

SCHEDULE 13

DISPUTE RESOLUTION PROCEDURE

1. INTERPRETATION

1.1 Definitions

In this Schedule, in addition to the definitions set out in Section 1.1 of the Agreement:

"Dispute" means any disagreement, failure to agree or other dispute arising out of or in connection with this Agreement or either of the Leases;

"Dispute Notice" means a notice from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute;

"Referee" means the person appointed pursuant to Section 2.3(a) of this Schedule in respect to a Dispute, which person will be (i) independent, and (ii) qualified and experienced in the subject matter of the Dispute; and

"Settlement Meeting" has the meaning given in Section 2.2 of this Schedule.

2. DISPUTES

2.1 Dispute Resolution

Except as set out in the Agreement, any Dispute will be resolved in accordance with the Dispute Resolution Procedure set out in this Schedule, which will be followed in the order set out below unless both parties agree otherwise in writing:

- (a) unless expressly provided otherwise in this Agreement, the Dispute Resolution Procedure will be started by delivery of a Dispute Notice;
- (b) the parties will attempt to resolve the Dispute by a Settlement Meeting under Section 2.2 of this Schedule;
- (c) if that fails to resolve the Dispute, the parties will appoint, and obtain the decision of, a Referee under Section 2.3 of this Schedule; and
- (d) if all of the above fail to resolve the Dispute, the Dispute may, with both parties' consent, be referred to arbitration.

Notwithstanding the foregoing, during the Term of the Agreement prior to the commencement of the Operational Term, all Disputes that involve Construction or Design related issues will first be submitted to the Independent Certifier and dealt with in accordance with Schedule 4 of the Agreement.

2.2 Negotiation through Settlement Meeting

In the event of a Dispute which is not resolved in the normal course of business, either party hereunder may deliver a Dispute Notice to the other party. Within five Business Days from the delivery of the Dispute Notice, executives designated by VCHA and Project Co who have authority to settle the Dispute will meet at a mutually acceptable time and place to attempt to resolve the Dispute (a "**Settlement Meeting**"). If possible, the representatives for each party will be persons who have not previously been involved directly with the matter in Dispute. The parties and their representatives will make all reasonable efforts to resolve the Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations. If the Dispute is not resolved through these negotiations within 15 days after the Dispute Notice is delivered, then the Dispute will be referred to the Referee in accordance with Section 2.3 hereof.

All negotiations held pursuant to this Section 2.2 are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding.

2.3 Referee

Before proceeding further with the Dispute, a disputing party will obtain a decision on the Dispute from a Referee. The Referee's review may be omitted only if, pursuant to this Agreement an independent party has previously provided an opinion on the Dispute (for example, the Independent Certifier under Schedule 4 or a decision of an Expert under Schedule 7), or with the written approval of both parties or as described below. The Referee will participate in the Dispute as follows:

- (a) if the Dispute is not completely resolved by agreement between the parties pursuant to Section 2.2 hereof within the 15-day period noted above then the disputing party will initiate the appointment of a Referee as follows:
 - (1) the disputing party will submit in writing (as part of its initiation notice) the names of three acceptable candidates for Referee to the other party who are immediately available to perform the role of Referee in Vancouver. The other party will have three Business Days to select one of the three proposed candidates. If the other party fails to respond within such three Business Day period, the other party will be deemed to have accepted the list of candidates (and the disputing party will select one of the candidates from the list); or
 - (2) if the parties are unable to agree upon a Referee within three Business Days after the delivery of the list of candidates, then the matter will be referred to the British Columbia Commercial Arbitration Centre or its successors to select the Referee;
- (b) upon selection of the Referee, Project Co and VCHA will enter into an agreement for services with the Referee, and the Referee's fees, disbursements and other costs, as agreed between the parties and the Referee, will be shared equally by VCHA and Project Co;

- (c) the Referee will conduct a review of the Dispute in the manner the Referee decides is most suitable, including on-site inspections and discussions with any persons. The parties will comply with all reasonable requests from the Referee for additional information and documents which the Referee considers necessary for the review. Any information given to the Referee by a party will be given to the other party. All information disclosed in accordance with this Section 2.3(c) will be "**Confidential Information**" for purposes of the Agreement;
- (d) the Referee may, with the written approval of the parties, retain others to assist with the review;
- (e) the Referee will render a brief written decision on the Dispute, with copies to both parties, within 10 Business Days of the Referee's appointment pursuant to Section 2.3(a), or such longer period as agreed to in writing by both parties. A value to the parties of the review is in having the Referee give a timely decision;
- (f) a decision of a Referee is not binding on the parties, and a Referee's review will be sought only for the purpose of assisting the parties to reach agreements with respect to the Dispute;
- (g) a Referee who has rendered a decision on a Dispute may be retained by either party, or both parties, to assist in any mediation or settlement proceedings with respect to that Dispute. A Referee may not be called by either party to give evidence with respect to the Dispute in any subsequent arbitration or litigation proceeding to resolve the Dispute, nor will either party refer to or enter into evidence the decision of the Referee in such proceeding, unless required by Law or by a court of competent jurisdiction; and
- (h) the parties will agree to indemnify and save harmless the Referee from any liability arising from a review undertaken by the Referee.

2.4 Arbitration

If the Dispute is not completely resolved by agreement between the parties within 10 days after receipt of the Referee's decision, then, if both parties consent in writing, the Dispute will be submitted to binding arbitration. If either party does not consent to arbitration then either party will be free to commence litigation proceedings.

Whenever any arbitration is consented to by the parties, arbitration proceedings will be commenced by the party desiring arbitration (the "**Initiating Party**") giving notice to the other party entitled to participate in the arbitration proceedings (the "**Responding Party**") specifying the matter to be arbitrated. If the Initiating Party and the Responding Party are unable to agree upon an arbitration procedure within five Business Days after the delivery of such notice, the Initiating Party will, by written notice to the Responding Party, designate an arbitrator. The Responding Party will, within five Business Days thereafter appoint an arbitrator by written notice to the Initiating Party, and the two arbitrators so appointed will thereupon meet and select a third arbitrator acceptable to both. If the Responding Party fails to appoint an arbitrator within the timeframe aforesaid and deliver notice thereof to the Initiating Party, then the Initiating Party

may appoint an arbitrator on behalf of the Responding Party and is hereby appointed the agent of the Responding Party for such purpose. If the two arbitrators so appointed are unable to agree upon a third arbitrator within five Business Days after the appointment of the arbitrator for the Responding Party, then the Initiating Party will be entitled to make application to a judge of the Supreme Court of British Columbia under the *Commercial Arbitration Act* (British Columbia) for selection of the third arbitrator.

In the event that the parties agree that the matter is to be arbitrated before a single arbitrator, but are unable to agree on the choice of an arbitrator within five Business Days after delivery of the notice by the Initiating Party, either party may request the Referee to appoint the arbitrator (such Referee being the person selected to review the Dispute in question in accordance with Section 2.3).

Each arbitrator selected to act hereunder will be qualified by a profession or occupation to decide the matter in dispute and will have at least 10 years' experience in relation to the matter in dispute.

The arbitrator, or arbitration panel, will have the authority to award any remedy or relief that a court or judge of the Supreme Court of British Columbia could order or grant in accordance with the Agreement, including, without limitation, specific performance of any obligation created under the Agreement, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process.

Meetings and hearings of the arbitration panel will take place in the City of Vancouver or in such other place as the Initiating Party and the Responding Party will agree upon in writing and such meetings and hearings will be conducted in the English language unless otherwise agreed by such parties. Subject to the foregoing, the arbitration panel may at any time fix the date, time and place of meetings and hearings in the arbitration and will give all parties adequate notice of same. Subject to any adjournments which the arbitration panel allows, the final hearing will be continued on successive Business Days until it is concluded. All meetings and hearings will be in private unless the parties agree otherwise and either party may be represented at any meetings or hearings by legal counsel. Either party may examine, and re-examine, all its own witnesses at the arbitration and may cross-examine all of the other parties witnesses.

The arbitration will be kept confidential and the existence of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted and exchanged, and testimony or other oral submission and any awards) will not be disclosed beyond the arbitrators, the parties, their counsel and any person necessary to the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

The arbitration panel will make and send a decision in writing within 15 Business Days after the conclusion of the hearing and, unless the parties agree otherwise, will set out reasons for the decision.

The decision of the majority of the arbitration panel will be deemed to be the decision of the arbitration panel.

2.5 Strict Compliance with Time Limits

The parties agree that timely resolution of any Dispute is mutually beneficial and, in order to achieve timely resolution, the time limits as set out in this Schedule will be strictly enforced.

2.6 Performance of Obligations

Notwithstanding the existence of any Dispute, VCHA and Project Co will, to the extent not precluded by the matter in Dispute, continue with the Work, or the Operation and Maintenance, as the case may be, without interruption and perform their respective obligations in accordance with the provisions of the Agreement (including VCHA's obligation to make payment to Project Co in accordance with Schedule 15 to this Agreement) without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the Agreement.