

**SCHEDULE 8**

**PAYMENTS**

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**APPENDIX 8A MAXIMUM CUMULATIVE CONSTRUCTION PAYMENTS**

## SCHEDULE 8

### PAYMENTS

#### 1. INTERPRETATION

##### 1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 of this Agreement:

"**Construction Completion Payment**" means \_\_\_\_\_ ;

"**Construction Payments**" has the meaning set out in Section 2.2 of this Schedule;

"**Contract Price**" has the meaning set out in Section 2.1 of this Schedule;

"**Deduction**" means a deduction from payments due from the Owner to Project Co under this Agreement;

"**Deficiency Holdback**" has the meaning set out in Section 0 of this Schedule;

"**LEED Holdback**" has the meaning set out in Section 0 of this Schedule;

"**Schedule of Values**" means the schedule that allocates the Contract Price and that is the basis for monthly payments by the Owner for Construction properly performed pursuant to this Agreement, a copy of which schedule has been delivered by Project Co pursuant to Schedule 18 [Completion Documents];

"**Service Commencement Payment**" has the meaning set out in Section 2.3 of this Schedule; and

"**Warranty Holdback**" has the meaning set out in Section 0 of this Schedule.

#### 2. PAYMENTS

##### 2.1 Contract Price

- (a) Project Co will perform all of its obligations under this Agreement for a contract price of \_\_\_\_\_, exclusive of GST (the "**Contract Price**"). The Contract Price is not subject to change except to the extent expressly provided in this Agreement.
- (b) The Contract Price consists of the total amount of the Construction Payments, payable in accordance with Section 2.2, plus the Construction Completion Payment.

##### 2.2 Construction Payments

The Owner will make payments to Project Co ("**Construction Payments**") monthly calculated in accordance with the following:

- (a) The Construction Payment for a month will be calculated as follows:

$$\text{CPP}_n = \text{CP}_n - \text{CPD}_n$$

Where:

CPPn = The Construction Payment payable for month n

CPn = The Construction Payment for month n, as determined by the following:

- (1) if the cumulative value of Design and Construction up to and including month n certified by the Independent Certifier in accordance with Section 3.5 of this Schedule is less than or equal to \_\_\_\_\_ then the Construction Payment for month n is \_\_\_\_\_ ;
- (2) if the cumulative value of Design and Construction up to and including month n certified by the Independent Certifier in accordance with Section 3.5 of this Schedule is greater than \_\_\_\_\_ and less than \_\_\_\_\_ , then the Construction Payment for month n is equal to:
  - (A) \_\_\_\_\_ of the amount that is calculated as the cumulative value of Design and Construction up to and including month n less \_\_\_\_\_ , less \_\_\_\_\_
  - (B) the cumulative amount of all Construction Payments payable prior to month n;
- (3) if the cumulative value of Design and Construction up to and including month n certified by the Independent Certifier in accordance with Section 3.5 of this Schedule is greater than \_\_\_\_\_ then the Construction Payment for month n is equal to:
  - (A) \_\_\_\_\_ of \_\_\_\_\_ less \_\_\_\_\_ , plus \_\_\_\_\_
  - (B) \_\_\_\_\_ of the amount that is calculated as the cumulative value of Design and Construction up to and including month n less \_\_\_\_\_ , less \_\_\_\_\_
  - (C) the cumulative amount of all Construction Payments payable prior to month n.

CPDn = The Deductions made by the Owner in month n, in accordance with Section 2.4 of this Schedule

- (b) If the cumulative Construction Payments up to and including month n certified by the Independent Certifier in accordance with Section 3.5 of this Schedule exceed the applicable value as set out in Column A (Maximum Cumulative Construction Payments) of Appendix 8A [Maximum Cumulative Construction Payment], the Construction Payment for month n will be reduced by such excess amount.

### 2.3 Service Commencement Payment

Upon the achievement of Service Commencement, the Owner will make a payment to Project Co (the "**Service Commencement Payment**"). The Service Commencement Payment will be calculated as follows:

$$\text{SCP} = \text{CCP} - \text{H}$$

Where:

SCP = Service Commencement Payment

CCP = Construction Completion Payment

H = The Deficiency Holdback, the Warranty Holdback and the LEED Holdback calculated in accordance with Section 2.6 of this Schedule

Upon receipt of the Certificate of Service Commencement, Project Co will provide the Owner with an invoice in the amount of the Service Commencement Payment.

## 2.4 Construction Deductions

Subject to Section 9.10 [Owner's Right of Set Off] of the Agreement, the Owner will be entitled, regardless of the time at which the events giving rise to the Deductions occurs, to deduct or set-off the amount of any Deductions provided in this Agreement against any amounts payable at any time by the Owner to Project Co.

## 2.5 Lien Holdback

Project Co will make all applicable builders' lien holdbacks in accordance with Section 6.13 of Schedule 2 [Design and Construction Protocols].

## 2.6 Holdbacks

### (a) Holdback for Deficiencies

(1) The Owner may withhold from the Service Commencement Payment a holdback amount that is two times its reasonably estimated costs to fully correct any Deficiencies if such Deficiencies are not fully corrected by their respective Deficiency Deadlines as required by Section 13.5 of Schedule 2 [Design and Construction Protocols] to the satisfaction of the Owner, acting reasonably (the "**Deficiency Holdback**"). The Deficiency Holdback will also include:

(A) an amount for training after Service Commencement in accordance with Section 16.1 of Schedule 2 [Design and Construction Protocols], and

(B) an amount for Post-Service Commencement Equipment Work in accordance with Section 9.3 of Appendix 2E [Equipment and Furniture],

provided however that the amounts described in (A) and (B) above will be a single amount and not two times the reasonably estimated costs to provide such training or the Post-Service Commencement Equipment Work.

(2) Where the Owner carries out, or has others carry out, the work to correct Deficiencies pursuant to Section 13.6 of Schedule 2 [Design and Construction Protocols], the Owner may deduct its costs and expenses from the Deficiency Holdback.

(3) Subject to Sections 2.6(a)(4) and 2.6(a)(5) below, the Owner will release the net amount of the Deficiency Holdback to Project Co when the requirements of this Agreement in relation to the correction of such Deficiencies have been met to the satisfaction of the Owner, acting reasonably. Project Co may apply monthly for

release of the Deficiency Holdback on a pro-rata basis for Deficiencies that have been confirmed by the Owner, acting reasonably, as having been completed.

- (4) Payment from the Deficiency Holdback for the training referenced in Section 16.1 of Schedule 2 [Design and Construction Protocols] will be released to Project Co monthly as such training is provided.
- (5) Payment from the Deficiency Holdback for the Post-Service Commencement Equipment Work will be released to Project Co monthly as such Post-Service Commencement Equipment Work is carried out.

(b) Holdback for Warranty

- (1) The Owner may withhold from the Service Commencement Payment a holdback of \$15 Million for Defects arising during the Warranty Period (the "**Warranty Holdback**").
- (2) Where the Owner carries out, or has others carry out, the work to remedy Defects pursuant to Section 9.16(d) of this Agreement, the Owner may deduct its costs and expenses from the Warranty Holdback.
- (3) The Owner will release the net amount of the Warranty Holdback to Project Co at the later of the expiry of the Warranty Period and the date of completion of making good all Defects that are identified during the Warranty Period to the satisfaction of the Owner.

(c) Holdback for LEED

- (1) The Owner may withhold from the Service Commencement Payment a holdback of \$500,000 with respect to obtaining LEED Gold Certification as required by Section 4.6 of Schedule 2 [Design and Construction Protocols] (the "**LEED Holdback**").
- (2) If Project Co fails to obtain LEED Gold Certification within 24 months after the Service Commencement Date, the Owner may deduct the amounts set out in Section 4.6(g) of Schedule 2 [Design and Construction Protocols] from the LEED Holdback.
- (3) The Owner will release the net amount of the LEED Holdback to Project Co at the earlier of the receipt of LEED Gold Certification or expiry of the 24 month period.

## 2.7 Letter of Credit

Project Co as an alternative to the retention of the holdbacks set out in Section 2.6 of this Schedule may propose to the Owner to provide a clean irrevocable standby letter of credit from a financial institution acceptable to the Owner in a form acceptable to the Owner. If the Owner accepts the proposal, the Owner will upon receipt of the letter of credit release such holdbacks to the Design-Builder.

## 2.8 BC Hydro Service Connection

Project Co acknowledges that the work Project Co is required to perform in relation to the BC Hydro service connection, referenced in Section 7.8.3.1 of Schedule 3 [Design and Construction Specifications], will be based on a design to be provided by BC Hydro after the Effective Date. Project Co will perform such work in accordance with the requirements of Schedule 3 [Design and Construction Specifications]. The Owner will then reimburse Project Co for the costs incurred by Project Co in performing such work, with such costs

being valued as a Change in accordance with Schedule 6 [Changes], except that no mark-up will be paid by the Owner to Project Co or to the Design-Builder in connection with such costs. Project Co will pay BC Hydro's costs in relation to the service connection in accordance with Section 5.1 of this Schedule

### **3. APPLICATIONS FOR CONSTRUCTION PAYMENTS**

#### **3.1 Applications for Construction Payments**

Project Co will make applications for payment of the Construction Payments in accordance with this Section 3. Applications for payment will be:

- (a) submitted to the Independent Certifier, with a copy to the Quality Monitor and the Owner;
- (b) dated the last day of the monthly period;
- (c) for the value, proportionate to the amount of the Contract Price, of Construction performed and material and equipment delivered to the Site, or delivered off-Site under conditions acceptable to the Owner acting reasonably, to and at the date of submission; and
- (d) submitted no more than once per month.

#### **3.2 Schedule of Values**

The Schedule of Values will be used as the basis for all applications for payment, unless it is determined at any time by the Independent Certifier to be in error, in which case it will be corrected in accordance with the Independent Certifier's directions.

#### **3.3 Supporting Documents**

When making applications for payment, Project Co will submit a statement based upon the Schedule of Values. Claims for material and equipment delivered to the Site but not yet incorporated into the Facility will be supported by such evidence as the Independent Certifier may reasonably require to establish the value and their delivery.

#### **3.4 Content of Application for Payment**

Subject to any further information that may be required by the Owner, the application for payment will include:

- (a) the amount applied for in the application;
- (b) the value of Design and Construction performed in compliance with this Agreement, including the Reviewed Drawings and Specifications;
- (c) the value of material and equipment delivered to the Site;
- (d) the amount of Deductions incurred in that month and in preceding months but not yet deducted;
- (e) certification by Project Co that the project binder required pursuant to Section 6.23(k) of Schedule 2 [Design and Construction Protocols] includes documentation current to within at least 30 days prior to the application, including all inspection reports;
- (f) a statutory declaration of an officer or senior management employee of Project Co stating that all accounts for labour, subcontracts, materials, construction machinery and

equipment and other indebtedness which may have been incurred by Project Co in performing the Construction and for which the Owner 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

- (g) a clearance letter from the Workers' Compensation Board indicating that all current assessments due from Project Co, the Design-Builder and all Subcontractors with subcontracts larger than \$50,000 in value have been paid.

### **3.5 Review of Application for Payment**

The Independent Certifier, will, within 10 Business Days of receipt of Project Co's application for payment:

- (a) accept and certify the amount set out in the application for payment; or
- (b) adjust the amount of any payment to reflect the Design and Construction satisfactorily performed in accordance with this Agreement and the Reviewed Drawings and Specifications as of the date of the application for payment and/or adjust the amount of any payment to reflect applicable Deductions incurred by Project Co in the previous month, and in preceding months but not yet deducted, and certify the amount of the Construction Payment.

If the Independent Certifier amends the application for payment, the Independent Certifier will promptly notify Project Co in writing and give reasons for the amendment.

### **3.6 Payment**

The Owner will pay Project Co within 10 Business Days of the Independent Certifier approving or adjusting Project Co's application for payment in accordance with Section 3.5(b) of this Schedule and the Schedule of Values, provided that at no time can the total of all Construction Payments exceed the amount set out in Section 2.2(b) of this Schedule.

## **4. GENERAL PAYMENT PROVISIONS**

### **4.1 Invoicing and Payment Arrangements**

With respect to all invoicing (including applications for payment under Section 3 of this Schedule) and payment under this Agreement, the following will apply.

- (a) Project Co will provide the Owner with an invoice in a form agreed by the parties, acting reasonably. The invoice will include as a minimum:
  - (1) any amount owing to the Owner under this Agreement;
  - (2) any amount owing to Project Co under this Agreement;
  - (3) the amount of applicable GST;
  - (4) the amount of applicable PST;
  - (5) Project Co's GST registration number; and
  - (6) the net amount owing by the Owner to Project Co, or by Project Co to the Owner, as applicable;

- (b) the Owner will:
  - (1) review each invoice submitted in accordance with this Section 4.1 within 5 Business Days;
  - (2) pay the amount approved by the Owner on the 10th Business Day after receipt of the invoice; and
  - (3) concurrently advise Project Co of any amounts the Owner has not approved and the reasons for non-approval;
- (c) Project Co:
  - (1) will, after discussion and agreement with the Owner, clarify and resubmit an invoice for any amounts not approved by the Owner in any previously submitted invoice and the Owner will pay such agreed amounts in accordance with Section 0; and
  - (2) may refer for resolution pursuant to the Dispute Resolution Procedure the amount of any invoice it has not agreed with the Owner;
- (d) the Owner will not be obligated to make any payment unless all conditions of payment in this Agreement have been satisfied;
- (e) Project Co will include with each invoice such supporting documentation as is reasonably required to substantiate and confirm the invoiced amounts; and
- (f) no payment will be construed as an acceptance or approval of incomplete, defective or improper Design, Construction or any other matter provided by Project Co which is not in conformance with the requirements of this Agreement, and will not operate to relieve Project Co from any of its obligations under this Agreement.

## **5. CASH ALLOWANCE**

### **5.1 Third Party Utilities Cash Allowance**

- (a) This Section 5.1 applies to a cash allowance of \_\_\_\_\_ (plus applicable GST) for the payment of third party utilities costs associated with Sections 4.24.11.2 and 7.8.3.1 of Schedule 3 [Design and Construction Specifications] of which the responsibilities in Section 4.24.11.2 are defined as power and telecom utility fees for relocation and/or undergrounding of infrastructure within the footprint of the off-site roadworks, and relocation of the West Precinct manhole and in Section 7.8.3.1 are defined as BC Hydro to supply a new 12.47-kV double dual radial service to the Site that will terminate at two (2) indoor Vista switches located within the Facility.
- (b) The parties acknowledge that the Contract Price includes such cash allowance of \_\_\_\_\_ (plus applicable GST). The cash allowance will be expended, if at all, only in accordance with Schedule 3 [Design and Construction Specifications].
- (c) The cash allowance covers the net cost to Project Co of all such third party utilities costs that are incurred as stipulated under the cash allowance.
- (d) Where the actual costs expended by Project Co for third party utilities costs under the cash allowance exceed the amount of the cash allowance, Project Co will be compensated for any excess costs incurred and substantiated, but not for Project Co's overhead and profit



on such amount. Where the actual costs expended by Project Co for third party utilities costs under the cash allowance is less than the amount of the cash allowance, the Owner will upon request be credited for the unexpended portion of the cash allowance. The adjustments will be made on a lump sum basis.

- (e) The Contract Price will be adjusted to provide for any difference between the amount of the cash allowance and the actual cost of the third party utilities costs under the cash allowance.

**APPENDIX 8A**

**MAXIMUM CUMULATIVE CONSTRUCTION PAYMENTS**

Construction Period (Month)	Maximum Cumulative Construction Payment (A)
24-Feb-21	
26-Feb-21	
28-Feb-21	
31-Mar-21	
30-Apr-21	
31-May-21	
30-Jun-21	
31-Jul-21	
31-Aug-21	
30-Sep-21	
31-Oct-21	
30-Nov-21	
31-Dec-21	
31-Jan-22	
28-Feb-22	
31-Mar-22	
30-Apr-22	
31-May-22	
30-Jun-22	
31-Jul-22	
31-Aug-22	
30-Sep-22	
31-Oct-22	
30-Nov-22	
31-Dec-22	
31-Jan-23	
28-Feb-23	
31-Mar-23	
30-Apr-23	
31-May-23	
30-Jun-23	
31-Jul-23	
31-Aug-23	
30-Sep-23	
31-Oct-23	

30-Nov-23	
31-Dec-23	
31-Jan-24	
29-Feb-24	
31-Mar-24	
30-Apr-24	
31-May-24	
30-Jun-24	
31-Jul-24	
31-Aug-24	
30-Sep-24	
31-Oct-24	
30-Nov-24	
31-Dec-24	
31-Jan-25	
28-Feb-25	
31-Mar-25	
30-Apr-25	
31-May-25	
30-Jun-25	
31-Jul-25	
31-Aug-25	
30-Sep-25	
31-Oct-25	
30-Nov-25	
31-Dec-25	
31-Jan-26	
28-Feb-26	
31-Mar-26	
30-Apr-26	
31-May-26	
30-Jun-26	
31-Jul-26	
<b>Total</b>	