements;

“**Balancing Amount**” means that amount of the Net Cost to Date in the Transition Month that forms part of the Base Amount;

“**Base Amount**” means \$71,317,066.91;

“**BLA**” means the *Builders Lien Act* (British Columbia);

“**Builders Lien Holdback**” has the meaning set out in Section 7.3(a) (Builders Lien Holdback) of this Schedule;

“**Builders Lien Holdback Letter of Credit**” has the meaning set out in Section 8.1(a) (Option to Issue Letters of Credit) of this Schedule;

“**Carbon Holdback**” has the meaning set out in Section 5(c) (Substantial Completion Payment) of this Schedule;

“**Carbon Holdback Letter of Credit**” has the meaning set out in Section 8.1(a) (Option to Issue Letters of Credit) of this Schedule;

“**Construction Payment**” has the meaning set out in Section 3(a) (Construction Payments) of this Schedule;

“**Contract Price**” has the meaning set out in Section 2.1(a) (Contract Price and Payment) of this Schedule;

“**Cost to Date**” as at a date means the sum of:

- (a) the total amounts paid or payable by Project Co to the Design-Builder under the Design-Build Agreement (including the amount of any holdback required under the BLA) for Construction performed by the Design-Builder, as certified by the Independent Certifier as contemplated in Section 3.4 (Payment Certificates) of Schedule 2 [Design and Construction Protocols];
- (b) the total amounts paid or payable by Project Co in respect of SPV Costs, up to the cumulative maximum applicable to that month as set out in the Financial Model at the

Effective Date, provided that in the final month of the Construction Period the Cost to Date shall include any unpaid amounts of SPV Costs as set out in the Financial Model at the Effective Date;

- (c) the total amounts paid or payable by Project Co to Senior Lenders under the Senior Financing Agreements in respect of interest during the Construction Period, up to the cumulative maximum applicable to that month as set out in the Financial Model at the Effective Date, provided that in the final month of the Construction Period the Cost to Date shall include any unpaid amounts of such interest payments as set out in the Financial Model at the Effective Date
- (d) the total amounts paid or payable by Project Co to Senior Lenders under the Senior Financing Agreements in respect of fees during the Construction Period, up to the cumulative maximum applicable to that month as set out in the Financial Model at the Effective Date, provided that in the final month of the Construction Period the Cost to Date shall include any unpaid amounts of such fees as set out in the Financial Model at the Effective Date; and
- (e) the total amounts paid or payable by Project Co in respect of Proposal Response Costs, up to the cumulative maximum applicable to that month as set out in the Financial Model at the Effective Date,

all of the above as evidenced by supporting invoices and other documentation reasonably required by the Authority;

**“Deduction”** means a deduction from the payments due from the Authority to Project Co under this Agreement, including the Construction Payments and the Substantial Completion Payment;

**“Deficiency Holdback”** has the meaning set out in Section 6.1(a) (Deficiency Holdback) of this Schedule;

**“Deficiency Holdback Letter of Credit”** has the meaning set out in Section 8.1(a) (Option to Issue Letters of Credit) of this Schedule;

**“Energy Holdback”** has the meaning set out in Section 5(c) (Substantial Completion Payment) of this Schedule;

**“Energy Holdback Letter of Credit”** has the meaning set out in Section 8.1(a) (Option to Issue Letters of Credit) of this Schedule;

**“LEED Holdback”** has the meaning set out in Section 5(c) (Substantial Completion Payment) of this Schedule;

**“LEED Holdback Letter of Credit”** has the meaning set out in Section 8.1(a) (Option to Issue Letters of Credit) of this Schedule;

**“Lenders’ Technical Advisor”** means the Person appointed by the Senior Lenders from time to time to advise the Senior Lenders on technical matters, including with respect to certain conditions precedent to advances under the Senior Financing Agreements;

**“Letter of Credit”** means an irrevocable letter of credit substantially in the form of Appendix 8A [Form of Letter of Credit] to this Schedule, modified as indicated therein and meeting the requirements set out therein;

**“Net Cost to Date”** in any month means the difference between the total Cost to Date in that month and the Cost to Date as at the end of the previous month;

**“Proposal Response Costs”** means costs for professional services reasonably and properly incurred in respect of the preparation of the proposal submitted under the request for proposals for the Project prior to the Effective Date and included in the Financial Model;

**“SPV Costs”** means administrative costs reasonably and properly incurred in respect of the management and operations of Project Co;

**“Substantial Completion Payment”** has the meaning set out in Section 5(a) (Substantial Completion Payment) of this Schedule;

**“Transition Month”** means the month in which the total Cost to Date reaches the Base Amount;

**“Unpaid CPP”** has the meaning set out in Section 7.3(a) (Builders Lien Holdback) of this Schedule;

**“Warranty Holdback”** has the meaning set out in Section 6.2(a) (Warranty Holdback) of this Schedule; and

**“Warranty Holdback Letter of Credit”** has the meaning set out in Section 8.1(a) (Option to Issue Letters of Credit) of this Schedule.

## 2. PAYMENTS

### 2.1 Contract Price and Payment

- (a) Project Co will perform its obligations under this Agreement for the contract price of \$301,116,504.72, (the **“Contract Price”**). The Contract Price is not subject to change except to the extent expressly provided in Schedule 6 [Changes]. Project Co agrees to accept the Contract Price as full payment and reimbursement to Project Co for performing the Design and the Construction, including all labour, services, materials, equipment, and overhead required to perform the Design and the Construction, all financing costs and profit.
- (b) The Contract Price is exclusive of GST but inclusive of all other sales, value-added, or similar Tax. All Taxes levied against Project Co’s income, capital, or activities will be the sole responsibility of Project Co.
- (c) Project Co is undertaking the Design and the Construction on a fixed price basis, subject to Changes, Supervening Events, and any other mechanisms specified in this Agreement which explicitly adjust the Contract Price pursuant to this Agreement, and in the event that scheduled payments under this Agreement are insufficient to cover the costs incurred by Project Co in respect of such obligations, Project Co will be liable to provide

all required additional capital necessary to fund such cost overruns. Project Co will not be reimbursed by the Authority for such cost overruns at any time.

- (d) Subject to Project Co meeting the requirements for payment set out in this Agreement, the Authority will pay Project Co the amounts expressly provided for in this Agreement in accordance with the provisions of this Agreement.
- (e) No payment of or on account of any amount by the Authority to Project Co in accordance with this Agreement, including the release by the Authority of any holdback amounts hereunder, or partial or entire use or occupancy of the Project, the Site, or any part or parts thereof by the Authority or any other person, and no approval of any invoice, report or application submitted by Project Co to the Authority for any such payment, will constitute or be construed as constituting a final evaluation or an acceptance by the Authority of any of the Design or the Construction as being in accordance or in compliance with this Agreement.
- (f) Notwithstanding any payment by the Authority to Project Co in accordance with this Agreement, including the release by the Authority of any holdback amounts hereunder, and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of an invoice, report or application submitted by Project Co to the Authority for any such payment, Project Co is and at all times will remain responsible for providing, performing, and carrying out the Design and the Construction in accordance and in compliance with this Agreement.

## 2.2 Deductions

The Authority will be entitled to make Deductions in accordance with this Agreement.

## 3. CONSTRUCTION PAYMENTS

- (a) The Authority will make monthly payments (each, a “**Construction Payment**”), in arrears, to Project Co on account of the Contract Price, subject to and in accordance with this Schedule and this Agreement.
- (b) The amount payable by the Authority to Project Co as a Construction Payment as at the end of the month indicated in Table 8A will be:
  - (1) for each month prior to the Transition Month, 5% of the Net Cost to Date for that month; and
  - (2) in the Transition Month, the aggregate of:
    - (A) 5% of the Balancing Amount; and
    - (B) 100% of the Net Cost to Date less the Balancing Amount; and
  - (3) for each month after the Transition Month, 100% of the Net Cost to Date,

provided that in each case, the cumulative amount of Construction Payments up to and including that Construction Payment shall not exceed the cumulative maximum applicable to that month as set out in the second column of Table 8A.

- (c) The Construction Payments are intended as funding and to qualify as one of the listed items in paragraph 12(1)(x) of the *Income Tax Act* (Canada).

#### 4. CONSTRUCTION PAYMENT INVOICING AND PAYMENT

- (a) Project Co will submit an invoice to the Authority's Representative for each Construction Payment at any time after the end of the applicable month indicated in Table 8A, and will include with that invoice:
- (1) a certificate of the Independent Certifier certifying (in the manner outlined in Section 3.4 (Payment Certificates) of Schedule 2 [Design and Construction Protocols]) the Cost to Date as at the end of the applicable month and the Net Cost to Date for that month;
  - (2) any amount payable in respect of a Change, if not included in the Construction Payment;
  - (3) the amount of GST payable;
  - (4) any Deductions to be applied in that Payment Period;
  - (5) copies of all certifications (including from the Lenders' Technical Advisor) provided to, and communications from, the Senior Lenders (other than those previously provided under this Schedule) with respect to payments to the Design-Builder for the applicable month, the cost to complete the Project, the sufficiency of funds available to Project Co to complete the Project, and the likelihood that both SFB Expansion Substantial Completion and New Tower Substantial Completion will be achieved by the Longstop Date;
  - (6) a certificate of an officer of Project Co certifying that:
    - (A) Project Co is in compliance with all applicable provisions of the Senior Financing Agreements and the Design-Build Agreement with respect to all payments to be made to the Design-Builder on or before the date of the invoice;
    - (B) for each month up to and including the Transition Month, Project Co has taken all steps required under the Senior Financing Agreement to draw the funds required (in addition to the amounts invoiced to the Authority) to pay the Design-Builder and knows of no reason why such funds would not be advanced as requested;
    - (C) Project Co is not in default under either this Agreement or any of the Senior Financing Agreements;

- (D) Project Co has available to it sufficient funds to complete the Project;
  - (E) to the best of Project Co's knowledge, there has not been any materially adverse change in the Design-Builder's ability to perform its obligations under the Design-Build Agreement;
  - (F) Project Co reasonably expects to achieve both SFB Expansion Substantial Completion and New Tower Substantial Completion by the Longstop Date;
  - (G) the Design-Builder and all of the Subcontractors have been paid in full up to the last Progress Payment received by Project Co, subject to holdbacks (including for amounts disputed in good faith) required or permitted by the Design-Build Agreement and the Subcontracts and the BLA, if applicable;and
  - (H) no Adverse Claims exist with respect to, or as a result of, or in relation to, the Design or the Construction which, in any such case, has either not been paid, discharged, satisfied, and, if filed in the land title office, cancelled, or not been removed or cancelled from title following the payment of money into, or the posting of security with, the court in accordance with section 23 or 24, as applicable, of the BLA.
- (b) Each invoice will set out the net amount owing by the Authority to Project Co.
  - (c) Project Co will arrange with the Authority's Representative a reasonable opportunity for the Authority's Representative to meet with Project Co's Representative to review the invoice and review such documentation as the Authority's Representative may request.
  - (d) Project Co may provide a draft invoice to the Authority's Representative no more than five days prior to the end of applicable month indicated in Table 8A and may arrange the meeting with the Authority's Representative referred to in Section 4(c) of this Schedule to review the draft invoice.
  - (e) If the Authority's Representative identifies any deficiencies or inaccuracies in the invoice submitted pursuant to Section 4(a) of this Schedule or the draft invoice submitted pursuant to Section 4(c) of this Schedule, the Authority's Representative will notify Project Co of the Authority's calculation of the relevant Construction Payment and other amounts in the invoice within five Business Days of the invoice being delivered pursuant to Section 4(a) of this Schedule or the draft invoice being delivered pursuant to Section 4(c) of this Schedule.
  - (f) Project Co will cooperate with the Authority's Representative to reach agreement on the finalized invoice and the calculation of the relevant Construction Payment and other amounts in the invoice on or before the seventh Business Day following delivery of the invoice to the Authority's Representative pursuant to Section 4(a) of this Schedule or the draft invoice being delivered pursuant to Section 4(c) of this Schedule.

- (g) The Authority's Representative will approve the invoice as to the amount of the relevant Construction Payment and other amounts in the invoice not in dispute within five Business Days of the invoice being agreed upon pursuant to Section 4(f) of this Schedule or, where the invoice delivered pursuant to Section 4(a) of this Schedule is the same as the draft invoice delivered pursuant to Section 4(c) of this Schedule, within five Business Days of the draft invoice being agreed upon pursuant to Section 4(f) of this Schedule.
- (h) The Authority will make payment to Project Co of the net amount approved pursuant to Section 4(g) of this Schedule by not later than the tenth Business Day following approval of the net amount pursuant to Section 4(g) of this Schedule.
- (i) Notwithstanding the foregoing, Project Co acknowledges and agrees that, irrespective of when it submits an invoice in respect of the Unpaid CPP, the Unpaid CPP shall be held back in accordance with this Schedule 8 and the Unpaid CPP shall be paid to Project Co exclusively in accordance with and subject to Section 7.3 of this Schedule.

## 5. SUBSTANTIAL COMPLETION PAYMENT

- (a) Subject to the provisions of this Schedule and this Agreement, the Authority will pay to Project Co, on account of the Contract Price and in accordance with the procedure set out in this Section 5, an amount of \$67,751,216.50 (the "**Substantial Completion Payment**").
- (b) At any time after the Substantial Completion Date, Project Co may submit to the Authority's Representative an invoice for the Substantial Completion Payment.
- (c) Without prejudice to Section 9.12 [Undisputed Amounts and Interest on Disputed Amounts] of this Agreement, the Authority will, after withholding:
  - (1) the Deficiency Holdback;
  - (2) the Warranty Holdback;
  - (3) the Builders Lien Holdback (if applicable);
  - (4) the amount of \$1,000,000 (the "**LEED Holdback**");
  - (5) the amount of \$1,500,000 (the "**Energy Holdback**");
  - (6) the amount of \$1,500,000 (the "**Carbon Holdback**"); and
  - (7) the amount of \$500,000 (the "**M&V Holdback**"),

make payment to Project Co of the net amount of the Substantial Completion Payment by not later than the tenth Business Day following submission of the payment application pursuant to Section 5(b) of this Schedule.



- (d) The Authority is not required to pay interest to Project Co in respect of any amounts withheld from the Substantial Completion Payment that the Authority is entitled to withhold pursuant to this Agreement.

## 6. DEFICIENCY AND WARRANTY HOLDBACKS

### 6.1 Deficiency Holdback

- (a) Notwithstanding any other provision of this Agreement, and in addition to any other holdbacks provided for in this Agreement, the Authority may retain out of the Substantial Completion Payment an amount equal to:

- (1) 200% of the Independent Certifier's estimate of the aggregate costs to remedy any Deficiencies in the SFB Expansion and any Deficiencies in the New Tower as of the Substantial Completion Date; and
- (2) the amount referred to in Section 16 of Schedule 2 [Design and Construction Protocols] in respect of obligations to be satisfied after the Substantial Completion Date,

(the "**Deficiency Holdback**").

- (b) Following the achievement of both SFB Expansion Total Completion and New Tower Total Completion, Project Co will prepare and deliver to the Authority a payment application, requesting any portion of the Deficiency Holdback not replaced by a Deficiency Holdback Letter of Credit, less any amounts applied therefrom by the Authority in accordance with Section 13.4 (Correction of Deficiencies, Total Completion) of Schedule 2 [Design and Construction Protocols], and/or, if applicable, the return of any Deficiency Holdback Letter of Credit provided by Project Co.
- (c) By not later than the tenth Business Day following receipt of the payment application pursuant to Section 6.1(b) of this Schedule, the Authority will make payment to Project Co of any portion of the Deficiency Holdback not replaced by a Deficiency Holdback Letter of Credit, less any amounts applied therefrom by the Authority in accordance with Section 13.4 (Correction of Deficiencies, Total Completion) of Schedule 2 [Design and Construction Protocols], and/or, if applicable, return any Deficiency Holdback Letter of Credit provided by Project Co.
- (d) If the Termination Date occurs after the Substantial Completion Date but prior to Project Co achieving both SFB Expansion Total Completion and New Tower Total Completion, the Authority will be entitled to irrevocably retain from any portion of Deficiency Holdback not replaced by a Deficiency Holdback Letter of Credit, and/or, if a Deficiency Holdback Letter of Credit has been provided by Project Co, the Authority will be entitled to make a demand under any such Deficiency Holdback Letter of Credit for, an aggregate amount equal to the Independent Certifier's estimate of the costs to remedy any Deficiencies in the SFB Expansion and any Deficiencies in the New Tower remaining at the Termination Date.

## 6.2 Warranty Holdback

- (a) Notwithstanding any other provision of this Agreement, and in addition to any other holdbacks provided for in this Agreement, the Authority may retain out of the Substantial Completion Payment an amount equal to 1% of the Contract Price (the “**Warranty Holdback**”).
- (b) Following the expiry of the Warranty Periods, Project Co will prepare and deliver to the Authority a payment application requesting payment of any portion of the Warranty Holdback not replaced by a Warranty Holdback Letter of Credit, less any amounts applied therefrom by the Authority in accordance with Section 14.1(d) (Warranties and Liability for Defects) of Schedule 2 [Design and Construction Protocols], and/or, if applicable, the return of any Warranty Holdback Letter of Credit provided by Project Co.
- (c) By not later than the tenth Business Day following receipt of the payment application pursuant to Section 6.2(b) of this Schedule, the Authority will make payment to Project Co of any portion of the Warranty Holdback not replaced by a Warranty Holdback Letter of Credit, less any amounts applied therefrom by the Authority in accordance with Section 14.1(d) (Warranties and Liability for Defects) of Schedule 2 [Design and Construction Protocols], and/or, if applicable, return any Warranty Holdback Letter of Credit provided by Project Co.

## 7. BUILDERS’ LIENS

### 7.1 Builders Lien Act

With respect to builders liens and the requirements of the BLA:

- (a) the Authority will not have any responsibility to be the payment certifier under any contract related to Construction;
- (b) Project Co will make all required builders lien holdbacks as if it were the owner under the BLA;
- (c) no builders lien holdback will be retained by the Authority under this Agreement;
- (d) if it is determined that any builders lien holdback is required to be retained by the Authority, then Project Co agrees that it is making and will make all of its required holdbacks as agent for the Authority;
- (e) Project Co will indemnify the Authority from any damages, costs, claims and expenses of any kind, including actual solicitors costs, arising from the failure of the Authority to retain a builders lien holdback; and
- (f) Project Co will not request any amount from the Authority in relation to holdback amounts under the BLA applicable to the Design-Build Agreement or any Sub-Contract and will administer the release of holdbacks on account of Sub-Contracts from the holdback it retains from the Design-Builder.

## 7.2 Certificate of Completion

Project Co shall require the payment certifier under the Design-Build Agreement to deliver a copy of the certificate of completion under the BLA for the Design-Build Agreement within seven days of its having been issued.

## 7.3 Builders Lien Holdback

- (a) Notwithstanding any other provision of this Agreement, and in addition to any other holdbacks provided for in this Agreement, if the Substantial Completion Payment becomes due and payable on or before the date that is 55 days after the BLA Completion Date the Authority may retain out of the Substantial Completion Payment an amount equal to:

- (1) 10% of the Contract Price;
- (2) minus any amounts properly released to Sub-Contractors by Project Co pursuant to section 9 of the BLA;
- (3) minus any Construction Payment for which an invoice has not been submitted to the Authority Representative prior to the Substantial Completion Date (the “Unpaid CPP”),

such aggregate amount being the “Builders Lien Holdback”, provided that Project Co may notify the Authority that the Unpaid CPP should be reduced (and the Builders Lien Holdback therefore increased) by an amount reflecting work completed prior to the Substantial Completion Date but not yet invoiced.

- (b) The Authority may retain from the Builders Lien Holdback (or claim on any Builders Lien Holdback Letter of Credit) and the Unpaid CPP from time to time any amounts required to satisfy any lien(s) filed with respect to the Project.
- (c) On or after the day that is 55 days after the BLA Completion Date, Project Co shall prepare, and deliver to the Authority, a payment application requesting payment of the Builders Lien Holdback and the Unpaid CPP (less any amounts applied therefrom by the Authority in accordance with Section 7.3(b) of this Schedule). The parties agree that the payment application for the Unpaid CPP shall otherwise be in accordance with Section 4(a) of this Schedule.
- (d) By not later than the tenth Business Day following receipt of the Payment Application pursuant to Section 7.3(c) of this Schedule, the Authority shall make payment to Project Co of the Builders Lien Holdback and the Unpaid CPP (less any amounts applied therefrom by the Authority in accordance with Section 7.3(b) of this Schedule).

## 7.4 Adverse Claims

- (a) Project Co will comply with Section 3.6 (Builders’ Liens) of Schedule 7 [Lands] in respect of all builders’ liens and other liens and claims of lien for labour, services, or materials

furnished or alleged to have been furnished with respect to the Design and the Construction (each, an “**Adverse Claim**”). If Project Co fails to comply with Section 3.6 (Builders’ Liens) of Schedule 7 [Lands] in respect of any Adverse Claim, then:

- (1) the Authority will be entitled to retain from any amounts that would otherwise be payable to Project Co an amount equal to the amount of such Adverse Claim until the date that is the earliest to occur of:
    - (A) the payment, discharge, satisfaction and, if filed in the land title office, cancellation of such Adverse Claim; and
    - (B) the removal or cancellation of such Adverse Claim from title following the payment of money into, or the posting of security with, the court in accordance with section 23 or 24, as applicable, of the BLA; and
  - (2) in the event that any such Adverse Claim is either paid, discharged, satisfied and, if filed in the land title office, cancelled, or is removed or cancelled from title following the payment of money into or the posting of security with the court in accordance with section 23 or 24, as applicable, of the BLA, in any such case by the Authority, Project Co will, on demand, reimburse the Authority all amounts so paid, together with all related costs (including legal costs) and expenses incurred by the Authority, and the provisions of Section 9.10 (Authority’s Right of Set Off) of this Agreement will apply to all such amounts, costs and expenses.
- (b) Subject to Section 7.3 (Builders Lien Holdback) of this Schedule, if, as a result of any Adverse Claim, the Authority withholds amounts otherwise payable to Project Co, the Authority will, once such Adverse Claim has been finally resolved by way of litigation or settlement, pay to Project Co the surplus of any funds so withheld that were not used by the Authority to resolve such Adverse Claim.

## 8. LETTERS OF CREDIT

### 8.1 Option to Issue Letters of Credit

- (a) At the option of Project Co, any amount that the Authority is entitled to hold back under Section 5(c) (Substantial Completion Payment) may be replaced by a Letter of Credit that satisfies (in the discretion of the Authority) the requirements specified in Appendix 8A [Form of Letter of Credit] to this Schedule] (the “**Deficiency Holdback Letter of Credit**” and/or the “**Warranty Holdback Letter of Credit**” and/or the “**LEED Holdback Letter of Credit**” and/or the “**Energy Holdback Letter of Credit**” and/or the “**Carbon Holdback Letter of Credit**” and/or the “**M&V Holdback Letter of Credit**” and/or the “**Builders Lien Holdback Letter of Credit**”, as applicable), which Letter(s) of Credit will remain in full force and effect until the date that is:
  - (1) in the case of the Deficiency Holdback Letter of Credit, 1 month after the later of the date on which SFB Expansion Total Completion and New Tower Total Completion is achieved;

- (2) in the case of the Warranty Holdback Letter of Credit, 25 months after the Substantial Completion Date;
  - (3) in the case of the LEED Holdback Letter of Credit, 37 months after the New Tower Substantial Completion Date;
  - (4) in the case of the Energy Holdback Letter of Credit, 25 months after the New Tower Substantial Completion Date;
  - (5) in the case of the Carbon Holdback Letter of Credit, 25 months after the New Tower Substantial Completion Date;
  - (6) in the case of the M&V Holdback Letter of Credit, 25 months after the New Tower Substantial Completion Date; and
  - (7) in the case of the Builders Lien Holdback Letter of Credit, three months after the Substantial Completion Date.
- (b) Notwithstanding any termination of this Agreement prior to such expiry date, but subject to any obligation of the Authority to return such Letter(s) of Credit to Project Co prior to such expiry date, upon receipt of such Letter(s) of Credit, the Authority will pay to Project Co an amount equal to the retained amount that each such Letter of Credit is replacing.

## 8.2 Replacement Letters of Credit

If:

- (a) Project Co fails to replace any Letter of Credit within ten Business Days after the downgrading of the institution issuing or confirming such Letter of Credit below the level specified in Appendix 8A [Form of Letter of Credit] to this Schedule; or
- (b) the institution issuing or confirming any Letter of Credit notifies the Authority that such Letter of Credit will not be renewed in accordance with its terms and Project Co has not (by the date which is ten Business Days prior to the date of termination or expiry of such Letter of Credit) made arrangements satisfactory to the Authority, in its discretion, that will result in such Letter of Credit being replaced with effect from the date of its termination or expiry with a Letter of Credit that satisfies (in the discretion of the Authority) the requirements specified in Appendix 8A [Form of Letter of Credit] to this Schedule,

the Authority will be entitled to make a demand for the full principal amount of such Letter of Credit and deposit the proceeds of such demand in an account in the name of the Authority, in which event the Authority will thereafter be entitled to withdraw funds from such account in an aggregate amount up to the relevant principal amount so deposited in any circumstance in which the Authority would otherwise have been entitled in accordance with this Agreement to make a demand under such Letter of Credit, provided that, if, at any time after the Authority has made such a demand for the full principal amount of such Letter of Credit, Project Co delivers a replacement Letter of Credit to the Authority that satisfies (in the discretion of the Authority) the requirements specified in Appendix 8A [Form of Letter of Credit] of this Schedule, the Authority will pay Project Co the amount, as at the date of delivery of such replacement Letter of Credit,

standing to the credit of such account on account of the Authority having deposited the principal amount from the original Letter of Credit, less any amounts subsequently withdrawn therefrom (and for greater certainty, the Authority will be entitled to retain for its own account any interest that has accrued thereon).

## **9. AUTHORITY RIGHTS TO AUDIT**

### **9.1 Audit Rights**

Project Co will at all times ensure that the Authority has unrestricted rights of audit, review, and investigation over all records and documentation (including the Financial Model, any update or adjustment to the Financial Model and any other financial model) directly or indirectly relating to or used in connection with, or relevant to, the calculation of any payment to be made by one party to the other under or pursuant to the terms of this Agreement, including all records and documentation relating to or used in connection with, or relevant to, the determination or calculation of any adjustment to the Contract Price.

### **9.2 Inaccuracies in Payments**

Subject to Section 6.5 (Full Settlement) of Schedule 9 [Compensation on Termination], if there is any inaccuracy in any demand, invoice, or payment application issued by a party pursuant to this Agreement providing for the payment of an amount from one party to the other, whether determined upon an examination by the Authority pursuant to Section 4.2 (Records and Reports) of this Agreement or otherwise:

- (a) the necessary adjustments in such demand, invoice, or payment application and resulting payment will be made by the applicable party within 10 Business Days after the date such inaccuracy is established by agreement or pursuant to the Dispute Resolution Procedure; and
- (b) if such inaccuracy results in an underpayment or overpayment being made by one party to another party (as against the sum that would have been paid but for such inaccuracy), then, if the paying party or the receiving party, as the case may be, issued the demand, invoice, or payment application containing such inaccuracy, the paying party or the receiving party will, in addition to paying such underpayment or repaying such overpayment, as the case may be, to such other party, pay interest thereon at a rate per annum equal to the Default Rate from the date of payment by the relevant party to such other party pursuant to the original demand, invoice, or payment application to the date of payment of such underpayment by the paying party or the date of repayment of such overpayment by the receiving party, as the case may be.

**Table 8A – Cumulative Maximum Construction Payments**

<b>Month<sup>1</sup></b>	<b>Cumulative Maximum Construction Payments<sup>2</sup> (\$000 Nominal)</b>
1	417
2	637
3	851
4	986
5	1,267
6	1,400
7	1,689
8	1,899
9	2,221
10	2,463
11	2,712
12	6,033
13	12,915
14	17,882
15	24,284
16	35,290
17	42,630
18	55,286
19	67,071
20	76,699
21	87,790
22	98,038
23	110,971
24	130,302
25	145,013
26	154,206
27	163,595
28	172,887
29	181,039
30	186,586
31	191,892
32	195,676
33	198,998
34	201,608
35	204,040
36	206,541

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<sup>1</sup> Month 1 is June 2021.

<sup>2</sup> Total of all monthly maximum Construction Payment installments to date.

<b>Month<sup>1</sup></b>	<b>Cumulative Maximum Construction Payments<sup>2</sup> (\$000 Nominal)</b>
37	208,120
38	209,299
39	210,298
40	211,685
41	213,352
42	213,352
43	233,365



**APPENDIX 8A**  
**FORM OF LETTER OF CREDIT**

**[NTD: Letters of Credit are to be issued or confirmed by one of the following, in each case as acceptable to the Authority:**

- (a) a Canadian chartered bank with offices in Vancouver, or any other domestic Canadian bank or financial institution with offices in Vancouver, and in any such case whose long term debt has a credit rating of not less than A (Standard & Poors), A2 (Moody's Investors Service Inc.) or A (Dominion Bond Rating Service); or**
- (b) a financial institution that is not a domestic Canadian financial institution whose sovereign country's debt rating is not less than AA (Standard & Poors), Aa2 (Moody's Investors Service Inc.) or AA (Dominion Bond Rating Service), provided that the Authority may accept a sovereign country's debt rating of AA- (Standard & Poors), Aa3 (Moody's Investors Service Inc.) or AA (low) (Dominion Bond Rating Service) if the financial institution's long term debt has a credit rating of not less than A (Standard & Poors), A2 (Moody's Investors Service Inc.) or A (Dominion Bond Rating Service),**

**and the issuing or confirming institution must meet these minimum credit ratings at all times during the validity period of the Letter of Credit. If such credit rating agencies publish differing credit ratings for the same financial institution or sovereign country, the lowest credit rating of any of the credit rating agencies shall apply for the purposes of the foregoing. Any Letter of Credit shall be callable at the issuing or confirming institution's counter in Vancouver.**

**This form of Letter of Credit shall be amended appropriately for use for each relevant Letter of Credit, with the expiry date as set out in Section 8.1(a):of this Schedule.]**

**[Name and address of Issuing Bank in Vancouver, BC]**

**[Date of issue]**

FRASER HEALTH AUTHORITY  
**[insert appropriate address]**

**[Attention]**

(the "**Beneficiary**")

Re: Project Agreement dated [•] between the Beneficiary and EllisDon Infrastructure BHRP Inc. (the "**Applicant**") in respect of the Burnaby Hospital Redevelopment Project - Phase One.

By order of our client, the Applicant, we hereby issue our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (this "**Standby Letter of Credit**") in an amount not to exceed in the aggregate CAD\$• to the Beneficiary, effective immediately and expiring on **[Fixed and determinable date]** (the "**Expiry Date**").

We, **[Name of Issuing Bank]** (the "**Issuing Bank**"), at our offices shown above in Vancouver, British Columbia, Canada (the "**Offices**"), shall immediately pay to you under this Standby Letter of Credit any amount or amounts claimed, not to exceed in the aggregate CAD\$•, upon presentation of a sight draft, appropriately completed, in the form of Annex 1 hereto (the "**Sight Draft**") being made upon us at our counter during normal business hours accompanied by the original of this Standby Letter of Credit and any amendments hereto.

Partial and multiple drawings are permitted.

If the Holder's Sight Draft, appropriately completed and the original of this Standby Letter of Credit and any amendments hereto are received by us at the Offices on or before the Expiry Date, we shall honour without enquiring whether you have a legitimate claim between yourself and the Applicant.

After the Expiry Date has elapsed, no draw shall be honoured by us save to any Sight Draft presented by the Holder according to the requirements of this Standby Letter of Credit prior to the Expiry Date.

All banking charges are for the account of the Applicant.

It is a condition of this Standby Letter of Credit that it shall be deemed automatically extended from year to year for successive one year periods from the Expiry Date (each anniversary of the Expiry Date thus becoming the new "**Expiry Date**"), but not beyond \_\_\_\_\_, unless we notify the Holder in writing at least 60 days prior to the then applicable Expiry Date that we irrevocably elect not to consider this Standby Letter of Credit renewed for such further period. Such notice must be sent by registered mail or courier, each with proof of delivery, to the Holder at the address set forth above or such other address designated by the Holder from time to time.

IT IS A CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT IS TRANSFERABLE AND MAY BE TRANSFERRED IN ITS ENTIRETY, BUT NOT IN PART, AND MAY BE SUCCESSIVELY TRANSFERRED BY THE THEN CURRENT HOLDER TO A TRANSFEREE. TRANSFER OF THIS STANDBY LETTER OF CREDIT TO SUCH TRANSFEREE SHALL BE EFFECTED UPON PRESENTATION TO US AT THE OFFICES OF THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT AND ANY AMENDMENTS HERETO ACCOMPANIED BY A REQUEST DESIGNATING THE TRANSFEREE IN THE FORM ATTACHED HERETO AS ANNEX 2 APPROPRIATELY COMPLETED. All future amendments under this Standby Letter of Credit are to be advised directly to the transferee without the consent of, or notice to, any prior Holder and all future correspondence and notifications in respect of this Standby Letter of Credit are to be sent to the transferee and not to any prior Holder.

In this Standby Letter of Credit, “**Holder**” means either (i) if no transfer has occurred, the Beneficiary or (ii) if a transfer has occurred, the last transferee under the above provision.

DOCUMENTS SHALL BE PRESENTED AT OUR ADDRESS MENTIONED ABOVE OR AT THE [NAME AND ADDRESS OF ISSUING BANK] ON OR BEFORE THE EXPIRY DATE.

This Standby Letter of Credit is subject to and governed by International Standby Practices ISP98 of International Chamber of Commerce publication no. 590.

All matters not covered by ISP98 shall be interpreted and governed by the laws of British Columbia and the federal laws of Canada applicable therein. The parties irrevocably attorn to the exclusive jurisdiction of the courts of British Columbia. The number of this Letter of Credit must be quoted on all documents required hereby.

•

Per: \_\_\_\_\_  
Authorized Signatory

•

Per: \_\_\_\_\_  
Authorized Signatory

**ANNEX 1**

**SIGHT DRAFT**

To: [Name of Issuing Bank]  
[Address of Offices]

Re: [• name of Issuing Bank]'s Standby Letter of Credit No. [•] dated [•] (the “**Standby Letter of Credit**”) issued in favour of Fraser Health Authority on behalf of [•] (the “**Applicant**”)

We refer to the Standby Letter of Credit. Terms defined in the Standby Letter of Credit have the same meaning when used in this Sight Draft.

We hereby request payment of CAD\$[•] ([•] Canadian Dollars).

Payment should be made to the following account:

Name: [•]  
Account Number: [•]  
Bank: [•]

We hereby confirm that the undersigned is entitled to present the Standby Letter of Credit for payment in accordance with the terms and conditions of the Project Agreement between the Beneficiary and the Applicant in respect of the Broadway Subway Project.

Yours truly,  
[• **Name of Holder**]

By: \_\_\_\_\_  
Authorized Signatory

**ANNEX 2**

**REQUEST DESIGNATING THE TRANSFEREE**

To: [Name of Issuing Bank]  
[Address of Offices]

Re: [• name of Issuing Bank]'s Standby Letter of Credit No. [•] dated [•] (the “**Standby Letter of Credit**”) issued in favour of Fraser Health Authority on behalf of [•] (the “**Applicant**”)

We refer to the Standby Letter of Credit. Terms defined in the Standby Letter of Credit have the same meaning when used in this Request Designating the Transferee.

The undersigned Holder demands transfer of drawing rights in their entirety including our rights to demand further payment, reduction, cancellation, and transfer under the Standby Letter of Credit and rights to give or withhold consent to any pending or future amendment or cancellation in the amount of CAD \$• to the following transferee:

[Name of Transferee]  
[Full Address of Transferee]

We enclose herewith the original Standby Letter of Credit together with any amendments thereto for your endorsement purposes. The transfer will be issued in accordance with the terms of the Standby Letter of Credit.

We understand that the transferee, from and after its issuance date, will have all of Holder’s rights that are supported by the Standby Letter of Credit. We further state that there are no outstanding demands by us for any other transfer or for any payment, or for any reduction or cancellation under the Standby Letter of Credit. We agree to make no such demands or requests while this demand is outstanding.

This request to transfer is subject to Rules 6.01 to 6.05 of International Standby Practices ISP98 of International Chamber of Commerce publication no. 590.

We certify that the below signatories are genuine and that they have the authority to sign on behalf of the Holder.

[• **Name of Holder**]

By: \_\_\_\_\_  
Authorized Signatory