

SCHEDULE 4

DESIGN AND CONSTRUCTION PROCEDURES

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1. INTERPRETATION

1.1 Definitions

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

"Approved Drawings and Specifications" has the meaning given in Section 5.3(e) of this Schedule;

"Building Laws" means all Laws applicable to the Design and Construction of the Facility;

"Certificate of Substantial Completion" means the certificate to be issued by the Independent Certifier in accordance with Section 10.1 of this Schedule;

"Certificate of Total Completion" means the certificate to be issued by the Independent Certifier in accordance with Section 10.2 of this Schedule;

"Change in Building Laws" means the coming into effect or repeal (without re-enactment or consolidation) of any Building Law or any amendment or variation of any Building Law, including any judgement of a relevant court of law which changes binding precedent in British Columbia, and in each case, after the date of this Agreement;

"Commencement of Construction" means the date Construction commences on the Site;

"Construction Deficiency" means a deficiency in the Construction, including a failure to meet the Design and Construction Requirements;

"Construction Manager" means the on-site designated representative of the Prime Contractor, which representative will be **DELETED**;

"Delay Event" means: **DELETED**

"Dispute" has the meaning given in Section 1.1 of Schedule 13 to this Agreement;

"Dispute Notice" has the meaning given in Section 1.1 of Schedule 13 to this Agreement;

"Environmental Protocol" has the meaning given in Section 6.5 of this Schedule;

"Independent Certifier" has the meaning given in Section 3.1 of this Schedule;

"Mould Protocol" means the Mould Guidelines for the Canadian Construction Industry as adopted by the Prime Contractor for its Canadian Operations, a copy of which is annexed as Appendix 1 hereto;

"Move-in Schedule" has the meaning given in Section 7.5 of this Schedule;

"Preliminary Life Cycle Report" has the report prepared pursuant to Section 5.6 of this Schedule;

"Project Co's Construction Representative" has the meaning given in Section 2.3 of this Schedule;

"Project Co's Design Representative" has the meaning given in Section 2.3 of this Schedule;

"Project Schedule" means the schedule for the Design and Construction of the Facility as prepared and approved under Section 7 of this Schedule as may be updated in accordance with the terms of the Agreement;

"Proposal Extracts" means the extracts from the proposal prepared by Project Co in response to the RFP, modified as agreed by the parties and attached as Schedule 4A;

"Substantial Completion" means that all of the Substantial Completion Criteria have either been satisfied or waived by VCHA, and, without prejudice to its right to require the completion or correction of any Construction Deficiency, VCHA will, for the purpose only of establishing Substantial Completion be deemed to have waived satisfaction of any Substantial Completion Criteria not then satisfied if it commences its operations in the Facility;

"Substantial Completion Criteria" means:

- (a) certification by the Architect and Design Professionals of the achievement of "substantial performance" as defined in the *Builders' Lien Act* (British Columbia);
- (b) all life safety systems are substantially operational;
- (c) all mechanical and electrical systems are substantially operational;
- (d) elevators have been inspected and passed by applicable Governmental Authorities;
- (e) an occupancy permit has been issued for the Parking Area; and
- (f) an occupancy permit has been issued for the rest of the Facility;

"Substantial Completion Date" means the first date when all Substantial Completion Criteria that have not been waived have been satisfied as certified by the Independent Certifier in accordance with Section 10.1 of this Schedule;

"Total Completion" means the completion (as that term is defined in Subsection 1(3) of the *Builders Lien Act* (British Columbia)) of all of the Design and all of the Construction (other than warranty obligations), and includes the correction of any Defects that were remaining as of the Substantial Completion Date;

"Total Completion Date" means the date when Total Completion is achieved as certified by the Independent Certifier in accordance with Section 10.2 of this Schedule;

"User Consultation Group" has the meaning given in Section 5.5 of this Schedule;

"User Consultation Protocol" has the meaning given in Section 5.5 of this Schedule;

"**Variation**" has the meaning given in Schedule 17;

"**VCHA's Construction Representative**" has the meaning given in Section 2.2 of this Schedule; and

"**VCHA's Design Representative**" has the meaning given in Section 2.2 of this Schedule.

2. GENERAL

2.1 Required Consultation

The parties acknowledge that to achieve the public private partnership objectives, as set out under Section 2.1 of this Agreement, in the Design and Construction of the Facility a higher degree of consultation will be required between the parties than occurs generally in traditional procurement.

2.2 VCHA's Design and Construction Representatives

VCHA will designate in writing a representative of VCHA for Design ("**VCHA's Design Representative**") and for Construction ("**VCHA's Construction Representative**") to be a single point of contact with respect to the Design and Construction of the Facility. Except as otherwise set out in this Agreement, all costs or expenses incurred by or with respect to VCHA's Design Representative will be for the account of VCHA. VCHA's Design Representative will not have the authority to execute or agree to any amendments or give any waivers of this Agreement. VCHA may at any time and at its own discretion by written notice to Project Co change the person appointed as VCHA's Design Representative or VCHA's Construction Representative.

2.3 Project Co's Representative

Project Co will designate in writing a representative of Project Co for Design ("**Project Co's Design Representative**") and for Construction ("**Project Co's Construction Representative**") to be a single point of contact with respect to the Design and Construction of the Facility, respectively. Except as otherwise set out in this Agreement, all costs or expenses incurred by or with respect to Project Co's Design Representative or Project Co's Construction Representative will be for the account of Project Co. Neither Project Co's Design Representative nor Project Co's Construction Representative will have the authority to execute or agree to any amendments or give any waivers of this Agreement. Project Co may at any time and at its own discretion by written notice to VCHA change the person appointed as Project Co's Design Representative or Project Co's Construction Representative. Project Co may appoint a representative of the Prime Contractor, including the Construction Manager, as Project Co's Construction Representative.

2.4 VCHA's Review, Approval and Confirmation

Any approval or confirmations required to be given by VCHA under this Schedule relating to the Design may be given by VCHA's Design Representative or related to Construction may be given by VCHA's Construction Representative. Project Co's Design Representative will, on behalf of

Project Co, submit, or cause to be submitted, items for approval or confirmation in accordance with the Project Schedule (as may be updated under Section 7.2 of this Schedule), or otherwise in a timely way so as to permit VCHA's Design Representative or VCHA's Construction Representative, as the case may be, a reasonable time to consider the submission and to consult with other representatives of VCHA as required and, subject to the above, VCHA's Design Representative or VCHA's Construction Representative will in a timely way respond to a request for approval or confirmation of compliance so as to facilitate the efficient completion of the Design or Construction and either:

- (a) approve or confirm the submission; or
- (b) reject the submission and provide written reasons.

If VCHA's Design Representative or VCHA's Construction Representative, which ever the case may be, has not responded to a request for approval or confirmation of compliance where required under this Schedule within the time period as may be set out in the Project Schedule (which will in no event be less than five calendar days), or with respect to minor Design issues not addressed in the Project Schedule within ten Business Days after the request is made, then the request will be deemed to be approved or confirmed without any further action or documentation required.

VCHA's rights of review and approval or confirmation of compliance will be for VCHA's benefit only, and no approval or confirmation of compliance by VCHA's Design Representative, VCHA's Construction Representative or other representative of VCHA will in any way relieve Project Co of its obligation for all aspects of the Design and Construction of the Facility except as may be expressly set out in the Project Agreement.

2.5 Change in Building Laws ~~DELETED~~

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3. INDEPENDENT CERTIFIER AND VCHA RESPONSIBILITIES

3.1 Appointment

On or before Financial Close, Project Co will engage a person (or firm of persons) who is (are) a professional expert (the "**Independent Certifier**"), independent from either VCHA or Project Co with no conflicts of interest with either VCHA or Project Co, qualified and experienced with respect to the design and construction of projects in British Columbia similar to the Project, and whose appointment and terms of engagement are acceptable to VCHA, acting reasonably.

3.2 Impartiality

The Independent Certifier will be impartial to the parties when required by this Agreement to make interpretations of the parties' rights and obligations relating to the Design and Construction, or make determinations as to the status or progress of the Work, or to provide opinions with respect to Disputes.

3.3 Monthly Inspections and Report

The Independent Certifier will:

- (a) during Design, consult with all persons involved with the Design; and
- (b) during Construction, conduct inspections of the Work,

as the Independent Certifier determines is required to be satisfied that the Design and Construction is proceeding in accordance with the requirements of this Agreement. The Independent Certifier will provide:

- (c) VCHA with a copy of the Prime Contractor's monthly statement that the Prime Contractor is required to submit to the Independent Certifier each month with the Prime Contractor's application for payment under the Construction Contract; and
- (d) VCHA and Project Co with a monthly written report, completed no later than the 10th calendar day of a calendar month, reporting on the Work completed in the previous month.

3.4 Permitted Access, City Agreements and Services

For the Independent Certifier to provide the reports as described under Section 3.3, Project Co will permit the Independent Certifier to have access to the Design and Construction work as the Independent Certifier reasonably requires, including:

- (a) access to documents, drawings and specifications, in each case, relating to the Design and Construction, and access to the Prime Contractor, the Architect and Design Professionals; and
- (b) access to the Site,

and Project Co will give permission for the Independent Certifier to attend all Design meetings and, during Construction, all Site meetings except to the extent Project Co and VCHA expressly otherwise agree.

3.5 No Responsibility for Design or Construction

Nothing in this Agreement (including this Schedule) will be interpreted as giving the Independent Certifier or VCHA's Design Representative or VCHA's Construction Representative any responsibility for any aspect of the Design or the Construction, and none of Project Co, the Architect or the Prime Contractor will be entitled to rely on any advice or approvals that the Independent Certifier may give with respect to the Work.

3.6 Monitoring by Independent Certifier

The parties will cooperate and permit the Independent Certifier to monitor all aspects of the Design development process as described in Section 5.3 to the extent reasonably necessary for the Independent Certifier to perform its obligations under the Independent Certifier's agreement

with the parties. If requested by either party, the Independent Certifier will respond within five Business Days after the request is made, to provide an opinion regarding a Design issue, with a copy to both Project Co and VCHA. In the event of a dispute between Project Co and VCHA with respect to a matter covered by a report or opinion of the Independent Certifier then such report or opinion will be taken as the Independent Certifier's initial decision pursuant to Section 0. DELETED

3.7 Initial Decisions

Any Dispute between the parties relating to or arising out of the Design or the Construction, including interpretation of a party's obligations under this Agreement relating to Design or Construction, or any failure of the parties to reach agreement relating to Design or Construction where this Agreement calls for agreement, will in the first instance be referred to the Independent Certifier as follows:

- (a) the Independent Certifier will provide a decision in writing within five Business Days of receipt of a written request delivered by either VCHA or Project Co, or within such other time as the parties in consultation with each other and the Independent Certifier decide;
- (b) a decision of the Independent Certifier will not be final and binding on either Project Co or VCHA, and may be disputed by either party pursuant to the Dispute Resolution Procedure (without the requirement to submit to the Referee as set out in Section 2.1 of the Dispute Resolution Procedure), except that a party will be conclusively deemed to have accepted the decision of the Independent Certifier unless within 10 Business Days of receipt of the Independent Certifier's written decision the disputing party delivers a Dispute Notice to the other party;
- (c) the parties will cooperate and will each take all reasonable steps to mitigate the effects of any Dispute under this Section and minimize any resulting delays or cost increases in the performance of the Work; and
- (d) if any interim or temporary decisions are required the parties will request the Independent Certifier to provide any direction required, and the parties will comply with such direction but such compliance will be without prejudice to either party's rights at law or under this Agreement and provided that if, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of a matter that is the subject of the Dispute, the parties will proceed in accordance with the position of VCHA, provided that DELETED

If the Independent Certifier fails or refuses to provide a decision within the time period described in Section 3.6(a), then either party will be free to proceed directly with the Dispute Resolution Procedure.

3.8 VCHA's Responsibilities

VCHA:

- (e) will perform any of the obligations of VCHA under any agreement between VCHA and the City of Vancouver which is registered on title to the Site as of the date of this Agreement;
- (f) to the extent that the failure by VCHA to perform its obligations under Section 3.6(e) would cause a delay in achieving Substantial Completion (whether or not the relevant agreement requires performance of the obligation prior to the dates contemplated in the Project Schedule) VCHA will perform such obligations in a timely manner so as not to cause a delay in achieving Substantial Completion;
- (g) agrees that Project Co is not obligated to observe, undertake or perform any such obligations unless Project Co is expressly required to do so pursuant to this Agreement or the Leases;
- (h) will obtain and grant "crane swing" easements as reasonably required to permit the Prime Contractor to carry out the Work;
- (i) will permit Project Co to connect the Project to VCHA's steam delivery system; and
- (j) will deliver steam from VCHA's steam supply system in sufficient quantity for purposes of the Work for the period of time commencing on the date noted in the Project Schedule and ending, for purposes of this Schedule, on the date of commencement of the Operational Term at the cost to Project Co as set out in Schedule 15. In this regard:
 - (1) the steam pressure will be 125 psi to 140 psi;
 - (2) the water treatment of the steam heat will not prevent the steam to be used for humidification of the air supplied for the Facility through the air handling system (with reference to CSA Standard Z317.2-01);
 - (3) VCHA will maintain adequate back-up facilities and supply to ensure that there is a constant supply of steam in accordance with the foregoing requirements for the entire period of time prior to the Operational Term; and
 - (4) if at any time prior to the Operational Term there is an interruption in the supply of steam or the quality of such supply, then:
 - (A) VCHA will immediately take all commercially reasonable steps (including such steps which require the expenditure of moneys) to rectify the interruption and re-institute the supply of steam to the quantity and quality required hereunder;
 - (B) **DELETED**

- (C) to the extent deemed necessary by Project Co, acting reasonably, Project Co may obtain other sources for the heating of the Facility at the sole cost and expense of VCHA (including any termination costs relating to the other source upon the rectification of the interruption and re-institution of the supply of steam to the quantity and quality required hereunder) in accordance with Section 8.1(c) of this Schedule for the period of the interruption.

4. PROJECT CO'S RESPONSIBILITIES

4.1 Design/Build Responsibility

Notwithstanding any other provision of this Agreement, but in addition to all other provisions, Project Co will have complete responsibility for the Design and Construction of the Facility so as to provide a new "ambulatory care" facility that is at the Total Completion Date complete and operational and fit for the Intended Purposes, and Project Co will, without cost to VCHA, correct any Defects in the Facility that become apparent at any time during the Term (except that nothing in this Section will make Project Co responsible to correct any Defect that results from any defects or errors in any requirements imposed by VCHA or any person for whom VCHA is responsible at law, which will be the sole responsibility of VCHA and that provided Project Co has complied with the Mould Protocol it will be deemed to have fulfilled its responsibilities hereunder notwithstanding the presence of mould growth.)

4.2 Compliance with Building Laws

All elements of the Work, including the Design and the Construction, workmanship, equipment and materials, will meet or exceed the requirements of the Building Laws, and if there is any conflict or ambiguity between the provisions of the Building Laws, or between a provision of the Building Laws and the Design and Construction Requirements, then the provision of higher quality or higher standard will govern.

4.3 Permits and Approvals for the Work

Without limiting Project Co's obligations under this Agreement, the following will apply to the application for and receipt of Permits relating to the Design or the Construction:

- (a) with respect to such Permits required from the City of Vancouver, VCHA will cooperate with and assist Project Co, by providing the background and reference documents, data and information as VCHA possesses or has access to, and will provide consents so as to make any third-party consultants, who provided services to VCHA regarding the Project, available for consultation to Project Co (except that Project Co will pay any reasonable fees or out-of-pocket expenses demanded by such third-party consultants) that might assist Project Co in its discussions or negotiations with the City of Vancouver, and VCHA's Design Representative, VCHA's Construction Representative or other VCHA delegate will accompany Project Co to meetings with the City of Vancouver as Project Co may reasonably request, and VCHA will provide consents and approvals as

Project Co might reasonably request, all so as to permit Project Co to obtain such Permits expeditiously;

- (b) Project Co will keep VCHA's Design Representative and VCHA's Construction Representative fully informed as to all details of discussions and negotiations with all Governmental Authorities having jurisdiction with respect to all Permits required for the Design or Construction; and
- (c) Project Co will notify and obtain the prior written consent of VCHA's Design Representative and VCHA's Construction Representative to any request to the City of Vancouver or other Governmental Authority having jurisdiction for approval of a deviation from the requirements of the Building Codes, including any substitutions or equivalencies, which consent will not be unreasonably withheld, it being acknowledged by the parties that such deviations may assist in the objective of achieving an innovative and cost-effective Design.

5. DESIGN

5.1 Design Cooperation

Without limiting the obligations of the parties as set out in this Agreement, the parties expressly acknowledge that the objective of this Agreement is to achieve a Design that meets the needs of VCHA and provides benefits to the public, in a manner that provides a Facility that is cost-effective to construct and to operate and maintain, and the parties will use all reasonable commercial efforts to approach their respective responsibilities relating to Design under this Agreement to achieve that objective.

5.2 Project Co's Responsibility

Project Co will carry out the Design of the Facility:

- (a) so as to satisfy the Design and Construction Requirements;
- (b) in accordance with the Proposal Extracts; and
- (c) in accordance with the terms of this Agreement.

The obligations in paragraphs (a), (b) and (c) are independent obligations. In particular:

- (d) the fact that Project Co has satisfied the Design and Construction Requirements will not be a defence to an allegation that Project Co has failed to comply with the Proposal Extracts or the terms of this Agreement; and
- (e) the fact that Project Co has complied with the Proposal Extracts will not be a defence to an allegation that Project Co has not satisfied the Design and Construction Requirements or complied with the terms of this Agreement.

Notwithstanding Subsections 5.2(d) and (e), VCHA acknowledges that (i) it has accepted Project Co's Proposal Extracts in accordance with the terms of this Agreement, and (ii) the

Design and Construction Requirements, the Proposal Extracts and this Agreement comprise the arrangements made between the parties with respect to the Project.

5.3 Design Process

Project Co will direct the Prime Contractor, under the design-build Construction Contract, (and ensure that the Prime Contractor directs the Architect and the Design Professionals) to undertake the Design of the Facility progressively, in cooperation with VCHA and according to the following design phases:

- (a) Schematic Design Phase – the Architect will prepare a refined Schematic Design for the Facility, that complies with the Design and Construction Requirements, the Proposal Extracts, the requirements of the City of Vancouver, and all other applicable Building Laws;
- (b) Preliminary Development Permit Drawings Phase – the Architect will prepare, and for that purpose will direct and coordinate the work of the Design Professionals as required, drawings and specifications, to the level of detail and completeness of "Preliminary Development Permit Drawings" as ordinarily required by the City of Vancouver, based on the approved schematic design drawings as described in subsection (a), and which comply with the Design and Construction Requirements, the Proposal Extracts, the requirements of the City of Vancouver, and all other applicable Building Laws, for review by VCHA's Design Representative for compliance with the Design and Construction Requirements and the Proposal Extracts and all other requirements of this Agreement;
- (c) Review of Construction Drawings – at each of the times when the Design is developed generally to the 50% and 95% completion stages the Prime Contractor will provide to VCHA's Design Representative and the Independent Certifier a full set of Drawings and Specifications which are based on the approved preliminary development permit drawings as described in (b) above, and which comply with the Design and Construction Requirements, the requirements of the City of Vancouver and all other applicable Building Laws, and all other requirements of this Agreement, for review by VCHA's Design Representative and while such review by VCHA's Design Representative will be for the benefit of VCHA (as provided by Section 2.4) and while VCHA's Design Representative will not assume any responsibility for Design (as provided by Section 3.5) VCHA's Design Representative will confirm such compliance, or advise as to any non-compliance;
- (d) Building Permit Application Phase – following submission to and approval by the City of Vancouver the Architect will prepare building permit drawings and construction drawings for the Facility as customarily required and used for the design and construction of buildings in Vancouver similar to the size and complexity of the Facility, and will deliver a copy of such drawings to VCHA before the commencement of any construction on the Site; and

- (e) Approved Drawings and Specifications - the Prime Contractor will prepare (and for that purpose will direct and coordinate the work of the Architect and the Design Professionals as required) complete drawings and specifications, which are based on the building permits drawings and approvals described in (d) above, and which comply with the Design and Construction Requirements, the Proposal Extracts, the requirements of the City of Vancouver, and all other applicable Building Laws, and all other requirements of this Agreement, as will be used by the Prime Contractor for the Construction of the Facility. Project Co will deliver three complete copies of the drawings and specifications to VCHA's Design Representative to review and confirm such compliance before the Prime Contractor issues any of the drawings and specifications for tender, and upon confirmation VCHA's Design Representative will initial one complete copy (the "**Approved Drawings and Specifications**") and deliver the copy back to Project Co. Upon confirmation Project Co will deliver one complete copy of the Approved Drawings and Specifications to the Independent Certifier. Throughout the completion of detailed design of the Facility, and the construction of the Facility, Project Co will submit all amendments or additions to the Approved Drawings and Specifications to VCHA's Design Representative for review to confirm compliance as aforesaid (which confirmation will be indicated by initialing by VCHA's Design Representative) and upon confirmation such drawings and specifications will be deemed to be included in the Approved Drawings and Specifications.

5.4 Progressive Confirmation of Design

For each design phase described in Section 5.3 of this Schedule, Project Co will obtain, subject to Section 2 of this Schedule, the written confirmation of compliance of VCHA's Design Representative before directing or permitting the Prime Contractor or the Design Professionals to proceed with the next design phase. The parties will cooperate to establish a schedule and protocol for Project Co's application for confirmation of compliance and VCHA's review and response, with both parties acting in a timely way so as to facilitate the efficient completion of the Design. In the event of a dispute between the parties then the view of VCHA's Design Representative will prevail without prejudice to Project Co's right to refer the matter to the Independent Certifier pursuant to Section 0, without prejudice to the right of either party to refer the decision the matter in dispute to Dispute Resolution. If Project Co proceeds with a design phase in advance of the written or deemed confirmation of compliance of VCHA's Design Representative then VCHA's Design Representative may require Project Co to make changes to such advanced design which Project Co will undertake at its own cost. If, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of the matter that is in Dispute, the parties will proceed in accordance with the position of VCHA, **DELETED**

5.5 User Consultations

The parties acknowledge that (i) efficient Design requires appropriate consultation with representatives of the users of the Facility (the "**User Consultation Group**"), and (ii) Project

Co, the Prime Contractor, the Architect and the Design Professionals and VCHA's Design Representative have met with the User Consultation Group prior to the execution of this Agreement to consult with them as to the Design. Such consultation has and will include Design issues relating to users of the Facility that require input from VCHA including space allocation to individual users, floor arrangements, adjacencies and generic design of offices and examination rooms in the Facility. The parties have and will undertake such consultation based on protocols (a "**User Consultation Protocol**") which the parties will develop and follow to describe the nature and timing of consultations with the User Consultation Group that are reasonably required to take account of the requirements of the User Consultation Group in the completion of the Design. For the purpose of a User Consultation Protocol, VCHA will appoint from time to time, as VCHA reasonably requires three components of the User Consultation Group:

- (a) a "Project Management Committee" made up of senior representatives of VCHA (and of University of British Columbia Faculty of Medicine as VCHA may decide) with authority to make decisions regarding Users;
- (b) a "Department User Committee" made up of Department Heads with responsibility to make recommendations regarding Design issues relating to users of the Facility generally; and
- (c) a "Division User Committee" made up of representatives with the opportunity to provide user input to the Design process.

A User Consultation Protocol will include an appropriate number of consultation meetings between Project Co and the above committees, and permit the committees an appropriate length of time to consult with others and make recommendations, but will include time deadlines as reasonably required so as to permit proper consultation without delaying the Work. Project Co will administer a User Consultation Protocol in coordination with VCHA's Design Representative so as to avoid any delays to the Work.

If through no fault of Project Co the consultation process with the User Consultation Group causes a delay to the performance of the Work, and subject to Project Co's duty to mitigate the effect of any delay, **DELETED**.

The parties will have further consultations with the User Consultation Group with respect to the Design if any amendments to the Design are proposed or required by reason of a change in Building Laws, a requirement by the City of Vancouver or result from the Design process set out in Sections 5.3 and 5.4 which, in any of the foregoing cases, will have a material affect on the users of the Facility.

Project Co will not make any commitments to any potential users of the Facility with respect to details of Design except in accordance with a Variation Confirmation or a Variation Directive under Schedule 17. Project Co will not be required to take account of any input provided by the User Consultation Group that would result in the costs of improvements within the structural shell exceeding an average of **DELETED** per square foot.

Attached as Attachment A to this Schedule 4 is the "Tenant Improvement Protocol" that the parties will follow regarding the Design of tenant improvements in the Building.

5.6 Preliminary Life Cycle Report

The Proposal Extracts include a design approach and design details describing the approach that the Prime Contractor, the Architect and the Services Contractor will take in undertaking the Design to consider and take account of operating, maintenance and capital replacement issues, including proposed parameters for anticipated life of major elements in the Facility. On or before the Substantial Completion Date, the Services Contractor will prepare in consultation with the Prime Contractor, and the Architect a report consistent with the Proposal Extracts, and deliver such report to VCHA and Project Co, which sets out the proposed parameters for the anticipated life of major elements in the Facility and the Life Cycle Requirements relating thereto. VCHA will make its staff who work in building maintenance and repair available for consultation with the Services Contractor, the Architect and other Design Professionals regarding Life Cycle and Design issues and the report referred to herein.

5.7 Ownership of Design

With respect to the ownership and property rights relating to the Design:

- (a) VCHA will not have an ownership interest in the Design, including any of the drawings or specifications as prepared and produced by Project Co or the Architect; and
- (b) Project Co hereby grants to VCHA an irrevocable licence to use the Design in connection with the Facility, including any of the documents and information as listed in Section 6.13 of this Schedule, beyond the end of the Term and as long as the Facility exists;

provided that, except for reference purposes, the plans, sketches, drawings, electronic files, graphic representations and specifications will not be used for additions or alterations to the Design or on any other project.

6. CONSTRUCTION

6.1 Construction of the Facility

Project Co will construct the Facility and perform all the Work in strict conformity with the Approved Drawings and Specifications, as may be modified and amended from time to time in accordance with the terms of this Agreement, and this obligation will be in addition to all other obligations of Project Co under this Agreement.

6.2 Control of the Work

Project Co will have total control of the Work and will effectively direct and supervise the Construction so that it is undertaken in compliance with the terms of this Agreement. Project Co will be responsible for all construction means, methods, techniques, sequences and procedures

with respect to the Construction and for coordinating the various elements of the Construction, and nothing in this Agreement (including this Schedule) will be interpreted as giving any responsibility for the above to VCHA, VCHA's Design Representative, VCHA's Construction Representative or any other representative or agent of VCHA, or to the Independent Certifier.

6.3 Payment for Construction

Except to the extent that this Agreement expressly provides to the contrary, Project Co will pay the entire cost of the Construction, including all:

- (a) labour, equipment, materials, tools and supervision required to achieve Total Completion;
- (b) Permits;
- (c) all inspections, quality assurance and quality control required for the performance of the Work;
- (d) temporary works and material required for the performance of the Work; and
- (e) handling and storage of all construction materials and equipment,

and nothing in this Agreement will be interpreted as imposing any obligation on VCHA whatsoever to make any payments to either the Prime Contractor or Project Co for the Construction other than payment obligations specifically provided for in this Agreement, the Building Lease or the VCHA Sublease.

6.4 Site Inspection and Access

By entering into this Agreement, Project Co will be deemed to have inspected the Site and to have reviewed the report of a Geotechnical Investigation of the Site dated December 5, 2002, and other reference reports made available to Project Co by VCHA, and to have satisfied itself and accepted all risks relating to the Site (except as expressly provided to the contrary in this Agreement) including:

- (a) the adequacy of the rights of access to and through the Site as required for the Construction;
- (b) all subsurface geotechnical, ground water or other conditions whatsoever, including soil conditions (including risk of boulders, rock and low-strength soil) and ground water conditions (including risk of underground streams or water table conditions that may affect Design or Construction);
- (c) vehicular access and parking; and temporary storage of building materials and equipment.

6.5 Environmental Study, Subsurface Environmental and Geotechnical Risk Allocation

Project Co will cause a baseline environmental study of the Site, as contemplated by the Environmental Protocol dated July 2000 prepared by Pottinger Gaherty Environmental Consultants Ltd. for Vancouver Hospital & Health Services Centre (the "Environmental Protocol"), to be carried out before and during excavation, and will provide a copy of the resulting report, and the drafts of that report, to VCHA when received by Project Co.

VCHA accepts the following specific underground risks:

- (a) VCHA is aware that there were previous structures or buildings located on the Site and some foundations or other structural elements may remain below the surface of the Site in locations unknown as of the date of this Agreement, and accordingly Project Co will proceed carefully with the initial excavation of the Site as required for the Construction. **DELETED**
- (b) if in the excavation of the Site Project Co encounters any substance which reasonably appears to be a Hazardous Substance, then Project Co will immediately alter the method of, or suspend, Work as reasonably required, will put in place the protocols and procedures required by Governmental Authorities and will immediately notify VCHA's Construction Representative. **DELETED**

6.6 VCHA's Access to Site

Subject to complying with all relevant safety procedures, including any relevant health and safety plans for the carrying out of the Work or the Contractor's site rules, VCHA's Design Representative and VCHA's Construction Representative will have unrestricted access at all reasonable times during normal working hours to:

- (a) attend the Site and view the Work; and
- (b) subject to obtaining the consent of the relevant manufacturer or supplier (which Project Co agrees to use all reasonable commercial efforts to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Work for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Work.

VCHA's Design Representative and VCHA's Construction Representative will have the right to attend all monthly progress meetings and site meetings.

VCHA will be responsible for all costs incurred by VCHA's Design Representative and VCHA's Construction Representative in connection with its access to the site.

6.7 Inspection

- (a) Prior to the Substantial Completion Date, Project Co will, upon request by VCHA's Construction Representative including detailed reasons for the request,

open up for inspection by VCHA's Construction Representative any part of the Work which VCHA's Construction Representative believes is defective and if the parties agree that there are no Defects in the relevant part of the Work,

DELETED

- (b) if the parties agree upon such inspection that any relevant part of the Work is defective, then Project Co will rectify and make good such Defect(s) and any consequence of such rectification or making good Defect(s) will be carried out by Project Co at no cost to VCHA and Project Co will not be entitled to any extension of time to the Project Schedule in relation to such rectification and making good of the Construction;
- (c) if the parties are unable to reach agreement in accordance with Sections 6.7(a) or 6.7(b), then the matter will be referred to the Independent Certifier pursuant to Section 3.6, without prejudice to the right of either party to refer the matter in dispute to Dispute Resolution. If, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of the matter in Dispute, the parties will proceed in accordance with the position of VCHA **DELETED**

6.8 Defects or Deficiencies

If at any time the Independent Certifier determines that there are Defects or that Project Co has failed to comply with the requirements of this Agreement, then the Independent Certifier may give written directions to Project Co to remedy the Defect, with a copy to VCHA's Construction Representative. Project Co will comply with such written directions, except that either Project Co or VCHA may dispute such directions by requesting the Independent Certifier to render an initial decision under Section 6.7 of this Schedule, and thereafter the Dispute Resolution Procedure will apply.

6.9 Builders Lien Act and Builders Liens

With respect to builders liens and the requirements of the *Builders Lien Act*:

- (a) VCHA will not have any responsibility to be the payment certifier under any contract related to Construction;
- (b) no builders lien holdback will be retained by VCHA under this Agreement, and Project Co will indemnify VCHA from any damages, costs, claims and expenses of any kind, including actual solicitors costs, arising from the failure of VCHA to retain a builders lien holdback;
- (c) if at any time a builders lien is filed against the Site with respect to the Construction then Project Co will forthwith take steps as required to discharge the lien; provided that Project Co may dispute such builders lien or filing thereof so long as Project Co is proceeding with such dispute in a diligent manner and Project Co, at VCHA's option, (i) delivers to VCHA security therefor as reasonably required by VCHA, or (ii) pays into court the amount claimed and registers all such documents as may be necessary to discharge such lien; and

- (d) if Project Co fails to take any of the steps referred to in Subsection 6.9(c) above, then VCHA may, at its election, upon five days notice to Project Co, take all reasonable steps to obtain the discharge, including paying the amount of the lien into court, and in such event all of the costs reasonably incurred by VCHA are due and payable forthwith by Project Co. If Project Co fails to pay such costs then VCHA may set off the amount of such costs plus interest at the Default Rate against amounts owing by VCHA to Project Co.

6.10 Safety and Protection of Property

Project Co will be responsible for safety at the Site, including all persons on the Site (whether lawfully or not). Project Co will protect VCHA's property and any third party's property from damage in the performance of Construction. However, Project Co will not be responsible for the actions of, or costs incurred by, VCHA or persons for whom it is legally responsible as a result of their negligent or wrongful acts or omissions.

6.11 Signage

Project Co may erect signage at the Site during Construction provided such signs comply with the requirements of the City of Vancouver and are acceptable to VCHA's Design Representative, acting reasonably.

6.12 Operation Manuals

On or before Substantial Completion, Project Co will make available to VCHA's Representative for review all operating and maintenance manuals, specifications, warranties and related information, in either written or electronic form, for all the equipment and systems that have been included in the Design and Construction of the Facility. Such information will be organized and stored by Project Co in accordance with Schedule 10 to this Agreement.

6.13 Project Records

Project Co will retain the following:

- (a) As-Built Drawings and Specifications: Project Co will:
- (1) throughout the Construction update the Approved Drawings and Specifications (with respect to the drawings, such update will be in "CAD" or other electronic format reasonably acceptable to VCHA's Representative), including approved shop drawings, so as to produce accurate as-built documents for the Facility;
 - (2) as requested from time to time during the Construction, make available such as-built drawings and specifications to VCHA's Design Representative and to the Independent Certifier for review to permit VCHA's Design Representative and the Independent Certifier to monitor Project Co's compliance with the requirements of this Section. The

Independent Certifier will include the results of such review in the monthly report under Section 3.3 of this Schedule; and

- (3) on or before Total Completion, make available for review and inspection by VCHA's Design Representative and the Independent Certifier the completed as-built drawings and specifications.

If at any time the Independent Certifier determines that Construction is proceeding without adequate retention of as-built records, then upon two Business Days notice to the Project Co's Construction Representative VCHA may retain a separate consultant to retain such information, the costs of which will be paid by Project Co upon demand;

- (b) Design Records: records of the Design development for the Facility;
- (c) Minutes of Meetings: for meetings between VCHA and Project Co relating to the Design and Construction of the Facility;
- (d) Inspection Reports and Tests Results: Official reports and certified test records of all inspections and tests which were undertaken as part of the Construction;
- (e) Utility Plans: for the Facility and the Site;
- (f) Landscape and Irrigation Plans: for the Facility and the Site;
- (g) Copies of all Permits and Approvals: for the Construction and occupation of the Facility; and
- (h) Signed Quality Assurance Plan: for the Construction.

7. PROJECT SCHEDULE

7.1 Initial Project Schedule

Attached as Schedule 4B is the initial Project Schedule, which the parties have relied upon in entering into this Agreement, including the dates for delivery to VCHA's Design Representative and review for compliance by VCHA's Design Representative of drawings and specifications as described in Section 2.4, and including the Target Substantial Completion Date.

7.2 Project Schedule Updates

Project Co will ensure that the Project Schedule is at all times an accurate, reasonable and realistic representation of Project Co's plans for the completion of the Design and Construction of the Facility in accordance with the requirements of this Agreement. Project Co will, as required from time to time until Total Completion, but no less than once per calendar month, deliver an updated Project Schedule to VCHA's Design Representative, VCHA's Construction Representative and to the Independent Certifier for review for compliance with the requirements of this Agreement, and which includes the following:

- (a) adjustments resulting from Delay Events and Variations, if any, as permitted by this Agreement;
- (b) as the Design progresses, best estimates of:
 - (1) the start and completion dates for the design phases described in Section 5.3 of this Schedule;
 - (2) the dates for approval by VCHA's Design Representative of specified drawings as described in Section 2.4 of this Schedule; and
 - (3) the Commencement of Construction;
- (c) the planned start and completion dates of the major activities of Construction; and
- (d) the estimated Substantial Completion Date.

Once confirmed by the Independent Certifier, in cooperation with VCHA's Construction Representative, the updated Project Schedule will be the Project Schedule under this Agreement in substitution for the previously approved Project Schedule. If at any time either Project Co's Design Representative or Project Co's Construction Representative, as the case may be, or VCHA's Design Representative or VCHA's Construction Representative, as the case may be, do not agree with the proposed updates that may be required to the Project Schedule then the disagreement may be referred to the Dispute Resolution Procedure (without the requirement to submit to the Referee set out in Section 2.3 of the Dispute Resolution Procedure).

7.3 Failure to Update Project Schedule

If Project Co fails or refuses to update the Project Schedule as required under Section 7.2 of this Schedule, then such failure or refusal will be deemed to be a material breach of Project Co's obligations under this Agreement and Section 15.1(a) of this Agreement will apply.

7.4 Compliance with Project Schedule

Project Co will undertake the Design and Construction of the Facility in compliance with the Project Schedule, as may be updated pursuant to this Agreement.

7.5 Move-In Schedule

Project Co specifically acknowledges that VCHA will rely on Substantial Completion of the Facility by the Substantial Completion Date as set out in the Project Schedule (as may be adjusted under Section 7.2 of this Schedule) because the Building will be occupied in part by physicians and other medical staff that VCHA requires to be moved to the Facility from other premises to facilitate and permit other VCHA projects.

As soon as reasonably practicable, but in any event no more than 90 days prior to the Substantial Completion Date Project Co will deliver to VCHA's Construction Representative a

move-in schedule (the "**Move-in Schedule**") indicating the anticipated dates when the areas in the Facility will become available for occupation by VCHA so as to facilitate and permit physicians and other medical staff to move from existing premises and take up occupation in the Facility in an efficient manner. VCHA's Construction Representative will advise Project Co of any key or significant moves or move-in requirements, and Project Co will, as reasonably possible without incurring additional costs, accommodate VCHA's requirements and requests. Project Co will, as may be required from time to time, up-date the Move-in Schedule.

8. DELAYS AND ACCELERATION

8.1 Delay Events

In the event of a Delay Event, then: **DELETED**

8.2 Notice of Delay and Cooperation to Mitigate

Project Co will give immediate written notice of delay to VCHA's Design Representative and the Independent Certifier promptly upon becoming aware of any Delay Event, provided that in the event of continuing delay only one notice will be required. Except as may be expressly stated otherwise in this Agreement, in no event will Project Co be entitled to any time extension for delay that occurs more than ten days prior to the written notice of delay to VCHA. Upon such notice, Project Co will meet with VCHA's Representative and the Independent Certifier to review measures that might be taken to minimize the effects of the Delay Event and Project Co and VCHA will take all reasonable steps to mitigate the effects of the Delay Event.

8.3 Acceleration to Recover Project Co Delays

If at any time the Independent Certifier determines that Project Co is behind the approved Project Schedule (other than due to a Delay Event) and will not achieve the scheduled Substantial Completion Date (as it may be adjusted pursuant to the terms of this Agreement), then the Independent Certifier will deliver notice of same to VCHA's Construction Representative and Project Co's Construction Representative. Following receipt of such notice, VCHA's Design Representative may deliver notice to Project Co's Construction Representative advising Project Co to use its best efforts, at Project Co's own cost and at no cost to VCHA, to accelerate the Work so as to conform to the approved Project Schedule and such scheduled Substantial Completion Date.

8.4 Move-in Delay Costs

If Project Co fails to achieve the dates for move-in as set out in the Move-in Schedule (other than due to a Delay Event or a Variation), then Project Co will reimburse VCHA for any additional incremental direct, arm's length out of pocket costs which VCHA reasonably incurs and evidences to Project Co related to the move of physicians and other health professionals into the Facility because VCHA relied on the Move-in Schedule which are in excess of the costs which VCHA would have incurred had Project Co achieved the dates set out in the Move-In Schedule (other than due to a Delay Event or a Variation). Notwithstanding anything contained in the Project Agreement or any Schedule to the Project Agreement, the liability of Project Co

for failing to achieve Substantial Completion by the date identified for the same under the Project Schedule will not exceed **DELETED** per day.

8.5 Acceleration to Advance Total Completion Date

If at any time VCHA determines that it requires the Work to proceed in advance of the approved Project Schedule then VCHA may give written notice to Project Co to provide VCHA with a written proposal to accelerate the Work, including cost estimates and an estimate of the time saved, and if VCHA decides to proceed with the acceleration then Project Co will implement the directed acceleration. In such event VCHA will pay Project Co's costs of the acceleration.

9. VARIATIONS

9.1 Variations

VCHA may, at any time, propose and require Project Co to carry out a Variation, all of which will be in accordance with Schedule 17, including the determination of any extension to the Substantial Completion Date and the Total Completion Date and the determination of any additional payments to Project Co as a result thereof.

10. COMPLETION

10.1 Application for Certificate of Substantial Completion

The Independent Certifier will, no later than five Business Days after application by Project Co for a Certificate of Substantial Completion, in cooperation with Project Co's Construction Representative and VCHA's Construction Representative make an inspection of the Facility and then within a further five Business Days:

- (a) either issue a Certificate of Substantial Completion or provide Project Co and VCHA's Construction Representative with a list of Defects that must be corrected prior to Substantial Completion; and
- (b) deliver to Project Co and VCHA's Construction Representative a complete list of Defects, describing all Defects that must be corrected to achieve Total Completion.

If the Certificate of Substantial Completion is issued by the Independent Certifier, then such Certificate and the issuance thereof shall be final and not subject to Dispute Resolution. If the Independent Certifier delivers a list of Defects, then VCHA or Project Co may dispute the accuracy or completeness of the list of Defects listed with respect to either (a) or (b) and if the Independent Certifier does not issue a list of Defects with the Certificate of Substantial Completion, VCHA may deliver such a list within five Business Days of delivery by the Independent Certifier of the Certificate of Substantial Completion but, notwithstanding such delivery by VCHA, the Certificates of Substantial Completion issued by the Independent Certifier shall still be final and not subject to Dispute Resolution and the terms of the Leases shall commence. In the event of such dispute there shall be no delay to the completion of the Work or occupation of the Building.

10.2 Application for Certificate of Total Completion

The Independent Certifier will, no later than five Business Days after application by Project Co for a Certificate of Total Completion, in cooperation with the Project Co's Construction Representative and VCHA's Construction Representative make an inspection of the Facility and then within a further five Business Days either issue a Certificate of Total Completion or provide Project Co and VCHA's Construction Representative with a list of Defects that must be corrected to achieve Total Completion. VCHA or Project Co may dispute the accuracy or completeness of such list of Defects in which event the date of Total Completion will be determined pursuant to Section .3.7.

APPENDIX 1

**ATTACHMENT A
SCHEDULE 4 (s.5.5)**

Academic Ambulatory Care Centre

TENANT IMPROVEMENTS PROTOCOL

Introduction

Project Co's Design and Construction obligations include the design and construction of Tenant Improvements ("TIs") to the level specified for the VCHA Space and Teaching Clinic Space in accordance with the standards required in the Output Specifications in the Agreement, in accordance with the plans attached as Schedule 4A, and in accordance with the other provisions of the Agreement.

Average Cost of TIs per Square Foot

The cost of the TIs are included in the total Building cost. The TI portion of the total Building cost has been based on the Building "Item Unit Cost" figures set out in the second column from the right in the attached two PCL Conceptual Estimates:

- a. "VGH/Ambulatory Care Centre"; and
- b. "VGH AACC Teaching Clinic Space".

On this basis the average cost of TI's per square foot in each of the VCHA Space and in the Teaching Clinic Space is **DELETED**.

With respect to the VCHA Space, no payments in addition to the payments expressly described in the Agreement, whether for Direct Costs, overhead or profit, will be owing by VCHA on account of the Design and Construction of the TIs, provided that the overall average cost of the TI's in the VCHA Space does not exceed **DELETED** per square foot, calculated as set forth in this Attachment A.

TIs Design Process

As part of the Design process described in Section 5.3 of Schedule 4 Project Co will cooperate and consult with VCHA so as to optimize the TIs Design of the VCHA Space, including:

- (a) valuing the cost of the TIs in the various areas of the VCHA Space, as described in the detailed Design drawings and specifications, with such costs based on the Item Unit Costs (as described above);
- (b) if the cost of TIs in any particular portion of the VCHA Space, calculated as described in (a) above, is less than **DELETED** per square foot, then the total of

such “credit” can be applied so as to increase the cost of the TIs in other portions of the VCHA Space;

provided that the overall average cost of TI's for the VCHA Space does not exceed **DELETED** per square foot. This process will apply until final Design drawings and specifications for the TIs for a particular portion of the VCHA Space are reviewed and confirmed for compliance by VCHA's Design Representative.

In the event that the overall average cost (based on Item Unit Costs) of the TI's in the VCHA Space as identified in the drawings and specifications confirmed for compliance by VCHA's Design Representative, exceed **DELETED** per square foot, such additional cost will be dealt with as a Variation and in such event Schedule 17 will apply, except that:

- (a) in determining the price impact of such Variation, Project Co will proceed in accordance with Schedule 17 and provide VCHA with an Estimate as therein contemplated, based on the Item Unit Costs (together with overhead and profit thereon as provided in Section 1.6(b)(2) of Schedule 17). Sufficient detail will be provided by Project Co to VCHA to enable VCHA to understand the Variation in terms of the Item Unit Costs (described above) on such Estimate; and
- (b) if and when the Estimate is agreed to by Project Co and VCHA's Design Representative and VCHA elects to proceed with the Variation, the Estimate (based on the Item Unit Costs, as described above, together with overhead and profit thereon as provided in Section 1.6(b)(2) of Schedule 17), will be used for the purpose of this Agreement. Actual Direct Costs incurred by Project Co upon completion of the Variation will not be relevant.

Variations to TIs Prior to Substantial Completion

If at any time and for any reason following confirmation of compliance by VCHA's Design Representative under Section 5.3 of Schedule 4 that a Design drawing and specification of a TI is acceptable, and prior to Substantial Completion VCHA requests a change in such drawing and specification then such change will be a Variation and in such event Schedule 17 will apply and the Estimate shall be based on Direct Costs of the Variation (with overhead and profit thereon as provided in Section 1.6(b)(2) of Schedule 17) and not on Item Unit Costs.

Appendix 1

DELETED