

APPENDIX 2H

UNDISCLOSED ROTTING STRUCTURAL COMPONENTS AND BRICK REPOINTING AND RENDER REPAIRS

1. DEFINITIONS

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

“Approved Excess Repointing or Render Repair Work” means the Proposed Repointing or Render Repair Work approved by the Authority pursuant to Section 4.2 of this Appendix;

“Approved Structural Work” means Proposed Structural Work approved by the Authority pursuant to Section 2.2 of this Appendix;

“Cash Allowance Account” means a separate, interest-bearing bank account for all Approved Structural Work related cash flows that is maintained by Project Co at the Authority’s direction as contemplated in this Appendix;

“Cash Allowance Amount” means \$1,000,000;

“Excess Repointing or Render Repair Work” has the meaning set out in Section 4.1 of this Appendix;

“Masonry Condition Summary” means the Masonry Condition Summary prepared by McGinn Engineering and Architecture Ltd.;

“Proposed Repointing or Render Repair Work” has the meaning set out in Section 4.1(a) of this Appendix;

“Proposed Structural Work” has the meaning set out in Section 2.1(a) of this Appendix;

“Repointing or Render Unit Prices” mean:

(a) for repointing work: $\$2.32/m^2$; and

(b) for render repair work: $\$2.32/m^2$;

“Request for Payment Approval” has the meaning set out in Section 3.5 of this Appendix;

“Request for Repointing or Render Repair Work Approval” has the meaning set out in Section 4.1 of this Appendix;

“Request for Structural Work Approval” has the meaning set out in Section 2.1 of this Appendix; and

“Undisclosed Rotting Structural Components” means key wooden structural components of a Building (such as beams, columns and joists) which:

(a) due to wood rot or decay, must reasonably be reinforced or replaced in order to ensure the integrity of the structural component for the intended use and occupancy design loads; and

- (b) were not identified in a Building Condition Report, or which could not be reasonably inferred from information that Project Co obtained in a Building Condition Report or from a Building inspection, as rotting, decaying or otherwise requiring reinforcement or replacement.

2. SUBMISSION AND APPROVAL OF STRUCTURAL WORK

2.1 Request for Work Approval

If, pursuant to Section 5.3.1.2 of Schedule 3 [Design and Construction Specifications], Project Co identifies any Undisclosed Rotting Structural Components, Project Co will provide to the Authority a request for approval ("**Request for Structural Work Approval**") which includes the following:

- (a) a description of the design and construction required to reinforce or replace such structural components in accordance with Section 5.3.1.2 of Schedule 3 (the "**Proposed Structural Work**"); and
- (b) subject to Section 3.4 of this Appendix, an estimate of Project Co costs and expenses reasonably necessary for and directly associated with the Proposed Structural Work, including the following (which will be shown separately if requested by the Authority), as applicable:
 - (1) all design costs (based on the estimated number of hours reasonably required to perform any additional design);
 - (2) all construction labour, material and equipment costs, supported as the case may be by quotations from the applicable Project Co Person;
 - (3) all costs of relevant Permits, including an amendment or renewal of a Permit, a new Permit or a Permit that is in the course of being obtained; and
 - (4) a description of the extent to which the Proposed Structural Work would interfere with Project Co's ability to comply with any of its obligations under this Agreement, the Material Contracts, any Sub-Contracts and any Permits.

2.2 Agreement on a Request for Structural Work Approval

As soon as practicable, and in any event within 15 Business Days after the Authority receives a Request for Structural Work Approval, or such longer period as the parties agree acting reasonably, the Authority will deliver to Project Co any requests for clarifications or amendments, and the parties' Representatives will meet and use all reasonable efforts to agree to the Request for Structural Work Approval, including the scope of the Proposed Structural Work, costs and other information contained in the Request for Structural Work Approval. Upon receipt of an approval from the Authority pursuant to this Section, Project Co will perform the approved Proposed Structural Work. If the parties do not agree on:

- (a) whether the Proposed Structural Work relates to an Undisclosed Rotting Structural Component; or
- (b) the valuation of the Proposed Structural Work,

either party may refer any such issue to the Dispute Resolution Procedure.

3. CASH ALLOWANCE FOR APPROVED STRUCTURAL WORK

3.1 Deposits to Cash Allowance Account

Project Co will deposit the Cash Allowance Amount into the Cash Allowance Account forthwith after the Effective Date and will manage the Cash Allowance Account in accordance with this Appendix.

3.2 Management of Cash Allowance Account

Project Co will establish the Cash Allowance Account and will manage all monies deposited in the Cash Allowance Account by Project Co pursuant to Section 3.1 of this Appendix in trust for the benefit of, and as directed by, the Authority as follows:

- (a) interest earned will accrue in the Cash Allowance Account and will be for the benefit of the Authority;
- (b) Project Co will grant to the Authority a first priority security interest in and to the Cash Allowance Account and the funds deposited therein and will execute all documents reasonably required by the Authority in connection with such security;
- (c) Project Co will withdraw monies from the Cash Allowance Account as approved by the Authority pursuant to Section 3.6 of this Appendix;
- (d) Project Co will provide a reconciliation of the Cash Allowance Account to the Authority on a monthly basis;
- (e) as Approved Structural Work is completed, Project Co will keep and update an overall budget for the Cash Allowance Account and will provide access to and copies of such budget to the Authority monthly and as otherwise required by the Authority;
- (f) if, at Service Commencement, there is a positive balance in the Cash Allowance Account, such balance will be the property of the Authority and will be paid by Project Co as directed by the Authority; and
- (g) the parties will review the operation of the Cash Allowance Account on a regular basis and agree to any appropriate modifications to ensure its efficient operation.

3.3 Minimizing Costs

Project Co will:

- (a) use all reasonable efforts to minimize the costs to complete Approved Structural Work; and
- (b) cause all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available in connection with Approved Structural Work to be attributed solely to reduce the cost to complete Approved Structural Work.

3.4 Mark-Ups and other Costs and Expenses Not to be Included by Project Co

Project Co will not include in a Request for Structural Work Approval or withdraw from the Cash Allowance Account any:

- (a) amount for any profit and overhead or any increase in Project Co's financing costs; or
- (b) costs and expenses incurred by Project Co related to the administration of the Cash Allowance Account, including the preparation of Requests for Structural Work Approval, Requests for Payment Approval or any required reporting,

with respect to any Proposed Structural Work or Approved Structural Work, all of which Project Co has already included in the Financial Model and will be paid by the Authority to Project Co as part of the Service Payments.

3.5 Payment Requests

Project Co will, on a monthly basis, provide to the Authority and to the Independent Certifier a request for payment approval (each, a "**Request for Payment Approval**") that includes the following information:

- (a) details of all Approved Structural Work performed by the applicable Project Co Person in the preceding month, including relevant supporting documentation;
- (b) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with such Approved Structural Work;
- (c) a description of any Approved Structural Work still to be completed; and
- (d) an updated schedule and cost estimate for any Approved Structural Work still to be completed.

3.6 Payment Approval

The Authority will, within 10 Business Days after receiving from the Independent Certifier a certificate confirming the completion of any Approved Structural Work described in a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the requested amount is approved. The Authority will only be permitted to withhold its approval if:

- (a) the Independent Certifier does not certify that the Approved Structural Work described in the Request for Payment Approval has been completed in accordance with this Agreement; or
- (b) the Authority determines that the Request for Payment Approval does not contain the information that the Authority requires, acting reasonably, to evaluate the Request for Payment Approval.

3.7 Payment

If the Authority approves the payment for the Approved Structural Work described in the Request for Payment Approval, Project Co may withdraw from the Cash Allowance Account, and retain for its account, the amount approved by the Authority pursuant to Section 3.6 of this Appendix.

3.8 Approved Structural Work in Excess of the Cash Allowance Amount

If at any time the value, as certified by the Independent Certifier pursuant to Section 3.6 of this Appendix, of any completed Approved Structural Work exceeds the amount of funds in the Cash Allowance Account, each further Request for Payment Approval will be deemed to be a Compensation Event to which Section 8 (Supervening Events) will apply, subject to the application of Sections 2 and 3.3 to 3.6 of this Appendix.

4. BRICK REPOINTING OR RENDER REPAIR WORK

4.1 Approval for Excess Brick Repointing or Render Repair Work

Prior to proceeding with any brick repointing or render repair work in excess of the façade surface area percentage(s) listed in the Masonry Condition Summary for the Building ("**Excess Repointing or Render Repair Work**"), Project Co will provide to the Authority a request for approval ("**Request for Repointing or Render Repair Work Approval**") which includes the following:

- (a) the surface area of Excess Repointing or Render Repair Work that Project Co proposes to undertake on each façade of a Building (the "**Proposed Repointing or Render Repair Work**");
- (b) a description of the design and construction required to complete the Proposed Repointing or Render Repair Work;
- (c) an estimate of the cost to the Authority, not including HST, of the Proposed Repointing or Render Repair Work (calculated using the Repointing or Render Unit Prices); and
- (d) if applicable, a description of how the Proposed Repointing or Render Repair Work would interfere with Project Co's ability to comply with any of its obligations under this Agreement, the Material Contracts, any Sub-Contracts and any Permits.

4.2 Agreement on a Request for Repointing or Render Repair Work Approval

As soon as practicable, and in any event within 15 Business Days after the Authority receives a Request for Repointing or Render Repair Work Approval, or such longer period as the parties agree acting reasonably, the Authority will deliver to Project Co any requests for clarifications or amendments, and the parties' Representatives will meet and use all reasonable efforts to agree to the scope of the Proposed Repointing or Render Repair Work. If the parties do not agree on whether the Proposed Repointing or Render Repair Work is necessary either party may refer any such issue to the Dispute Resolution Procedure.

4.3 Payment for Excess Repointing or Render Repair Work

Upon receipt of an approval from the Authority pursuant to Section 4.2 of this Appendix, Project Co will perform the Approved Excess Repointing or Render Repair Work. Project Co will notify the Independent Certifier when it has completed Approved Excess Repointing or Render Repair Work and the Authority will, within 10 Business Days after receiving from the Independent Certifier a certificate confirming the completion of Approved Excess Repointing or Render Repair Work, pay to Project Co an amount equal to:

- (a) the surface area of the Approved Excess Repointing or Render Repair Work performed by Project Co (as certified by the Independent Certifier) multiplied by,
- (b) the applicable Repointing or Render Repair Unit Price,

plus HST. Such amount is the entire compensation owing to Project Co for the Approved Excess Repointing or Render Repair Work. The Repointing or Render Unit Prices include all of Project Co's costs, expenses, profit and overhead to perform Approved Excess Repointing or Render Repair Work.