

APPENDIX 8B

CONSTRUCTION PERIOD PAYMENTS

1. DEFINITIONS

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

“Construction Payment” has the meaning set out in Section 2 of this Appendix;

“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 *Builders Lien Act* (British Columbia)) for Construction performed by the Design-Builder, as certified by the Independent Certifier as contemplated in Section 3.4 of Schedule 2 [Design and Construction Protocols];
- (b) the total amounts paid or payable by Project Co in respect of SPV Costs, as evidenced by supporting invoices up to the cumulative maximum applicable to that month as set out in Column B of Table 8B-2;
- (c) an amount totalling \$9,688,323.38 calculated prior to the Effective Date to reflect an assumption regarding an amount that may be generally described as “interest during construction” (but not necessarily reflecting 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 Column C of Table 8B-2;
- (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, as evidenced by supporting invoices up to the cumulative maximum applicable to that month as set out in Column D of Table 8B-2;
- (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 Column E of Table 8B-2; and
- (f) without duplication of the above amounts, the total amounts paid or payable by Project Co in respect of mobilization costs, up to the cumulative maximum applicable to that month as set out in Column F of Table 8B-2;

“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;

“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;

“Table 8B-1” means Table 8B-1 attached to this Appendix; and

“Table 8B-2” means Table 8B-2 attached to this Appendix.

2. CONSTRUCTION PAYMENT AMOUNTS

The Authority will make monthly payments (each a **“Construction Payment”**) to Project Co during the Construction Period in accordance with this Appendix. The amount payable by the Authority to Project Co as a Construction Payment as at the end of the month indicated in Table 8B-1 will be the amount by which the lesser of:

- (a) the cumulative maximum applicable to that month as set out in Column B of Table 8B-1; and
- (b) 40% of the Cost to Date at the end of that month,

exceeds the total of all Construction Payments previously paid by the Authority to Project Co under this Appendix. These 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).

3. INVOICING AND PAYMENT

Project Co will invoice the Authority for Construction Payments at any time after the end of the applicable month and will include with that invoice:

- (a) a certificate of the Independent Certifier certifying (in the manner outlined in Section 3.4 of Schedule 2 [Design and Construction Protocols]) the Cost to Date as at the end of the applicable month;
- (b) the amount of GST payable;
- (c) copies of all certifications (including from the Lender’s Technical Advisor) provided to, and communications from, the Senior Lenders (other than those previously provided under this Appendix) with respect to payments to the Design-Builder for the applicable payment period, the cost to complete the Project, the sufficiency of funds available to Project Co to complete the Project and the likelihood that Service Commencement will be achieved by the Longstop Date;
- (d) a certificate of an officer of Project Co certifying that:

- (1) 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 the Design-Builder made on or before the date of the invoice;
- (2) 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;
- (3) Project Co is not in default under either the Project Agreement or any of the Senior Financing Agreements;
- (4) Project Co has available to it sufficient funds to complete the Project; and
- (5) the Project can reasonably be expected to achieve Service Commencement by the Longstop Date.

The Authority will review each invoice submitted in accordance with this Section 3 of this Appendix within 5 Business Days and pay the amount approved by the Authority within 10 Business Days after receipt of the invoice.

Table 8B-1 – Cumulative Maximum Construction Payments, Maximum Additional Construction Payments

Table 8B-1	
Month¹	Cumulative Maximum Construction Payments²
1	8,441,566.30
2	8,534,444.19
3	10,120,502.50
4	11,238,284.32
5	12,413,398.44
6	13,719,083.36
7	15,367,508.14
8	17,353,013.45
9	19,569,424.27
10	23,473,601.13
11	26,167,141.61
12	29,010,620.55
13	32,440,167.72
14	36,175,350.22
15	40,312,421.48
16	44,473,323.84
17	48,448,501.10
18	52,505,943.60
19	55,839,266.68
20	59,097,531.04
21	62,312,154.07
22	65,438,567.16
23	68,662,565.86
24	71,884,594.31
25	75,390,985.76
26	78,625,804.92
27	81,317,689.43
28	83,813,715.69
29	86,236,576.63
30	88,312,438.91
31	90,053,116.20
32	91,427,664.53
33	92,198,419.35
34	92,967,381.38

¹ number of months after Financial Close, month 1 being April -16

² total of all monthly maximum Construction Payment installments to date

Table 8B-2 – Cumulative Maximum - SPV Costs, Interest during Construction Period, Fees during Construction Period and Proposal Response Costs

A	B	C	D	E	F
Month ³	Cumulative Maximum SPV Costs	Cumulative Maximum Interest during Construction Period	Cumulative Maximum Fees during Construction Period	Cumulative Maximum Proposal Response Costs	Cumulative Maximum Mobilization Costs
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					
33					
34					

³ number of months after Financial Close, month 1 being Apr-16