

SCHEDULE 6

Part 3

**SERVICES CONTRACTOR
COLLATERAL AGREEMENT**

**BROOKFIELD LEPAGE JOHNSON CONTROLS FACILITY
MANAGEMENT SERVICES**

VANCOUVER COASTAL HEALTH AUTHORITY

AHV ACCESS HEALTH VANCOUVER LTD.

Dated

2004

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SERVICES CONTRACTOR COLLATERAL AGREEMENT

THIS AGREEMENT is dated as of _____, 2004

AMONG:

**BROOKFIELD LEPAGE JOHNSON CONTROLS FACILITY
MANAGEMENT SERVICES**, an Ontario Limited Partnership having an
office at 7400 Birchmount Road, Markham, Ontario

(the "**Services Contractor**")

AND:

VANCOUVER COASTAL HEALTH AUTHORITY

("VCHA")

AND:

AHV ACCESS HEALTH VANCOUVER LTD.

("Project Co")

WHEREAS:

A. VCHA and Project Co have entered into an agreement dated as of _____, 2004 (the "**Project Agreement**") whereby Project Co has agreed to design, construct, finance, operate and maintain a new academic ambulatory care centre (the "**Project**"), all as more particularly described in the Project Agreement;

B. Project Co and the Services Contractor have entered into an operation and maintenance services agreement dated as of _____, 2004 (the "**Services Contract**") whereby the Services Contractor has agreed to carry out and complete that part of the Project comprising Operation and Maintenance Services all as more particularly described in the Services Contract;

C. It is a condition of the Services Contract that the Services Contractor enter into this Agreement with VCHA and Project Co.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of Ten dollars (\$10.00) now paid by VCHA to the Services Contractor, the receipt and sufficiency of which is hereby acknowledged by the Services Contractor, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties covenant and agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement capitalized but otherwise undefined terms will have the meaning given in the Project Agreement.

1.2 Construction and Interpretation

The division of this Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Agreement and will not be used to affect the construction or interpretation of this Agreement. The word “including” will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this Agreement to “**Section**” and “**Schedule**” is to a Section of, and a Schedule to, this Agreement;
- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Vancouver, British Columbia;
- (e) all references to amounts of money mean lawful currency of Canada; and
- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied.

1.3 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia.

1.4 Severability

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement, or

(b) the legality, validity or enforceability of that provision in any other jurisdiction, except that if:

- (c) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable, and
- (d) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of this Section 1.4, the basic intentions of the parties in this Agreement are materially affected, the parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

2. SUBSTITUTION PROVISIONS

2.1 Notice to VCHA of Intent to Terminate

The Services Contractor will give VCHA and the Lenders not less than 20 Business Days' prior notice of its intention to terminate the Services Contract unless such termination is as a result of termination by Project Co pursuant to the terms of the Services Contract. The Services Contractor will not terminate or treat as terminated its engagement under the Services Contract, or discontinue performing the Operation and Maintenance Services, during such 20 Business Day period if VCHA:

- (a) requests the Services Contractor not to terminate within three Business Days of receiving the termination notice; and
- (b) VCHA agrees to pay all utility charges incurred with respect to the Building directly to the applicable utility provider.

2.2 Suspension of Termination

If VCHA serves on the Services Contractor a notice in accordance with Section 2.3, the Services Contractor will not terminate or treat as terminated its engagement, or discontinue the performance of the Operation and Maintenance Services under the Services Contract but service of such notice will not prejudice any other right or remedy the Services Contractor may have under or in connection with the Services Contract.

2.3 Substitution Notice

Unless the engagement of the Services Contractor under the Services Contract has been terminated previously (and whether or not the Services Contractor has served notice on VCHA pursuant to Section 2.1) and provided that the Project Agreement has been properly terminated in accordance with its terms, VCHA will be entitled at any time to serve upon the Services Contractor a notice requiring the Services Contractor to thereafter accept the instructions of

VCHA or its appointee to the exclusion of Project Co under and in connection with the Services Contract and the Services Contractor will comply with such notice.

2.4 Substitution of VCHA

From and after the date of service of the notice under Section 2.3, provided that the Project Agreement has been properly terminated in accordance with its terms and that VCHA has acquired all of the rights and assumed all of the obligations of Project Co under the Construction Contract and the Facility Co-ordination Agreement (as that term is defined in the Services Contract), Project Co will be deemed to have assigned all the rights, and VCHA or its appointee will be deemed to have accepted the assignment and assumed and agreed to perform all the obligations, of Project Co under the Services Contract, provided that this will not affect or derogate from any right of action that either Project Co or Services Contractor may have against the other in respect of any breach by Project Co or Services Contractor of its obligations under the Services Contract happening prior to the date of service of notice by VCHA under Section 2.3.

2.5 Replacement Services Contract

If the engagement of the Services Contractor under the Services Contract is terminated before service of any notice under Section 2.3, the Services Contractor will, if required to do so by notice served by VCHA not later than 20 Business Days after the date the Services Contractor serves notice on VCHA pursuant to Section 2.1, enter into a new contract with VCHA or its appointee on the same terms as the Services Contract but with such revisions as VCHA and Services Contractor, each acting reasonably, agree is reasonably required to reflect altered circumstances. VCHA and the Services Contractor acknowledge and agree that, pursuant to the new contract, VCHA or its appointee will be required to (i) acquire all of the rights and assume all of the obligations of Project Co under the Construction Contract and the Facility Co-ordination Agreement (as that term is defined in the Services Contract) and (ii) cause the Payment Guarantee to be ratified. In the event of a new contract entered into pursuant to this Section 2.5, references in this Agreement to "Services Contract" will be deemed to include such a new contract.

The rights of VCHA under this Section 2.5 will be applicable only after the Project Agreement has been properly terminated in accordance with its terms.

2.6 Notice to Prevail

As against Project Co and VCHA, the Services Contractor will be entitled and obliged to rely upon and to comply with any notice served by VCHA under Section 2.3 or Section 2.5, and will not make, nor be required to make, any enquiry into the entitlement of VCHA as against Project Co to serve such notice or the obligation of Services Contractor thereafter to accept the instructions of VCHA to the exclusion of Project Co under Section 2.3.

2.7 Lenders' Rights Paramount

Notwithstanding the above, VCHA will only be entitled to issue a notice under Section 2.3 or Section 2.5 where the Lenders have not, within 20 Business Days of receiving the Services Contractor's notice pursuant to Section 2.1, exercised any similar rights of substitution they may have pursuant to any other agreement concerning the Project.

2.8 Project Co Bound

Project Co will be bound to the provisions of this Section 2.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 Licence

To the extent not already granted to VCHA pursuant to the Project Agreement, Services Contract or a replacement contract contemplated by Section 2.5, the Services Contractor hereby grants to VCHA a licence to use for all purposes relating to the Project any and all designs, drawings, details, specifications, plans, sketches, graphic representations, models, computer software and other documents which have been or are created or prepared by or on behalf of the Services Contractor relating to the Project (collectively for the purposes of this Section, the "**Documents**") beyond the end of the Term and for 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 Project or on any other project. Subject to the compliance by VCHA with its obligations under Section 19 of the Project Agreement, the Services Contractor will deliver to VCHA a complete copy of any Document upon written request from VCHA..

3.2 Third Party Infringement

If the use of the Documents in connection with the Project is found by a court of competent jurisdiction to infringe the rights of any third party, the Services Contractor will indemnify VCHA against all Direct Losses incurred by VCHA as a result of such infringement.

4. CONFIDENTIALITY

4.1 Confidential Information

The Services Contractor represents and warrants that it has and will hold in confidence any Confidential Information, provided that the provisions of this Section will not restrict the Services Contractor from passing such information to its professional advisors, to the extent necessary, to enable the Services Contractor to perform (or cause to be performed) or to enforce its rights or obligations under the Services Contract or to such other persons as may be expressly required by the Services Contract.

4.2 Exceptions

The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- (a) which VCHA confirms in writing is not required to be treated as Confidential Information;
- (b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
- (c) to the extent the Services Contractor is required to disclose such Confidential Information by Law or any Governmental Authority (but only to that extent); or
- (d) to the extent consistent with any VCHA policy the details of which have been provided to the Services Contractor in writing prior to the disclosure.

4.3 Announcements

Unless otherwise required by any Law, by any Governmental Authority or by the rules, orders or regulations of any stock exchange (but only to that extent), the Services Contractor will not make or permit to be made any public announcement or disclosure (whether for publication in the press, radio, television or any other medium) of any Confidential Information or the Services Contractor's interest in the Project or any matters relating thereto, without the prior written consent of VCHA, which will not be unreasonably withheld or delayed.

5. GENERAL

5.1 Assignment

Other than in conjunction with a permitted assignment of the Services Contract in accordance with its terms, the Services Contractor may assign this Agreement only with the prior written consent of VCHA, which consent may be given in VCHA's sole discretion.

5.2 Enurement

This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

5.3 Notice

Each notice to a party must be given in writing. A notice may be given by delivery to an individual or by fax, and will be validly given if delivered on a Business Day to an individual at the following address, or, if transmitted on a Business Day by fax addressed to the following party:

if to Services Contractor:

Brookfield LePage Johnson Controls Facility Management
Services
P.O. Box 4800
7400 Birchmount Road
Markham, Ontario L3R 4E6

Attention: Vice President, Finance & Real Estate
Facsimile: 905.470.4580

if to VCHA:

Vancouver Coastal Health Authority – Corporate Office
601 West Broadway, 11th floor
Vancouver, British Columbia, V5T 1X7

Attention: Executive Director, Facilities and Projects Manager
Facsimile: 604.875.5673

if to Project Co:

AHV Access Health Vancouver Ltd.
Three Bentall Centre
595 Burrard Street, Suite 2373
Vancouver, British Columbia, V7X 1J1

Attention: President
Facsimile: 604.484.7165

or to any other address, fax number or individual that the party designates. Any notice:

- (a) if validly delivered, will be deemed to have been given when delivered (provided that such notice is received by the contact person noted above or a person authorized on their behalf);
- (b) if validly transmitted by fax before 5:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day; and
- (c) if validly transmitted by fax after 5:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission.

5.4 Waivers

No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by those parties who have rights under,

or hold the benefit of, the provision being waived if those parties promptly send a copy of the executed waiver to all other parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

5.5 No Partnership or Agency

Nothing in this Agreement will be construed as creating a partnership or as constituting the Services Contractor as an agent of VCHA. The Services Contractor will not hold itself out as having any authority or power to bind VCHA in any way.

5.6 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

5.7 Remedies Cumulative

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

5.8 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

5.9 Delivery by Fax

Any party may deliver an executed copy of this Agreement by fax but that party will immediately dispatch by delivery in person to the other parties an originally executed copy of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

**BROOKFIELD LEPAGE JOHNSON CONTROLS
FACILITY MANAGEMENT SERVICES**

by its General Partner Brookfield LePage Johnson Controls Facility Management Services Ltd.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

VANCOUVER COASTAL HEALTH AUTHORITY

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

AHV ACCESS HEALTH VANCOUVER LTD.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory