

FORM OF PARENT COMPANY GUARANTEE

THIS GUARANTEE made as of April 9, 2013

BETWEEN:

NORTHERN HEALTH AUTHORITY

(hereinafter referred to as the "Owner"),

- and -

PCL CONSTRUCTION GROUP INC.

(hereinafter referred to as the "Guarantor").

WHEREAS Owner has entered into the Design-Build Agreement with **PCL CONSTRUCTORS WESTCOAST INC.** (the "**Design-Builder**") in connection with the design, construction and other work relating to the Facility (as defined in the Design-Build Agreement) in Burns Lake, British Columbia for the project referred to as the "Lakes District Hospital and Health Centre Replacement Project";

AND WHEREAS as a condition to Owner agreeing to enter into the Design-Build Agreement, the Guarantor agreed to execute and deliver this Guarantee;

NOW THEREFORE THIS GUARANTEE WITNESSES that in consideration of the sum of \$10.00 and other good and valuable consideration now paid by Owner to the Guarantor (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby covenant and agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 **General**

Unless otherwise defined herein, all capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in the Design-Build Agreement.

1.2 **Definitions**

The terms defined in this Section 1.2 shall have the following meanings unless the context expressly or by necessary implication otherwise requires:

- (a) "**Costs**" means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity scale, interest, demands and actions of any nature or kind whatsoever;
- (b) "**Design-Build Agreement**" means the Design-Build Agreement dated for reference as of April 9, 2013 between Owner and the Design-Builder, as such contract may be amended, supplemented, restated or otherwise varied from time to time, and including without limitation under Change Orders or Change Directives;

- (c) **"Design-Builder Unenforceability"** means the unenforceability or invalidity of the Design-Build Agreement or of the Liabilities (as defined below) or the rendering of the Design-Build Agreement or the Liabilities void or voidable as against the Design-Builder that would not have been unenforceable, invalid, void or voidable against the Guarantor, had the Guarantor executed the Design-Build Agreement as the sole contractor instead of the Design-Builder;
- (d) **"Encumbrance"** means any mortgages, pledges, charges, liens, debentures, hypothecs, trust deeds, assignments by way of security, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in property or assets, or any part thereof or interest therein;
- (e) **"Guarantee"** means this guarantee, as this guarantee may be amended, supplemented, restated or otherwise varied from time to time in accordance with the terms and conditions contained herein;
- (f) **"Guarantee Period"** means the period commencing as of the date hereof and continuing until the later of the completion of the Warranty Period (being 24 months after the Substantial Completion Date for the Project) or the date of correction of defects or deficiencies that appear during the Warranty Period or exercise of remedies by the Owner under the Design-Build Agreement in respect of such defects or deficiencies;
- (g) **"Liabilities"** has the meaning given in Section 2.1(a); and
- (h) **"Notice"** has the meaning given in Section 4.1.

ARTICLE 2 **GUARANTEE**

2.1 **Guarantee**

(a) Subject to Subsection 5.1(g), the Guarantor, for the duration of the Guarantee Period, does hereby absolutely, unconditionally and irrevocably guarantee to fully and promptly perform, observe and pay, on demand each and every covenant, agreement, undertaking, representation, warranty and obligation of the Design-Builder in connection with the Design-Build Agreement, including but not limited to the obligation to pay liquidated damages and any other monies owing by the Design-Builder (collectively, the **"Liabilities"**).

(b) The Guarantor's limit of liability hereunder shall be the maximum amount of total liability as set forth in Section 57.2 of the Design-Build Agreement, such amount being [REDACTED] calculated as [REDACTED] of the Contract Price, and subject to adjustment if the Contract Price is adjusted under the Design-Build Agreement. This limit shall be exclusive of liability referred to in Sections 57.3 of the Design-Build Agreement, such liability being in connection with:

- (i) fraud, gross negligence or wilful, fraudulent or criminal misconduct;
- (ii) bodily injury, sickness, disease or death;
- (iii) liability to third parties in respect of tangible personal or real property;
- (iv) breach by the Design-Builder of its obligations of confidentiality under the Design-Build Agreement; and

- (v) penalties, fines or other liability imposed by a governmental authority, an administrative tribunal or a court of competent jurisdiction for breach of applicable Law.

(c) Subject to Subsection 5.1(g), the Guarantor shall unconditionally and irrevocably pay to Owner on demand all such amounts as shall be required from time to time to ensure that Owner is fully indemnified against and saved fully harmless from and against all losses, costs and expenses which Owner may at any time suffer or incur by reason of (i) Design-Builder Unenforceability or (ii) any loss of any right or remedy of Owner against the Design-Builder under the Design-Build Agreement by operation of any bankruptcy, insolvency or similar such laws. The Guarantor's limited indemnity under this Subsection 2.1(c) constitutes a separate and independent obligation of the Guarantor from the guarantee set out in Subsection 2.1(a) and may be enforced, without duplication of recovery, by Owner in lieu of or in addition to such guarantee. Notwithstanding the foregoing, the liability of the Guarantor under this Subsection 2.1(c) shall be no greater than it would have been, had the Guarantor executed the Design-Build Agreement as the sole contractor instead of the Design-Builder.

2.2 General Provisions Relating to the Guarantee

(a) Separate Claim for Each Default

Subject to Subsection 5.1(g), each and every default by the Design-Builder in the performance, observance or payment of any of the Liabilities shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.

(b) Guarantee Continuing, Absolute and Unconditional

Subject to Subsection 5.1(g), the guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance, observance and payment of all Liabilities as aforesaid and shall remain in full force and effect for the duration of the Guarantee Period.

(c) Liability of Guarantor Unconditional

Subject to Subsection 5.1(g), the liability of the Guarantor hereunder shall be absolute and unconditional and shall be in effect irrespective of:

- (i) the legality, validity, regularity or enforceability in whole or in part of the Design-Build Agreement or any other agreement relating to any of the Liabilities; or
- (ii) any compromise, release of any security (including any other guarantee, letter of credit or bond), waiver, renewal, extension, indulgence, compromise, amendment, addition, deletion, change, release, discharge or modification of or with respect to any of the Liabilities; or
- (iii) any failure, neglect or omission on the part of Owner or any other person to give the Guarantor notice of the occurrence of any default by the Design-Builder, under or with respect to the Liabilities, or to realize upon any obligations or liabilities of the Design-Builder; or
- (iv) any judgment or right which Owner may have or exercise against the Design-Builder, the Guarantor or any other person; or

- (v) any amalgamation, merger or reorganization of the Design-Builder in which event the guarantee of the Guarantor shall apply to the corporation resulting therefrom; or
- (vi) any amalgamation, merger or reorganization of the Guarantor; or
- (vii) any sale, lease or transfer of the assets of the Design-Builder or the Guarantor; or
- (viii) any change in the ownership of any shares in the capital of the Design-Builder or the Guarantor; or
- (ix) any amendment or modification of the Design-Build Agreement; or
- (x) any Changes or Change Directives in connection with the Design-Build Agreement.

(d) **Guarantee Unaffected**

The obligations and liabilities of the Guarantor hereunder shall not be impaired, diminished, abated or otherwise affected by:

- (i) the commencement by or against the Design-Builder of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, re-adjustment of indebtedness, reorganization, arrangements, compositions or extensions or other similar laws;
- (ii) any lack of power, authority or capacity on the part of the Design-Builder to execute and deliver the Design-Build Agreement or perform its obligations thereunder;
- (iii) the Design-Build Agreement not being duly executed and delivered by the Design-Builder to Owner; or
- (iv) the Design-Build Agreement (and the performance by the Design-Builder of its obligations thereunder) not being duly authorized by the Design-Builder.

(e) **No Defences Applicable to Suretyship or Available to a Guarantor**

Subject to Subsection 5.1(g), it is the intent and purpose of this Guarantee that the Guarantor will not be entitled to raise and does hereby waive any and all defences which are under law or in equity applicable to suretyship or available to a guarantor, surety or other secondary party in law or in equity, and any benefit of any discharge of its liabilities arising from such law.

(f) **Owner Not Bound to Pursue the Design-Builder**

Owner shall not be bound or obliged to take any action or legal proceeding against or demand payment from or otherwise exhaust its recourse against the Design-Builder or others or any security (including any letter of credit, performance bond or labour and materials payment bond) or other guarantees it may at any time hold before being entitled to performance of or payment of the Liabilities from the Guarantor, and the Guarantor renounces all benefits of discussion and division. It shall not be a requirement of this Guarantee that the Design-Builder be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and Owner shall have the right to enforce the provisions

of this Guarantee whether or not legal proceedings are brought against the Design-Builder or such proceedings are pending or stayed if commenced.

(g) Guarantee Not Affected

The guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment of any of the Liabilities hereunder is rescinded or must otherwise be restored or returned by Owner upon the insolvency, bankruptcy or reorganization of the Design-Builder, or otherwise, all as though such payment had not been made.

(h) Liability Arises on Demand

Subject to Subsection 5.1(g), the liability of the Guarantor under the guarantee herein shall arise forthwith after demand has been made in writing on the Guarantor.

(i) Waiver of Notice

Except as set forth in Subsection 2.2(h), Owner shall not be required to give any notice or do any other act or thing in order to preserve or enforce Owner's rights hereunder including, without limiting the generality of the foregoing, give notice of any default under, or any amendments to the Design-Build Agreement, any such notice being expressly waived by the Guarantor.

(j) Owner's Costs

The Guarantor agrees to pay to Owner any and all reasonable out-of-pocket costs, expenses and disbursements (including legal fees on a substantial indemnity scale) incurred by Owner in connection with enforcing any of its rights under this Guarantee.

(k) Effect of Owner's Waiver

A waiver by Owner of any right or remedy hereunder on any occasion shall not be construed as a bar to any right or remedy which Owner would otherwise have had on any future occasion with regard to any subsequent breach. No failure to exercise nor any delay in exercising on the part of Owner of any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and may be exercised singularly or concurrently, and are not exclusive to any other rights and remedies provided under this Guarantee or otherwise by law.

(l) Non-Competition

Until the Liabilities have been irrevocably paid and performed in full, the Guarantor shall not:

- (i) be subrogated to any rights, security or moneys held, received or receivable by Owner or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee; or
- (ii) claim, rank, prove, vote or exercise any other rights as a surety or creditor of the Design-Builder, or its estate in competition with Owner; or
- (iii) take any steps to enforce a right or claim against the Design-Builder relating to any money paid by the Guarantor to Owner under this Guarantee; or

(iv) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any agreement or document to which Owner is a party.

(m) No Marshalling

Owner is not under any obligation to marshal or appropriate in favour of the Guarantor or to exercise, apply, perfect or recover any Encumbrance that Owner holds at any time or any funds or property that Owner may be entitled to receive or have a claim on.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Guarantor

The Guarantor hereby represents and warrants to Owner that, as at the date hereof and during the term of this Guarantee:

- (a) it is a corporation existing and governed by the laws of the Province of Alberta;
- (b) it has the necessary corporate authority, power and capacity to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this Guarantee and to carry out the transactions herein contemplated on the terms and conditions herein contained;
- (c) it has taken all corporate action that is necessary or desirable to authorize its entry into this Guarantee and its carrying out of the transactions that this Guarantee contemplates;
- (d) this Guarantee has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally);
- (e) neither the execution and delivery of this Guarantee by the Guarantor, nor compliance by the Guarantor with the terms, conditions and provisions hereof, will conflict with or result in a breach of any of the terms, conditions or provisions of:
 - (i) its constating documents or by-laws;
 - (ii) any agreement, instrument or arrangement to which the Guarantor is now a party or by which the Guarantor is, or may be, bound, or constitute a default thereunder, or result thereunder in the creation or imposition of any Encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor;
 - (iii) any judgment or order, writ, injunction or decree of any court; or
 - (iv) any applicable law or governmental regulation;
- (f) to the best knowledge of the Guarantor, after due inquiry, there are no actions, suits or proceedings pending (nor to the best knowledge of the Guarantor, after due inquiry, is there any pending investigation) against or involving the Guarantor at law or in equity or

before or by any federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before or by any arbitrator of any kind, which (so far as the Guarantor can foresee) could reasonably be expected to materially and adversely affect or impair the ability of the Guarantor to perform its obligations under this Guarantee, and the Guarantor is not in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, provincial, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which involves a reasonable possibility (so far as the Guarantor can foresee) of any material adverse change in the business, properties or financial condition of the Guarantor, which could reasonably be expected to materially and adversely affect or impair the ability of the Guarantor to perform its obligations under this Guarantee;

- (g) no action of approval, authorization, consent or other order of, and no designation, filing, further registration, qualification or recording with, any governmental or public body or authority is legally required to authorize or is otherwise required in connection with or for the execution, delivery or performance by the Guarantor of this Guarantee except as having already been obtained; and
- (h) its payment obligations under this Guarantee rank at least equally with all its other unsecured and unsubordinated payment obligations (whether present or future, actual or contingent), other than obligations that are mandatorily preferred by law.

3.2 Reliance on Representations and Warranties

The Guarantor acknowledges that Owner has executed this Guarantee and agreed to take part in the transactions that this Guarantee contemplates in reliance on the representations and warranties made by the Guarantor in Section 3.1.

3.3 No Representations by Owner

The Guarantor acknowledges that it has not relied on any representation, statement or promise made by or on behalf of Owner in deciding to enter into this Agreement or to exercise any right or perform any obligation hereunder.

ARTICLE 4 **NOTICE**

4.1 Notice

Any notice, demand, approval, consent, payment or other communication (a "**Notice**") to be given or made pursuant to this Guarantee shall be in writing and shall be given by personal delivery or by telecopier or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

- (a) if to the Guarantor at:

PCL Construction Group Inc.
5410-99 Street
Edmonton, AB T6E 3P4

Attention: Vice President, Corporate Finance
Telecopy: 780-733-5075

(b) if to Owner at:

NORTHERN HEALTH AUTHORITY
Suite 300-299 Victoria Street
Prince George, BC V2L 5B8

Attention: Michael Hoefler
Regional Director, Capital Planning and Support Services

Facsimile: 250 565 2753

Email: Michael.Hoefler@northernhealth.ca

Any Notice, if personally delivered or sent by telecopy or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the date of such delivery or sending, provided that such day in either event is a Business Day and the communication is so delivered or sent prior to 5:00 p.m. (Vancouver time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

ARTICLE 5 **MISCELLANEOUS**

5.1 Miscellaneous

- (a) Time shall be of the essence hereof.
- (b) No amendment or waiver of any provision of this Guarantee nor consent to any departure by the Guarantor therefrom shall be effective unless and until the same shall be in writing and signed by Owner and such waiver or consent shall be effective only in the specific instance and the specific purpose for which it was given.
- (c) If any provision hereof is determined to be void, voidable or unenforceable, in whole or in part, such determination shall not affect or impair or be deemed to affect or impair the validity of any other provision hereof and all provisions hereof are hereby declared to be separate, severable and distinct.
- (d) Words importing the singular number only shall include the plural and *vice versa*.
- (e) This Guarantee shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
- (f) This Guarantee shall become effective when it is executed and thereafter shall enure to the benefit of and be binding upon the Guarantor and Owner and their respective successors and permitted assigns. This Guarantee is assignable by Owner to a permitted assignee of Owner under the Design-Build Agreement to whom Owner assigns its interest under the Design-Build Agreement without

the consent of the Guarantor and when so assigned, to the extent of such assignment, the Guarantor shall be liable to the assignee as the Guarantor would have been if such assignee were Owner hereunder.

- (g) Notwithstanding anything contained in this Guarantee:
 - (i) the Guarantor shall cease to have any further obligations under this Guarantee upon the expiry of the Guarantee Period except in respect of demands made by Owner under this Guarantee prior to the expiry of the Guarantee Period; and
 - (ii) except as provided in Subsections 2.2(d) and 2.2(g), the Guarantor shall be entitled to assert any rights, defences, limits of liability or claims which the Design-Builder may be, or would have been, entitled to assert:
 - (A) under the Design-Build Agreement;
 - (B) at law; or
 - (C) in equity.

(h) Without limiting its obligations hereunder, in the event of default by the Design-Builder under the Design-Build Agreement and notice thereof from Owner to the Guarantor, the Guarantor shall have the option to substitute another wholly-owned corporate entity for the Design-Builder as the contractor under the Design-Build Agreement, provided that such entity has the technical ability to carry out the Design-Builder's obligations under the Design-Build Agreement as determined by Owner, acting reasonably, and is otherwise acceptable to Owner, acting reasonably. In the event the Guarantor elects to exercise such option, Owner agrees to execute such reasonable documents as are reasonably required to amend the terms and conditions of the Design-Build Agreement in order to accomplish such substitution in accordance with this subsection, but without otherwise amending the Design-Build Agreement.

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IN WITNESS WHEREOF this Guarantee has been duly executed and delivered as of the date first set out above.

PCL CONSTRUCTION GROUP INC.

by

Name:

Title:

Name:

Title:

I/We have authority to bind the Corporation.

**FORM OF OFFICER'S CERTIFICATE
TO ACCOMPANY PARENT COMPANY GUARANTEE**

I, the undersigned, hereby certify that I am the * _____ of **PCL CONSTRUCTION GROUP INC.**, a corporation organized and existing under the laws of Alberta ("Guarantor"). I further certify that, with respect to the attached guarantee dated April 9, 2013 ("Guarantee") required to be delivered by **PCL CONSTRUCTORS WESTCOAST INC.** ("Design-Builder") to **NORTHERN HEALTH AUTHORITY** ("Owner") pursuant to the provisions of the Design-Build Agreement dated April 9, 2013 between Owner and Design-Builder ("Agreement"), as of the date hereof:

1. Guarantor has been incorporated and is existing as a corporation under the laws of the Province of Alberta;
2. the execution and delivery of the Guarantee by Guarantor does not violate the laws of the Province of Alberta or Guarantor's articles, by-laws, unanimous shareholders' agreement or any other constating documents;
3. Guarantor has taken all necessary corporate action to authorize its execution, delivery and performance of the Guarantee;
4. The Guarantee has been validly signed and executed by Guarantor; and
5. I am not aware of any reason why the Guarantee as executed and delivered to Owner is not enforceable against Guarantor in accordance with its terms.

IN WITNESS WHEREOF, I hereby subscribe my name on behalf of Guarantor, and without personal liability, on this ____ day of April, 2013.

PCL CONSTRUCTION GROUP INC.

By: _____

Name: * _____

Title: * _____

FORM OF COUNSEL OPINION
TO ACCOMPANY PARENT COMPANY GUARANTEE

April _____, 2013

NORTHERN HEALTH AUTHORITY
Suite 300-299 Victoria Street
Prince George, BC V2L 5B8

Attention: Michael Hoefler
Regional Director, Capital Planning and Support Services

Re: **PCL CONSTRUCTION GROUP INC.**

Dear Sirs/Mesdames

We have acted as counsel to **PCL CONSTRUCTION GROUP INC.**, a corporation organized and existing under the laws of Alberta ("Guarantor") in connection with the execution and delivery of the guarantee dated April 9, 2013 ("Guarantee") required to be delivered by **PCL CONSTRUCTORS WESTCOAST INC.** ("Design-Builder") to **NORTHERN HEALTH AUTHORITY** ("Owner") pursuant to the provisions of the Design-Build Agreement dated as of April 9, 2013 between Owner and Design-Builder ("Design-Build Agreement").

In connection with the opinions expressed herein, I have examined the following documents:

- (i) the Design-Build Agreement;
- (ii) the Guarantee; and
- (iii) such corporate records of the Guarantor, such originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer's Certificate of _____ dated April ____, 2013.

In rendering this opinion to you, I have assumed, without inquiry:

- (a) genuineness of all signatures other than those on behalf of Guarantor and Design-Builder;
- (b) conformity to the original documents of all documents submitted to me as copies and the authenticity of all documents submitted to me as originals;
- (b) that the execution, delivery and performance of the Design-Build Agreement by each party thereto does not conflict with or constitute a violation of any law or governmental rule or regulation of any jurisdiction; and
- (c) that the execution, delivery and performance of the Guarantee by Guarantor does not breach, conflict with or constitute a violation of or default under (i) any agreement, instrument or

document to which Guarantor is a party or (ii) any order, judgment or decree to which Guarantor is bound or subject.

Based upon the foregoing assumptions and subject to the limitations, qualifications and exceptions hereinafter set forth, we are of the opinion that:

1. Guarantor has been incorporated and is existing as a corporation under the laws of the Province of Alberta.
2. Guarantor has the corporate power and capacity to execute and deliver the Guarantee and to perform its obligations under the Guarantee.
3. The execution and delivery of the Guarantee by Guarantor does not violate the laws of the Provinces of Alberta or British Columbia or the laws of Canada applicable therein or Guarantor's articles, by-laws, unanimous shareholders' agreement or other constating documents.
4. Guarantor has taken all necessary corporate action to authorize its execution and delivery of and performance of the Guarantee.
5. The Guarantee has been validly signed and executed by Guarantor.
6. Under the laws of the Provinces of Alberta and British Columbia and the laws of Canada applicable therein there are no governmental or regulatory consents, approvals or authorizations required of Guarantor for its entry into and performance of the Guarantee.
7. Under the laws of the Province of Alberta and the laws of the Province of British Columbia there are no registration, filing, certification or other formalities required to ensure the validity, binding effect and enforceability against Guarantor.

Our opinions set forth above are subject to the qualification that the enforceability of the Guarantee is subject to (i) applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or other laws affecting creditor's rights generally and (ii) general principles of equity (regardless of whether considered in a proceeding in equity or at law).

The foregoing opinions are limited to matters involving the laws of the Provinces of Alberta and British Columbia and the laws of the Canada applicable therein, and we do not express any opinion as to the laws of any other jurisdictions.

This opinion is rendered solely to, and is intended solely for the benefit of, Owner, in connection with the transactions contemplated in the Design-Build Agreement and the Guarantee. Other than Owner and its successors and assigns, this opinion may not be relied upon by any other person, firm or corporation for any purpose, in each case without our prior written consent.

Yours truly,

Name: * _____

Title: * _____

Firm: * _____