

SCHEDULE 17

VARIATION PROCEDURE

1. VARIATIONS

1.1 Definitions

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

- (a) **"Capital Expenditure"** means a capital expenditure as interpreted in accordance with GAAP;
- (b) **"Direct Cost"** has the meaning given in Appendix A of this Schedule;
- (c) **"Estimate"** has the meaning given in Section 1.4 of this Schedule;
- (d) **"Project Co Variation Notice"** has the meaning given in Section 2.1 of this Schedule;
- (e) **"Small Works"** means any works of a minor nature that are requested by VCHA to be performed having an individual cost or linked aggregate cost not exceeding \$10,000, Adjusted for Inflation, or as otherwise agreed from time to time, but excluding any works which will increase the likelihood of any Preliminary Deficiency Notices, Deficiency Notices or Warning Notices, will materially increase the cost to Project Co of performing the Operation and Maintenance Services, will materially hinder Project Co in the performance of the Operation and Maintenance Services or the implementation of which would be addressed by Section 1.5(a) if the Small Works was a Variation;
- (f) **"Variation"** means:
 - (1) a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change (including by reason of a Renovation), other than one which does not have a material effect, to the whole or any part of:
 - (A) the Design and Construction Requirements;
 - (B) the Approved Drawings and Specifications;
 - (C) the Operation and Maintenance Requirements; or
 - (D) the Life Cycle Requirements;
 - (2) a Change in Law which causes any of the matters referred to in Section (1) above, but only if and to the extent not reflected in an increase in payment to Project Co for Operating Costs;

- (3) any change in the published standards referred to in Section 2.1(b) of Schedule 7 to this Agreement which causes any of the matters referred to in Section (1) above, but only if and to the extent not reflected in an increase in payment to Project Co for Operating Costs; and
- (4) a Renovation, excluding any Small Works;
- (g) "**Variation Confirmation**" has the meaning given in Section 1.8(a)(2) of this Schedule;
- (h) "**Variation Directive**" means a written instruction which is issued on a form designated as a "Variation Directive Form" and signed by VCHA's Representative directing Project Co to immediately proceed with a Variation, pending the finalization and issuance of a Variation Confirmation for that Variation;
- (i) "**Variation Enquiry**" has the meaning given in Section 1.3 of this Schedule; and
- (j) "**VCHA Work**" has the meaning given to it in Section 1.7(a).

1.2 General

Subject to the provisions of this Schedule, VCHA may from time to time propose and require Project Co to carry out and implement a Variation. Project Co will not be entitled to any payment, compensation or extension of time for a Variation except in accordance with this Schedule.

1.3 Variation Enquiry

If VCHA proposes or is obligated to initiate a Variation it will deliver to Project Co a written notice of the proposed Variation (a "**Variation Enquiry**"). A Variation Enquiry will:

- (a) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate; and
- (b) if the proposed Variation will require a Capital Expenditure, state whether VCHA intends (subject to review of the Estimate) to pay for the Variation by way of lump sum payment or payments, adjustment to the Basic Rent and Additional Rent payable pursuant to Schedule 15 to this Agreement (and if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof.

1.4 Project Co Estimates

As soon as practicable and in any event:

- (a) within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co will deliver its detailed breakdown, estimate and other information (an "**Estimate**") prepared in

accordance with and meeting the requirements of Section 1.6 of this Schedule;
and

- (b) within 5 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co will advise VCHA of Project Co's reasonable estimate of the maximum anticipated out of pocket expenses to be incurred in connection with preparing the Estimate and finalizing the Variation, together with a brief description of its estimate and an explanation of how it was derived. Project Co will thereafter provide updates to such estimates if and as Project Co determines the most recent estimate will be materially inaccurate due to information or circumstances not known to Project Co (after reasonable enquiry) at the time of the original estimate.

1.5 Project Co Grounds for Objection

Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to VCHA's satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), the following:

- (a) that implementation of the Variation would materially and adversely affect the health and safety of any person; or
- (b) that implementation of the Variation would:
 - (1) infringe any applicable Law;
 - (2) cause to be revoked any existing Permit required by Project Co to perform the Work or the Operation and Maintenance Services, and such Permit is not, using all reasonable efforts, capable of amendment or renewal;
 - (3) require a new Permit for Project Co to perform the Work or the Operation and Maintenance Services, which Permit will not, using all reasonable efforts by Project Co or VCHA, as applicable, be obtainable; or
 - (4) have a material adverse effect on the performance of the Operation and Maintenance Services or the Life Cycle Requirements in a manner not compensated pursuant to this Schedule 17.

If Project Co refuses to provide an Estimate on one or more of the grounds set out above, Project Co will, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to VCHA a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

1.6 Estimate

- (a) Except as otherwise specified in a Variation Enquiry, each Estimate will include the following information, sufficient to demonstrate to VCHA's reasonable satisfaction:
- (1) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in all the circumstances;
 - (2) any impact on the Target Substantial Completion Date and any other schedule impact on the completion of the Work;
 - (3) any impact on the performance of the Operation and Maintenance Services, the Life Cycle Requirements and any other impact on this Agreement;
 - (4) any impact on expected usage of utilities for the current Contract Year and subsequent Contract Years;
 - (5) any amendment required to any Project Document;
 - (6) any impact on the Direct Costs of Project Co and its Sub-Contractors, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or VCHA); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
 - (7) Project Co's confirmation that:
 - (A) the proposed Variation will not affect its financing, or
 - (B) if the proposed Variation increases Project Co's costs, that Project Co's existing financing is adequate or that Project Co requires new or additional financing, and if new or additional financing is required, Project Co's indication as to the availability of financing for the Variation and the cost and terms of such financing;
 - (8) Project Co's preliminary indication of the potential increase or decrease, if any, of the Basic Rent and Additional Rent payable pursuant to Schedule 15 to this Agreement, with such amount calculated by reference to a financial model to demonstrate the impact of the proposed Variation;

- (9) any Permits that are required to be obtained or amended, and the estimated time for obtaining or amending same;
- (10) the proposed methods of certification of any Construction or Operation and Maintenance Services required by the Variation if not covered by the provisions of this Agreement; and
- (11) any out of pocket expenses reasonably and properly incurred by Project Co in connection with preparing the Estimate,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, Project Co will include sufficient information to demonstrate that:
 - (1) Project Co has used commercially reasonable efforts, including the use of competitive quotes or tenders if appropriate, to oblige its Sub-Contractors to minimize any increase in costs and to maximize any reduction in costs;
 - (2) Project Co and its Sub-Contractors have cumulatively charged, for overhead and profit, no more than **DELETED** of the Direct Costs of the Variation and no other margins or mark-ups;
 - (3) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been taken into account and applied in total to reduce the amount of all Variation costs, Basic Rent and Additional Rent; and
 - (4) Project Co has mitigated or will mitigate the impact of the Variation, including on the schedule for completion of the Work, the performance of the Operation and Maintenance Services, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will use commercially reasonable efforts to comply with prevailing good industry practice in relation to any such procurement to a standard no less than Project Co would apply if all costs incurred were to its own account.
- (d) As soon as practicable, and in any event not more than 15 Business Days after VCHA receives an Estimate, Project Co and VCHA will discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) If VCHA would be required by applicable Law to require Project Co to competitively tender any contract in relation to the proposed Variation, VCHA

may require Project Co to seek and evaluate competitive tenders for the proposed Variation.

- (f) VCHA may modify a Variation Enquiry in writing, at any time prior to the agreement between the parties in accordance with Section 1.6(d), for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co will, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify VCHA in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then:
 - (1) in the case of such a Dispute on or before the Substantial Completion Date, the Dispute will be submitted to the Independent Certifier for recommendation, and if either party does not agree with the Independent Certifier's recommendation the Dispute will be determined in accordance with the Dispute Resolution Procedure; or
 - (2) in the case of such a Dispute after the Substantial Completion Date, the Dispute will be determined in accordance with the Dispute Resolution Procedure.

1.7 VCHA's Right to Perform

- (a) VCHA may, upon notice to Project Co including details of the proposed work, perform the subject matter of a proposed Variation ("**VCHA Work**") itself or through contractors. VCHA will indemnify and save harmless Project Co against any Direct Losses incurred by Project Co in respect of VCHA Work. Project Co will take all reasonable steps to mitigate such Direct Losses.
- (b) Within 10 Business Days of receipt of details of the proposed VCHA Work, Project Co will provide VCHA with any suggestions of specific changes to the VCHA Work that Project Co would undertake if Project Co itself performed the VCHA Work as a Variation, and Project Co will advise VCHA of any adverse effects of which it is aware of the proposed VCHA Work on the Works or the Operation and Maintenance.
- (c) Project Co may (but is not obliged to) inspect the performance of VCHA Work during its performance, and will promptly notify VCHA of any remedial work required to remedy the VCHA Work.
- (d) VCHA will notify Project Co when the VCHA Work is complete, and Project Co will inspect (or during Construction cause the Independent Certifier to inspect) the VCHA Work and promptly notify VCHA of any remedial work required to remedy the VCHA Work.

1.8 Variation Confirmation

- (a) As soon as practicable, and in any event within 10 Business Days (unless an extension is agreed to by Project Co, acting reasonably) after the date the Estimate was agreed to, VCHA will:
 - (1) withdraw the Variation Enquiry by written notice to Project Co; or
 - (2) issue a written confirmation (the "**Variation Confirmation**") of the Estimate, including any agreed modifications thereto, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.
- (b) If VCHA does not issue a Variation Confirmation within such 10 Business Days (or such extended period as may have been agreed to), then the Variation Enquiry will be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued and, if applicable, upon Project Co obtaining financing pursuant to Section 1.9:
 - (1) the parties will as soon as practicable thereafter do all acts and execute all documents to amend this Agreement necessary to implement the Variation, including provision for payment to Project Co as provided in Section 1.10;
 - (2) Project Co will implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(1), all provisions of this Agreement applicable to the Work and the Operation and Maintenance Services will apply to the Work and the Operation and Maintenance Services as thereby changed; and
 - (3) payment in relation to the Variation will be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(c)(1).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation will not be effective until:
 - (1) Project Co obtains such financing acceptable to VCHA in VCHA's sole discretion; or
 - (2) VCHA in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
 - (1) the determination of whether or not to proceed with a Variation will at all times be at VCHA's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined by the Dispute Resolution Procedure; and

- (2) VCHA may at any time withdraw a Variation Enquiry and, subject only to payment of Project Co's costs pursuant to Section 1.12, VCHA will not be obligated to Project Co in respect of a Variation until such time as VCHA in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by VCHA or VCHA has waived such requirement,

provided that VCHA may not withdraw a Variation Enquiry in circumstances where VCHA is obligated to proceed with a Variation pursuant to the terms of this Agreement. In such circumstances, the Dispute Resolution Procedure will be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule.

1.9 Financing

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if VCHA requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co will use all reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and VCHA. For greater certainty, the parties acknowledge that Project Co has not arranged a standby facility for such purposes.
- (b) If Project Co has used all reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms satisfactory to Project Co, the Lenders and VCHA within 60 days of the date that VCHA issues the Variation Confirmation, then Project Co will have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing will no longer have any effect unless VCHA in its sole discretion waives the requirement for financing or unless VCHA is obligated to proceed with the Variation pursuant to the terms of this Agreement.
- (c) If Project Co obtains an offer of financing on terms satisfactory to Project Co, Project Co will provide VCHA with details of such financing, and VCHA will at its option determine whether Project Co should proceed with such financing. If VCHA determines that Project Co should not proceed with such financing, then Project Co will have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing will no longer have any effect unless VCHA in its sole discretion waives the requirement for financing or unless VCHA is obligated to proceed with the Variation pursuant to the terms of this Agreement.
- (d) VCHA may at any time withdraw the requirement for Project Co to use all reasonable efforts to obtain financing, after which Project Co will have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing will no longer have any effect unless VCHA in its sole

discretion waives the requirement for financing or unless VCHA is obligated to proceed with the Variation pursuant to the terms of this Agreement.

- (e) If VCHA waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections (b), (c) or (d), then Project Co will proceed with the Variation as set out in the Variation Confirmation and VCHA will pay for the Variation as provided for in Section 1.10.

1.10 Payment

If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by VCHA, the price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, will be made as follows:

- (a) the Basic Rent and Additional Rent payable pursuant to Schedule 15 to this Agreement will be adjusted as set out in the Variation Confirmation; and
- (b) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co will be adjusted as follows:
 - (1) VCHA will pay such Capital Expenditures in lump sum payments based on a payment schedule agreed to by VCHA and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by VCHA; and
 - (2) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out,

and if VCHA and Project Co fail to agree as to the terms of the payment schedule it will be determined in accordance with the Dispute Resolution Procedure.

1.11 Valuation and Payments for Reductions or Avoided Costs

- (a) If a Variation involves any reductions in the Work or the Operation and Maintenance Services, or net savings in costs to Project Co for performing the Work or the Operation and Maintenance Services, then the value of all such reductions or savings will be reflected in a lump sum payment or reductions to the Basic Rent and Additional Rent as determined by the parties, acting reasonably.
- (b) Project Co will not be entitled to claim any losses, costs or damages for overhead or profit with respect to the Work or the Operation and Maintenance Services which are reduced, deleted or removed, except to the extent that Project Co has

an outstanding claim with respect to such losses, costs or damages or any of such amounts have been incurred by or on behalf of Project Co and included in the Basic Rent or Additional Rent payable by VCHA after the date on which the Work or Operation and Maintenance Service is reduced, deleted or removed.

- (c) subject to Section 17.2 of the Agreement, VCHA will not propose a Variation which materially reduces the scope of the Operation and Maintenance Services if those services will be performed by VCHA or another service provider.

1.12 Reimbursement of Variation Enquiry Costs

If a Variation Confirmation is not issued for any Variation Enquiry, and if Project Co has used all reasonable efforts to produce a fair and accurate Estimate, VCHA will pay the out of pocket expenses reasonably and properly incurred by Project Co in connection with preparing the Estimate, to the maximum amount of the cost estimate provided by Project Co pursuant to Section 1.4(b).

1.13 Variation Directive

At any time and from time to time (including whether or not VCHA has made a Variation Enquiry, or Project Co fails to provide an Estimate, or an Estimate or Variation Confirmation is not promptly agreed upon by the Parties, or there is a Dispute in relation thereto (including as to whether there is a Variation) or in relation to a Variation Enquiry), if VCHA wishes to proceed with a proposed Variation within the general scope of the Design and Construction Requirements or the Operation and Maintenance Requirements, as the case may be, the following will apply:

- (a) VCHA will issue a Variation Directive to Project Co and the Independent Certifier (in the case of the issuance of a Variation Directive on or before the Substantial Completion Date) or the Referee (in the case of the issuance of a Variation Directive after the Substantial Completion Date), signed by VCHA's Representative, directing Project Co to proceed with the proposed Variation in which case Project Co will proceed with the proposed Variation and the determination of the valuation and payment of any adjustments therefor will be made as soon as reasonably possible after commencement of the implementation thereof in the same manner and to the same extent as a Variation for which a Variation Enquiry, Estimate and Variation Confirmation would be issued hereunder;
- (b) if Project Co has not previously done so, Project Co will as soon as practicable and in any event within 15 Business Days after the issuance of the Variation Directive provide an Estimate in accordance with the requirements of this Schedule for an Estimate; and
- (c) pending the delivery of an Estimate by Project Co and the determination of the valuation and payment of any adjustments for a Variation, the Independent Certifier (in the case of the issuance of a Variation Directive on or before the Substantial Completion Date) or the Referee (in the case of the issuance of a

Variation Directive after the Substantial Completion Date) will determine the method of valuation and payment and the parties will be bound by such determination.

VCHA will not be permitted to issue a Variation Directive the implementation of which is addressed by Section 1.5.

1.14 Project Schedule Delay and Service Delivery Impairment

Any delay in the Project Schedule resulting directly from a Variation Directive, a Variation Enquiry or a Variation itself will entitle Project Co to an extension to the Project Schedule, including the Substantial Completion Date and the Total Completion Date. To the extent that the delivery of the Operations and Maintenance Services is impaired by the implementation of a Variation, VCHA will not be entitled to issue any notices contemplated in Schedule 7 during the period of impairment.

2. PROJECT CO VARIATIONS

2.1 General

Project Co will deliver to VCHA a written notice (a "**Project Co Variation Notice**") for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice will:
- (1) set out details of the proposed Variation in sufficient detail to enable VCHA to evaluate it in full;
 - (2) specify Project Co's reasons for proposing the Variation;
 - (3) indicate all implications of the Variation, including whether there are any costs or cost savings to VCHA, and whether an adjustment to the Basic Rent and Additional Rent payable pursuant to Schedule 15 to this Agreement is required; and
 - (4) indicate the latest date by which a Variation Enquiry must be issued.
- (b) Subject to Section 2.2(c) of this Schedule, VCHA will issue to Project Co a Variation Enquiry with respect to the Variation proposed in the Project Co Variation Notice within 10 Business Days of receipt of the Project Co Variation Notice and the procedure set out in Section 1 of this Schedule will apply to such Variation Enquiry.
- (c) VCHA may, in its discretion acting reasonably, choose not to consider a Project Co Variation Notice (unless it related to a Variation described in Section 1.1(f)(2) or if Project Co is obligated under this Agreement to issue a Project Co Variation Notice).

- (d) Sections 1.5, 1.6(f), 1.8(a)(1), 1.8(e)(2) and 1.13 will not apply to a Variation proposed by Project Co pursuant to a Project Co Variation Notice.

3. SMALL WORKS

3.1 General

- (a) After the Substantial Completion Date, Project Co will carry out all Small Works requested by VCHA.
- (b) Within 10 Business Days of each request for Small Works, Project Co will provide VCHA with a quote (at cost plus **DELETED** or at the hourly rates established by Project Co and agreed to by VCHA from time to time) for carrying out the Small Works, and if accepted by VCHA in its sole discretion, Project Co will carry out such Small Works for such quoted price.
- (c) VCHA may at any time in its discretion, including if VCHA does not accept the quote delivered by Project Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule, other than this Section 3, will apply.

3.2 Project Co to Minimize Inconvenience

Project Co will notify VCHA of the estimated duration of any Small Works so that VCHA and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to VCHA. Project Co will take all reasonable efforts to minimize the duration of any Small Works.

APPENDIX A

DIRECT COST

- (1) The Direct Cost of the Variation means **DELETED**

Notwithstanding the foregoing and any provisions contained in this Agreement, it is the intention of the parties that the Direct Costs referred to herein will cover and include any and all contingencies other than those which are the result of or occasioned by any failure on the part of Project Co to exercise reasonable care and diligence in Project Co's attention to the Variation. Any cost due to failure on the part of Project Co to exercise reasonable care and diligence in Project Co's attention the Variation will be borne by Project Co.

For purposes of this Schedule 17, "Value Added Taxes" means amounts levied upon the costs of the Variation by a Governmental Authority and computed as a percentage of such costs and includes goods and services tax, provincial social services tax or other provincial sales tax, and any similar tax.

- (A) Discounts, rebates and refunds

All cash discounts, trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment applicable to the Variation will accrue to VCHA, and Project Co will make provision so that they can be secured.