

SCHEDULE 2
DESIGN AND CONSTRUCTION PROTOCOLS
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APPENDIX 2C PROPOSAL EXTRACTS (DESIGN AND CONSTRUCTION)

APPENDIX 2D CONSTRUCTION SITE PLAN

APPENDIX 2E NOT USED

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APPENDIX 2G REVIEW PROCEDURE

APPENDIX 2H USER CONSULTATION PROCESS

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APPENDIX 2K NOT USED

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APPENDIX 2O QUALITY ASSURANCE PLAN

APPENDIX 2P OUTLINE COMMISSIONING PROGRAM

SCHEDULE 2

DESIGN AND CONSTRUCTION PROTOCOLS

1. INTERPRETATION

1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 of this Agreement:

“Authority’s LEED Obligations” means:

- (a) by the First New Service Commencement Date the Authority having developed and implemented a low environmental impact integrated indoor pest management policy (sufficient to entitle Project Co to receive the Innovation and Design Process LEED credit 1.3) for each New Facility and, the Authority maintaining such policy at each New Facility from the date Service Commencement is achieved at such New Facility;
- (b) by the First New Service Commencement Date the Authority having developed and implemented a low environmental impact cleaning equipment policy and the Authority ensuring that only janitorial equipment that maximise the effective reduction of building contaminants are used (sufficient to entitle Project Co to receive the Innovation and Design Process LEED credit 1.2) for each New Facility and, the Authority maintaining such policy at each New Facility from the date on which Service Commencement is achieved at such New Facility;
- (c) [Not Used]
- (d) by the First New Service Commencement Date the Authority having developed and commissioned a medium to provide “green” education such as will enable Project Co to obtain the Innovation and Design Process LEED credit 1.1; and
- (e) the Authority prohibiting smoking or otherwise enforcing a no smoking policy at each New Facility so as to satisfy the LEED Canada prerequisite relating to environmental tobacco control; and
- (f) the Authority exercising commercially reasonable efforts to obtain such other LEED credits as are within the reasonable control of the Authority to obtain.

“Authority Operational Commissioning” means the Authority’s operational commissioning activities in accordance with Section 12.4 of this Schedule;

“Authority Operational Commissioning Period” has the meaning set out in Section 12.4(b) of this Schedule;

“CaGBC” means the Canada Green Building Council;

“Certificate of Service Commencement” means with respect to each of the New PUBC Facility, the New VJH Facility and the New Ambulatory and Emergency Facility and in respect of that Facility only, the

certificate issued by the Independent Certifier certifying that Service Commencement at that Facility has been achieved;

“Construction Period Joint Committee” has the meaning set out in Section 2.6 of this Schedule;

“Construction Representative” has the meaning set out in Section 2.1(b) of this Schedule;

“Deficiencies” has the meaning set out in Section 13.2 of this Schedule;

“Design Representative” has the meaning set out in Section 2.1(a) of this Schedule;

“Designated Construction Parking Areas” means those areas designated in Appendix 2D of this Schedule as being a designated parking area for Project Co’s construction vehicles and equipment.

“Final Commissioning Program” means each of the schedules to be jointly developed and agreed by the Authority and Project Co in accordance with Section 12.2 of this Schedule;

“Fortis Provisional Sum” has the meaning set out in Section 6.18 of this Schedule;

“Fortis Requirements” has the meaning set out in Section 6.18 of this Schedule;

“Geotechnical Reports” has the meaning set out in Section 6.7 of this Schedule;

“Independent Certifier” has the meaning set out in Section 3.1 of this Schedule;

“Intended Uses” means the uses for the New Facility as described in the Design and Construction Specifications;

“LEED Assumption” means (i) that the Authority’s placement of pre-load on the KGH Lands and the Authority’s design of a sediment control plan and certification of the existence thereof will meet the requirements of CaGBC and will not prejudice Project Co obtaining LEED Gold Certification in relation to the New Ambulatory and Emergency Facility; and (ii) that the Authority will not carry out any works on the Lands or any adjacent lands that results in Project Co being unable to obtain a particular LEED accreditation point and, in respect of which works, having regard to Project Co’s LEED obligation in this Schedule 2, the Authority was at the time of carrying out such works, aware or ought reasonably to have been aware that such works were reasonably likely to result in Project Co being unable to obtain the relevant LEED accreditation point;

“LEED Canada” means CaGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System for New Construction & Major Renovations LEED Canada – NC 1.0 (March 2007 addendum);

“LEED Gold Certification” means the award of a LEED Gold certification from the CaGBC;

“LEED Rating System” means LEED Canada;

“Life Cycle Report” has the meaning set out in Section 5.7 of this Schedule;

“Move-In-Schedule” has the meaning set out in Section 10.5 of this Schedule;

“Outline Commissioning Program” means the schedule setting out the standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities of the parties outlined in Appendix 2P;

“Preload Period” has the meaning set out in Section 4.8 of this Schedule;

“Project Co Commissioning” means Project Co’s commissioning activities to be carried out at each of the New PUBC Facility, the New Ambulatory and Emergency Facility and the New VJH Facility prior to the issuance of the applicable Certificate of Service Commencement;

“Project Co Commissioning Tests” means all commissioning tests required by the Final Commissioning Program;

“Project Co’s Quality Consultant” has the meaning set out in Section 8.3 of this Schedule;

“Project Schedule” has the meaning set out in Section 10.1 of this Schedule;

“Proposal Extracts (Design and Construction)” means the provisions of Appendix 2C[Proposal Extracts (Design and Construction)];

“Quality Assurance Plan” has the meaning set out in Section 8.5 of this Schedule;

“Quality Assurance Program” has the meaning set out in Section 8.4 of this Schedule;

“Quality System” means an organizational structure, procedures, processes and resources necessary to implement a comprehensive, planned and systematic program, designed and implemented by Project Co pursuant to this Agreement, to ensure that the standards of quality control, quality management and quality assurance required by this Agreement are achieved by Project Co in every material aspect of the Design and Construction;

“Reviewed Drawings and Specifications” has the meaning set out in Section 4(m) of Appendix 2G [Review Procedure];

“Royal Building” has the meaning set out in Section 4.8 of this Schedule;

“Submittal” has the meaning set out in Section 1 of Appendix 2G [Review Procedure].

“Submittal Schedule” has the meaning set out in Section 2(a) of Appendix 2G [Review Procedure];

“Transport Canada Approval” has the meaning set out in Section 4.5(d) of this Schedule;

“Updated Project Schedule” has the meaning set out in Section 10.2 of this Schedule;

“User Consultation Group” has the meaning set out in Section 5.4 of this Schedule; and

“User Consultation Protocol” has the meaning set out in Section 1 of Appendix 2H [User Consultation Process].

2. PARTIES' DESIGN AND CONSTRUCTION REPRESENTATIVES

2.1 Appointment of Representatives

Both parties will within 5 Business Days of the Effective Date designate in writing for each of KGH and VJH:

- (a) a person (the "**Design Representative**") to be the party's single point of contact with respect to the Design; and
- (b) a person (the "**Construction Representative**") to be the party's single point of contact with respect to the Construction.

References to the "Design Representative" and "Construction Representative" are references to the relevant representative for KGH or VJH as applicable. Any one or more of a party's Design Representative and a party's Construction Representative for each of KGH and VJH may be the same person and may or may not be a Key Individual. Except as otherwise set out in this Agreement, all costs or expenses incurred by or with respect to a party's Design Representative and Construction Representative will be for the account of that party.

2.2 Replacement

Subject to Section 2.12 of this Agreement in respect of Key Individuals, a party may at any time and in its own discretion by notice to the other party change the person appointed as the party's Design Representative or the party's Construction Representative. If for any reason a party's Design Representative or Construction Representative is unable or unwilling to continue then the party will immediately appoint a replacement Representative. If at any time a party objects to a Representative of the other party then the other party will give reasonable consideration to replacing the Representative with a person reasonably acceptable to the objecting party.

2.3 Authority of Representatives

A party's Design Representative will have full authority to act on behalf of and bind the party with respect to Design under this Agreement with respect to KGH or VJH, as applicable, and a party's Construction Representative will have full authority to act on behalf of and bind the party with respect to Construction under this Agreement with respect to KGH or VJH, as applicable, including giving any review, acceptance, approval or confirmations which may be given by the Authority. Notwithstanding the above, neither a Design Representative nor a Construction Representative will have the authority to execute or agree to any amendments or to give any waivers of this Agreement.

2.4 Review Procedure

The parties will comply with Appendix 2G [Review Procedure].

2.5 Authority Not Responsible for Design or Construction

The Authority's rights and requirements of advice, review, acceptance, approval or confirmation of compliance with respect to any aspect of the Design or the Construction, including pursuant to Appendix 2G [Review Procedure], will be for the Authority's benefit only, and no advice, acceptance, approval or

confirmation of compliance by the Authority's Design Representative, the Authority's Construction Representative or other representative of the Authority will in any way relieve Project Co of its obligation for all aspects of the Design and Construction of the New Facility except as may be expressly set out in this Agreement.

2.6 Construction Period Committee

- (a) Not less than 20 Business Days after the Effective Date, the Authority and Project Co will establish, and will maintain until the Final Service Commencement Date, a joint liaison committee (the "**Construction Period Joint Committee**") consisting of the Design Representatives and Construction Representatives and such other members as the parties may agree from time to time.
- (b) The purpose of the Construction Period Joint Committee is to provide a formal forum for the parties to consult and cooperate in all matters relating to the Facility during the Construction Period and any member appointed to the Construction Period Joint Committee will not have any duties or obligations arising out of such appointment independent of such member's duties or obligations to the party making such appointment.
- (c) The Construction Period Joint Committee:
 - (1) will only have the authority as expressly delegated to it by the Authority and Project Co, and both parties will give reasonable consideration to delegating appropriate authority to permit efficient decision making with respect to the Facility;
 - (2) may strike, establish terms of reference for, delegate authority and appoint members having the necessary experience and qualifications to such sub-committees as the Construction Period Joint Committee may determine are necessary from time to time and all such sub-committees will report to the Construction Period Joint Committee;
 - (3) will establish protocols and procedures for undertaking the tasks and responsibilities delegated to it, including a co-operative and consultative process to review all documentation submitted to it in relation to the Design and Construction;
 - (4) may make recommendations to the parties on all matters relating to the Facility, which the parties may accept or reject in their complete discretion; and
 - (5) will have no authority to agree to any amendments or to give any waivers of this Agreement.
- (d) Subject to the provisions of this Agreement, the members of the Construction Period Joint Committee may adopt such procedures and practices for the conduct of the activities of the Construction Period Joint Committee as they consider appropriate from time to time and:

- (1) may invite to any meeting of the Construction Period Joint Committee such other (non-voting) persons as a member may decide; and
 - (2) receive and review a report from any person agreed by the members of the Construction Period Joint Committee.
- (e) The Construction Period Joint Committee will meet at least once each month at a location provided by Project Co at or near the Lands (unless otherwise agreed by its members) and from time to time as necessary. Any member of the Construction Period Joint Committee may convene a meeting of the Construction Period Joint Committee at any time. Meetings of the Construction Period Joint Committee will be convened on not less than 10 Business Days' notice (which will also identify the agenda items to be discussed at the meeting) provided that in an emergency a meeting may be called at any time on such notice as may be reasonable in the circumstances. The Construction Period Joint Committee will be chaired by a representative of the Authority unless the Authority requires that a representative of Project Co chair the Construction Period Joint Committee.
- (f) Minutes of all recommendations and meetings of the Construction Period Joint Committee will be kept by Project Co in accordance with Schedule 14 [Records and Reports] and copies circulated promptly to the parties within five Business Days of the making of the recommendation or the holding of the meeting.

3. INDEPENDENT CERTIFIER

3.1 Appointment

The parties will cooperate to jointly appoint a person (or firm of persons) (the “**Independent Certifier**”), who is:

- (a) qualified and experienced with respect to the design and construction of projects in British Columbia similar to the Project, and
- (b) independent from both the Authority and Project Co (and who will be impartial to the parties),

to provide certification services for the benefit of the parties during the Construction Period. The parties will enter into an agreement with the Independent Certifier on the terms generally as set out in Appendix 2A [Independent Certifier Agreement]. The parties confirm that Project Co may also appoint the Independent Certifier to provide certification services in respect of the Design-Build Agreement.

3.2 Appointment and Replacement

If within 20 Business Days of the Effective Date the Independent Certifier has not been appointed, or if for any reason during the Construction Period the Independent Certifier is unable or unwilling to continue to perform the Independent Certifier services or if the Independent Certifier’s appointment has been terminated by the Authority and Project Co, then:

- (a) within 5 Business Days from the earlier of that date which is 20 Business Days after the Effective Date and the date of termination of the Independent Certifier's appointment, Project Co will provide the names of 3 candidates acceptable to Project Co for consideration by the Authority;
- (b) within 10 Business Days of receiving the candidate names, the Authority will notify Project Co of the candidates acceptable to the Authority, and the parties will cooperate to enter into a contract with an acceptable candidate generally in the form set out in Appendix 2A [Independent Certifier Agreement]; and
- (c) if none of the candidates are acceptable to the Authority, acting reasonably, or if for any reason an Independent Certifier is not appointed within 25 Business Days of the request from the Authority under Section (a) above, then either party may immediately apply to the British Columbia International Commercial Arbitration Centre for the selection of an Independent Certifier, providing the other party the opportunity to participate in the selection and appointment process.

3.3 Monthly Inspections and Report

Under its agreement with the parties the Independent Certifier will:

- (a) consult with the Design-Builder and others involved in the Design; and
- (b) conduct inspections of the Construction,

as the Independent Certifier determines is required to be generally satisfied that the Design and Construction are proceeding in accordance with the requirements of this Agreement, and will no later than the 10th day of each month prepare and deliver to the Authority and Project Co a monthly written report containing a description of:

- (c) the Design and Construction completed in the previous month;
- (d) the progress of the Design and Construction relative to the Updated Project Schedule, with an explanation and analysis of any variances; and
- (e) any elements of the New Facility that for any reason vary from the requirements of this Agreement, with particular reference to this Schedule and Schedule 3 [Design and Construction Specifications].

3.4 Payment Certificates

The Independent Certifier will prepare and deliver to the Authority and Project Co a certificate certifying the KGH Cost to Date, the KGH Cost to Complete, the VJH Cost to Date and the VJH Cost to Complete as described in Sections 9.6 of Schedule 8 [Payments] no later than the 10th day of each month (or other time in the case of payment under Section 9.5 of Schedule 8 [Payments]). The Authority and Project Co specifically agree to the following with respect to the preparation and delivery of the payment certificates by the Independent Certifier:

- (a) the KGH Cost to Date certificate and the VJH Cost to Date certificate will certify actual costs incurred by or on behalf of Project Co;
- (b) the KGH Cost to Complete certificate and the VJH Cost to Complete certificate will be an estimate of Project Co's costs to complete based on Project Co's costs and progress of the completed Construction;
- (c) the Independent Certifier will not have or assume any responsibility whatsoever for any of the Design or Construction and nothing in this Section or the parties' agreement with the Independent Certifier will in any way whatsoever relieve Project Co of its obligations for Design and Construction under this Agreement; and
- (d) except as required under Section 3.3, the Independent Certifier will have no role in monitoring or inspecting, or in giving any directions or instructions, with respect to any aspect of the Design or the Construction.

3.5 Application for Certificate of Service Commencement

The Independent Certifier will, no later than 5 Business Days after application by Project Co for a Certificate of Service Commencement, in cooperation with Project Co's Construction Representative and the Authority's Construction Representative make an inspection of the relevant Facility and then within a further 5 Business Days either:

- (a) issue the list of Deficiencies as further described in Section 13.2 of this Schedule and subsequently issue the relevant Certificate of Service Commencement; or
- (b) provide Project Co and the Authority's Construction Representative with a list of all incomplete Design and Construction that must be completed prior to Service Commencement at the relevant Facility.

A Certificate of Service Commencement issued by the Independent Certifier will be final and not referable to the Dispute Resolution Procedure or otherwise subject to dispute between the parties.

3.6 Permitted Access

Project Co will give the Independent Certifier access to the Design and Construction work as the Independent Certifier reasonably requests in order to be fully informed as to the progress of the Design and Construction including:

- (a) access to drawings, specifications, schedules, records, and other documents or data relating to the Design and Construction, including such information that is being produced by or in the possession of the Design Builder or others; and
- (b) access to the Site,

and Project Co will:

- (c) permit the Independent Certifier to attend all Design meetings and, during Construction, all Construction meetings except to the extent Project Co and the Authority expressly otherwise agree; and
- (d) keep the Independent Certifier fully informed as to the progress of the Construction, including giving notice in accordance with Good Industry Practice of any part of the work on the New Facility before it becomes covered up and unavailable for inspection.

3.7 No Responsibility for Design or Construction

Nothing in this Agreement (including this Schedule) will be interpreted as giving the Independent Certifier any responsibility or authority for any aspect of the Design or the Construction, or as relieving Project Co of its responsibility for the Design and Construction as set out in this Agreement, and neither Project Co nor the Design-Builder nor any Sub-Contractor will be entitled to rely on any advice, review, acceptance, approval or confirmation that the Independent Certifier may give with respect to Design or Construction.

4. PROJECT CO'S RESPONSIBILITIES

4.1 Design/Build Responsibility

Notwithstanding any other provision of this Agreement, Project Co will:

- (a) have complete responsibility for the Design and Construction of the New Facility;
- (b) perform and complete the Design and Construction:
 - (1) in accordance with all terms of this Agreement including the terms of this Schedule and the Design and Construction Specifications;
 - (2) so as to provide a new patient care facility that at the relevant Service Commencement:
 - (A) is complete and operational and fit for the Intended Uses as specified in the Design and Construction Specifications and the Proposal Extracts (Design and Construction);
 - (B) will permit Project Co to provide the Services in accordance with the requirements of this Agreement; and
 - (C) is fully integrated with other existing or planned buildings or structures at the Site, as described in the Design and Construction Specifications; and
 - (3) to reflect and capture the intent and benefits of the Proposal Extracts (Design and Construction).

Each of the obligations in Sections 4.1(b)(1), 4.1(b)(2) and 4.1(b)(3) of this Schedule are independent obligations, and the fact that Project Co has satisfied one obligation will be no defence to an allegation that it has failed to satisfy another provided that, with respect to the foregoing requirements, the Authority and Project Co acknowledge that (i) the Proposal Extracts (Design and Construction) do not yet fully

reflect the requirements of Schedule 3 [Design and Construction Specifications] and will be subject to the Design development process in this Schedule 2 and (ii) Project Co wishes to reduce the building footprint of the New Facilities and, during the Design development process, may propose changes in the building footprint for approval by the Authority, acting reasonably, provided that the approval of the Authority shall be conditional upon Project Co demonstrating that proposed changes continue to meet the requirements of Schedule 3 [Design and Construction Specifications].

4.2 Standard of Performance for Design and Construction

Without limiting any other standards specified in this Agreement, Project Co will at all times during the Construction Period and in all respects, perform the Design and Construction to the same standards that an experienced, prudent, and knowledgeable owner would employ to design and construct a comparable health care facility in North America similar to the New Facility that the owner of such facility would intend to own and operate, whether publicly or privately, for a long term.

4.3 Defects in Design or Construction

Project Co will, without cost to the Authority, and without limiting Project Co's obligations to perform the Services as set out in this Agreement, including Schedule 4 [Services Protocols and Specifications], correct any Defect that becomes apparent at any time during the Term, subject to the terms of this Agreement, including any Scheduled Maintenance and the Handback Requirements.

4.4 Compliance with Laws

Project Co will undertake and perform the Design and Construction in accordance with applicable Laws, and so that all elements of the Design and the Construction, including all workmanship, construction equipment and materials, and the supply and installation of Equipment, meet or exceed the requirements of applicable Laws. If there is any conflict or ambiguity between the provisions of applicable Laws, or between a provision of applicable Laws and the Design and Construction Specifications, or between provisions of the Design and Construction Specifications, then the provision of higher quality or higher standard will govern.

4.5 Permits for the Design and Construction and Use

- (a) Without limiting Project Co's obligations under this Agreement but subject to Section 4.5(c), 4.5(d) and 4.5(e), Project Co will obtain all Permits required for the Design and Construction and any other Permits applicable to the use and development of the Lands and the New Facility.
- (b) Project Co will keep each of the Authority's Design Representative and Construction Representative fully informed of the details of all discussions and negotiations with Governmental Authorities with respect to all Permits for which it is responsible and upon request from the Authority's Design Representative or Construction Representative Project Co will provide to the Authority copies of all documentation and correspondence with a Government Authority relating to such Permits. Project Co will provide reasonable advance notice to the Authority of any meetings with the City or other Governmental Authorities, including the Ministry of Transportation, and upon request by the Authority a representative of the Authority may attend any such meetings. Project Co assumes all

risk and costs arising in relation to Permits, including delays to the Project Schedule, arising from delays in obtaining, or inability to obtain Permits for which Project Co is responsible as described in this Section 4.5, conditions of obtaining such Permits, or amendments to such Permits as may be required.

- (c) The Authority will provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to all Permits for which Project Co is responsible.
- (d) The parties agree that with respect to the Transport Canada Heliport Certificate (the “**Transport Canada Approval**”), Project Co does not have standing to make the application and obtain the Transport Canada Approval from the relevant Governmental Authority. Project Co will prepare the application for the Transport Canada Approval for execution and submission by the Authority to Transport Canada. Project Co will not be liable for the failure of Transport Canada to issue such approval, provided that Project Co has designed and constructed the heliport in accordance with Transport Canada requirements.
- (e) The parties agree that the statutory right of way No. W10531 in favour of British Columbia Hydro and Power Authority (“BC Hydro”) on the VJH Lands will require the relocation of BC Hydro’s right of way. The Authority will grant such consents and other reasonable assistance as may be required in relation to the registration of the relocation of such right of way, such consents and other reasonable assistance not to be unreasonably withheld or delayed.

4.6 LEED Gold Certification

Project Co will, subject to Section 4.6(g) obtain LEED Gold Certification for each of the New VJH Facility, the New PUBC Facility and the New Ambulatory and Emergency Facility in accordance with the following:

- (a) Within 60 days of the Effective Date Project Co will register each such Facility with CaGBC.
- (b) Project Co will, subject to this Section, achieve all necessary prerequisites, credits and points under the LEED Rating System required to achieve the LEED Gold Certification for each such Facility and may in its discretion determine which of the credits and points to pursue except that Project Co will achieve two credits for Energy and Atmosphere Credit 1.1 and two credits for Energy and Atmosphere Credit 1.2 to reach the LEED target – Optimize Energy Performance: 38% (MNECB).
- (c) If at any time after Project Co obtains registration with the CaGBC in accordance with Section 4.6(a) of this Schedule the requirements to achieve LEED Gold Certification under the LEED Rating System change, and Project Co is required to comply with such change in order to achieve LEED Gold Certification of either such Facility, then Project Co will forthwith notify the Authority of such change and such change will be a Change pursuant to Schedule 6 [Changes, Minor Works and Innovation Proposals].

- (d) If for any reason Project Co fails to achieve the Energy and Atmosphere Credits in Section 4.6(b) of this Schedule for either such Facility, such failure will be deemed to be a Defect and Project Co will use all reasonable efforts to correct such Defect within 18 months after the Service Commencement Date for the relevant Facility. Project Co's maximum obligation to correct such Defect will be \$200,000 for the New PUBC Facility, \$450,000 for the New Ambulatory and Emergency Facility and \$350,000 for the New VJH Facility, for an aggregate maximum obligation of \$1,000,000. If Project Co has used all such reasonable efforts and has failed to correct the applicable Defect within 18 months after the relevant Service Commencement Date then Project Co will, upon written demand from the Authority, and in addition to any payment required under Section 4.6(e) of this Schedule, immediately pay to the Authority for each such Facility that has not had such Defect corrected an amount of \$200,000 for the New PUBC Facility, \$450,000 for the New Ambulatory and Emergency Facility and \$350,000 for the New VJH Facility, for an aggregate maximum obligation of \$1,000,000.
- (e) Subject to the provisions of Section 4.6(g) of this Schedule 2, if for any reason Project Co fails to obtain LEED Gold Certification at any of the New VJH Facility, the New PUBC Facility or the New Ambulatory and Emergency Facility, such failure will be deemed to be a Defect and Project Co will use all reasonable efforts to correct such Defect within 18 months after the relevant Service Commencement Date. Project Co's maximum obligation to correct such Defect will be \$200,000 for the New PUBC Facility, \$450,000 for the New Ambulatory and Emergency Facility and \$350,000 for the New VJH Facility, for an aggregate maximum obligation of \$1,000,000.
- (f) Upon payment of amounts, if any, owing under this Section 4.6 Project Co will have no further obligations in respect of obtaining LEED Gold Certification, except to provide the Authority with such information and administrative assistance as the Authority may reasonably require in relation to obtaining LEED Gold Certification, and for greater certainty the failure to obtain LEED Gold Certification will not be a Project Co Event of Default.
- (g) The Authority acknowledges that, with the exception of Section 4.6(d), Project Co's obligation in this Section 4.6 to obtain LEED Gold Certification is subject to the Authority satisfying the Authority's LEED Obligations and the LEED Assumption. If the Authority fails to satisfy the Authority's LEED Obligations and the LEED Assumption, then Project Co will be relieved from Project Co's obligations in this Section 4.6 to the extent of the LEED credits that would have been obtained if the Authority satisfied the Authority's LEED Obligations and the LEED Assumption. Without limiting the foregoing, Project Co will be required to demonstrate, supported by written documentation and expert reports and opinions, that Project Co would have achieved LEED Gold Certification subject to the Authority's failure to satisfy the Authority's LEED Obligations and the LEED Assumption.

4.7 Energy

Project Co will comply with the requirements of Appendix 8C [Energy].

4.8 Preload at KGH

Project Co acknowledges that prior to the Effective Date, the Authority has caused certain pre-load materials to be placed on a portion of the KGH Site, and that the Authority has a preload contract with a contractor for the removal of the preload materials. Project Co will identify the date by which the removal of the preload materials may commence (the time period from the placement of such preload materials to the completed removal of such preload materials being the "Preload Period"). Without limiting the responsibility of the Authority contained in the LEED Assumption, Project Co will, on behalf of the Authority, manage the preload contract so that Project Co meets its Design and Construction obligations, including requiring the aforementioned contractor to comply with the Occupational Health and Safety Regulation under the Workers Compensation Act (British Columbia) and to comply with Project Co's directions pursuant to that Act and regulation.

For greater certainty, Project Co will have no authority to initiate or approve any changes under the preload contract, or authorize any additional costs, including overtime, without the consent of the Authority, acting reasonably.

For greater certainty, the Authority remains responsible for payments to the aforementioned contractor under the preload contract, including any additional costs incurred by the contractor in complying with any reasonable directions by Project Co to comply with LEED Canada obligations for the removal of such preload.

The Authority acknowledges that except as expressly set out in this Section 4.8 Project Co is not responsible for risks associated with the settlement of the Royal Building and related infrastructure on the KGH Site (collectively the "Royal Building") during the Preload Period. Following the Preload Period, Project Co will assume all risks associated with settlement of the Royal Building.

Project Co will undertake a detailed survey of the Royal Building to establish a baseline for monitoring future settlement and will undertake monitoring of the Royal Building until the period that is two years following Service Commencement for the New Ambulatory and Emergency Facility. The Authority may monitor after date and will upon request provide copies of results to Project Co.

Any settlement of any part of the Royal Building after the Preload Period that exceeds the greater of (i) 30 mm or (ii) 38 mm less the measured settlement of the Royal Building during the Preloading Period, and which is demonstrably caused by the Design and Construction of the New KGH Facility shall, subject to the following provisions of this paragraph, be the responsibility of Project Co. In the event that the above settlements are exceeded Project Co will be required to perform all structural and other remedial work required to ensure the integrity of the affected portions of the Royal Building, ensure clinical functionality and repair aesthetic and other damage.

Project Co represents that as of the Effective Date it and the Design-BUILDER do not Have Knowledge of any matter in respect of the Design and Construction that will, or that has a material probability that it will, cause settlement of any part of the Royal Building in excess of the limits specified in (i) and (ii) above.

4.9 KGH Parking

Notwithstanding the Design and Construction Specifications, the parties agree that the scope of the Design and Construction includes a requirement for 346 new additional permanent parking stalls in the

"Parkade" portion of the New PUBC Facility as described by the Proposal Extracts (Design and Construction) and 103 new additional permanent parking stalls on the KGH Lands as surface parking as described by the Proposal Extracts (Design and Construction).

4.10 VJH Parking

The parties agree that the scope of the Design and Construction includes a requirement for the VJH site to have a minimum total of 821 permanent parking stalls. Project Co may provide these stalls as a combination of existing stalls and new additional stalls on site, all as described by the Design and Construction Specifications. Ambulance parking is required in addition to those stalls.

4.11 KGH Royal Avenue and Vernon Access

The Authority agrees that other than as required by the City of Kelowna as part of the building permit Project Co is not required to obtain a Permit from the City for access to the Facility from Royal Avenue. If any such Permit is required, or prevents Project Co from meeting its obligation under this Agreement or if any Permit requires Project Co to perform any off-site improvements for the New Facilities or improvements to any other off-site City-owned infrastructure or any improvement to the City-owned Rose Avenue lift station, the Authority shall implement any additional requirements as a Change pursuant to Schedule 6 [Changes, Minor Works and Innovation Proposals]. The Authority further agrees that Project Co is not required to obtain a Permit from the British Columbia Ministry of Transportation for access to VJH. If any such Permit is required or the British Columbia Ministry of Transportation prevents Project Co from meeting its obligations under this Agreement or if such Permit otherwise requires Project Co to perform any off-site improvements relating to the granting of access to VJH, the Authority shall implement any additional requirements as a Change pursuant to Schedule 6 [Changes, Minor Works and Innovation Proposals]. Project Co represents that as of the Effective Date it and the Design-Builder have not received written notification of any specific off-site improvements that are required by the City or British Columbia Ministry of Transportation.

4.12 Early Works

The parties agree that the Early Works Agreement between the parties dated July 16, 2008 is terminated and all Early Works (as that term is defined in that agreement) undertaken under that agreement in advance of Financial Close are deemed to have been undertaken by Project Co, as part of the Design and the Construction, pursuant to this Agreement, and as between Project Co and the Authority, Project Co accepts and assumes full responsibility and liability for such Early Works in accordance with the terms of this Agreement.

5. DESIGN

5.1 Additional Design Considerations

In addition to other requirements of this Agreement, Project Co will undertake and perform the Design so that the Design:

- (a) is undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in

scope, nature and complexity to the Design, as of the date of this Agreement, and Project Co will appoint a design team that:

- (1) is so qualified;
 - (2) includes (as required by applicable Law) licensed or registered professional engineers and architects; and
 - (3) has sufficient expertise and experience to expeditiously and efficiently perform all of the Design in a proper and professional manner to the standard set out in this Agreement;
- (b) includes specific consideration of “constructability” and “life cycle” cost issues at all stages of Design, as appropriate; and
 - (c) includes consideration of efficient and cost-effective operation and maintenance.

5.2 Not Used

5.3 Design Process

Project Co will cause the Design-Builder to undertake the Design:

- (a) in accordance with Appendix 2G [Review Procedure];
- (b) in phases progressively, as follows:
 - (1) Schematic Design Phase – this phase will include development of drawings and other documents illustrating the scale and character of the New Facility and how the parts of the New Facility functionally relate to each other, such as the Site plan, spatial relationship diagrams, principal floor plans, sections, and elevations;
 - (2) Design Development Phase – this phase will include drawings and other documents, including a Site plan, elevations and sections, together with a written project brief detailing area calculations, building systems and outline specifications, to fully describe the size and character of the entire New Facility including the architectural, structural, mechanical, and electrical systems, materials and other elements to fully describe the New Facility, to be delivered to the Authority when the overall Design of the New Facility is:
 - (A) approximately 50% complete; and
 - (B) approximately 95% complete;
 - (3) Construction Drawings Phase - this phase will include construction documents consisting of drawings and specifications describing in detail the requirements for the construction of the New Facility, delivered to the Authority when the design of the New Facility is:

- (A) approximately 50% complete; and
- (B) approximately 95% complete;

and delivered in a timely way in advance of Construction with sufficient detail to permit the Authority to understand and assess the design of the New Facility. If Project Co intends to proceed with construction of one element of the New Facility in advance of the completion of the design of the entire New Facility then Project Co will deliver the 50% and 95% construction documents for that element with sufficient accompanying detail to permit the Authority to understand and assess the design of that element;

- (c) for each phase so that in each phase Project Co will provide to the Authority the level of detail and documentation that the Authority would customarily receive or expect to receive for a facility similar to the New Facility in accordance with Good Industry Practice, including:
 - (1) dimensioned floor plans and elevations showing all millwork;
 - (2) furniture and equipment;
 - (3) interior elevations for all rooms;
 - (4) exterior building elevations;
 - (5) completed Site and landscaping plans;
 - (6) room finish schedules;
 - (7) Room Data Sheets;
 - (8) reflected ceiling plans;
 - (9) interior finishes; and
 - (10) a written report detailing and describing the manner in which the following have been taken into account in the Design:
 - (A) planning;
 - (B) LEED Gold Certification, including energy efficiency/sustainability and the relevant LEED checklist and points;
 - (C) material selection;
 - (D) constructability;
 - (E) Life Cycle Requirements; and
 - (F) building operating services; and

- (11) the information and detail that, pursuant to Submittals reviewed under Appendix 2G [Review Procedure], Project Co is entitled to proceed with from the previous phase; and
- (d) in consultation with the User Consultation Group as described in Section 5.4 of this Schedule.

Project Co will only issue drawings and specifications for formal pricing or construction purposes based on Reviewed Drawings and Specifications as described in Appendix 2G [Review Procedure].

5.4 User Consultations

The Design must be carried out with appropriate consultation with representatives of the Facility Users (the "**User Consultation Group**") and accordingly Project Co will, at its cost, as part of the Design process, conduct Facility Users consultations as described in Appendix 2H [User Consultation Process].

5.5 Master Design Schedule

Within 10 days after the Effective Date Project Co will submit to the Authority a master design schedule in a form and level of detail acceptable to the Authority, acting reasonably, that includes for each of Design phases described in Section 5.3(b) of this Schedule:

- (a) the proposed date for each Submittal package;
- (b) the nature and timing of consultation (including meetings) with Facility Users; and
- (c) the proposed periods for the Authority to review and provide comments and Project Co to address those comments and re-submit where required by the Review Procedure.

5.6 Mock Up Rooms

Project Co will at its cost construct mock-ups for the New KGH Facility and the New VJH Facility at two stages.

Project Co will construct the first stage mock-ups prior to the "Construction Drawings Phase" described in Section 5.3(b)(3) of this Schedule. Project Co will prepare mock-ups of the rooms identified below for each site, which indicates the overall room size, window and door opening (width and height) and the lighting levels. The mock-ups will include any equipment supplied by the Authority. Project Co will provide the first stage mock-ups for the New VJH Facility within the portion of the VJH Alexander building that is to be demolished and will provide the first stage mock-ups for the New KGH Facility in a location to be provided by the Authority in Kelowna.

Project Co will construct the second stage mock-ups immediately following the completion of sufficient structural elements for each of the New KGH Facility and the New VJH Facility to enable the mock-ups to be provided safely within the relevant structure. Project Co will prepare mock-ups for all of the rooms and elements set out in the first stage mock-ups and in addition will include all actual finishes, millwork, services, equipment and furniture.

Project Co will provide the following mock-up rooms for the New KGH Facility: OR, Trauma Room, Renal Treatment Bay.

Project Co will provide the following mock-up rooms for the New VJH Facility: OR, Trauma Room, LDRP, ICU with isolation room, Paediatric Inpatient Room.

5.7 Life Cycle Report

On or before each of the First New Service Commencement Date, the Second New Service Commencement Date and the Final Service Commencement Date, Project Co will prepare in consultation with the Design-Builder and the Service Provider a report (“**Life Cycle Report**”) that sets out the proposed parameters for the anticipated life of major elements in whichever is relevant of the New PUBC Facility, the New Ambulatory and Emergency Facility and the New VJH Facility and the Life Cycle Requirements relating thereto, to be used as a basis for the Life Cycle Plan referred to in Section 4.4 of Schedule 4 [Services Protocols and Specifications], and deliver such report to the Authority. The Authority will, acting reasonably, make its staff who work in building maintenance and repair available for consultation with Project Co, the Services Provider(s) and the Design-Builder regarding Design issues and the Life Cycle Report.

5.8 Ownership of Design

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

- (a) the Authority will not have an ownership interest in the Design, including any of the drawings or specifications prepared and produced by Project Co, the Design-Builder or any Sub-Contractor;
- (b) Project Co grants to the Authority, or as required will cause the Design-Builder and all Sub-Contractors to grant to the Authority, an irrevocable license giving the Authority the non-exclusive right to use the Design in connection with the New Facility, including any of the documents and information listed in Section 6.16 of this Schedule, beyond the end of the Term and as long as the New Facility exists, including for renovations, additions and alterations to the New Facility, provided that, except for reference purposes, the Design, including the plans, sketches, drawings, electronic files, graphic representations and specifications will not be used on any other project; and
- (c) Project Co will execute and deliver, or cause to be executed and delivered, any and all further and other documents as the Authority may reasonably request to effect and record the licence referred to in Section 5.8(b) of this Schedule.

6. CONSTRUCTION

6.1 Construction of the New Facility

Project Co will perform the Construction in strict conformity with the Reviewed 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 Amendments and Changes to the Drawings and Specifications

During the Construction, Project Co will submit all amendments or additions to the Reviewed Drawings and Specifications to the Authority's Design Representative for review under Appendix 2G [Review Procedure].

Any Changes during the Construction will be subject to the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals].

6.3 Skilled Workers

Project Co will employ or cause the Design-Builder to employ a sufficient number of sufficiently skilled workers to perform the Construction in compliance with this Agreement.

6.4 Control of the Construction

Project Co will have total control of the Construction 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 the Authority, the Authority's Design Representative, the Authority's Construction Representative or any other representative or agent of the Authority, or to the Independent Certifier.

6.5 Existing Utilities

Project Co will be responsible to relocate any existing services that conflict with the Construction. All existing services to existing buildings and structures must remain in operation at all times with interruption only with the approval of the Authority's Representative. Project Co will be responsible to confirm the location of, and protect, all existing utilities that may be affected by the Construction.

6.6 Site Investigation

By entering into this Agreement, Project Co will be deemed to have inspected the Site in relation to the performance of its obligations under this Agreement and to have satisfied itself and accepted all risks and related responsibilities relating to the Site (except as expressly provided to the contrary in this Agreement and without prejudice to the provisions of Section 8 of this Agreement) including:

- (a) the adequacy of the rights of access to and through the Site for the Construction;
- (b) vehicular access and parking; and
- (c) temporary storage of building materials and equipment.

6.7 Geotechnical Conditions

The Authority has made available certain geotechnical reports (the "**Geotechnical Reports**") as listed in Appendix 2N [Geotechnical Reports]. Project Co may rely on the accuracy of the geotechnical information as set out and contained in the Geotechnical Reports but only as specifically set out below:

- (a) Project Co may rely only on information, if any, contained in a Geotechnical Report describing the location of a test bore hole completed on the Site, and also the description of the soil and geotechnical material in a specific bore hole;
- (b) Project Co may not rely on any other information whatsoever that may be contained in a Geotechnical Report, including the adequacy of the number or locations of the described bore holes, or any opinions or recommendations interpreting the bore hole information for any purpose.

The Authority's responsibility for the information in the Geotechnical Reports is limited as set out above, and Project Co specifically acknowledges that it assumes and accepts all risks that the bore hole information, as may be available in the Geotechnical Reports, may not accurately or completely describe actual Site conditions including geotechnical or soil conditions (including risk of boulders, rock, low-strength soil and voids) and ground water conditions (including risk of underground streams or water table conditions) that may affect the Design or Construction.

6.8 Site Issues

Unless otherwise agreed by the Authority, Project Co will restrict the Construction to the area shown outlined in red in Appendix 2D [Construction Site Plan].

In addition, Project Co will:

- (a) request that Construction workers parking outside of the Designated Construction Parking Areas do so more than 1 km from the Site;
- (b) post an information phone number in a prominent location near the Site such that neighbours and passersby can phone in and contact Project Co; and
- (c) provide a Community Liaison Officer to provide a single point of contact with Project Co regarding construction and development issues.

6.9 The Authority'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 Construction and Project Co's and/or the Design-Builder's site rules, the Authority's Design Representative and Construction Representative, and their respective delegates, will have access at all reasonable times during normal working hours to:

- (a) attend the area shown outlined in red in Appendix 2D [Construction Site Plan] and view the Construction; and
- (b) subject to obtaining the consent of the relevant manufacturer or supplier (which Project Co will use all reasonable efforts to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Construction for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Construction.

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

Project Co will cooperate with the Authority to arrange for tours of the Site at reasonable times during Construction for interested doctors and other health care officials and personnel, in a way that does not interfere with the progress of the Construction.

6.10 Inspection

Prior to the each relevant Service Commencement Date, Project Co will, upon request by the Authority's Construction Representative including detailed reasons for the request, open up for inspection by the Authority's Construction Representative any part of the work on a New Facility that has not achieved Service Commencement which the Authority's Construction Representative, acting reasonably, believes is defective and:

- (a) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are no Defects in the relevant part of such work, and Project Co complied with the requirements of Section 3.6 of this Schedule, then any delay caused by the exercise of such rights will be treated as a Compensation Event and be subject to Section 8.3 of this Agreement;
- (b) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that any relevant part of the work on the New Facility is defective, then:
 - (1) Project Co will rectify and make good such Defect(s);
 - (2) any consequence of such rectification or making good Defect(s) will be carried out by Project Co at no cost to the Authority; and
 - (3) Project Co will not be entitled to any extension of time to the Project Schedule in relation to such rectification and making good of such work; and
- (c) if the parties are unable to reach agreement in accordance with Sections 6.10(a) or (b) above, then the matter will, at the request of either party, be referred to the Dispute Resolution Procedure. 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 the Authority, provided that Project Co proceeding in accordance with the Authority's position will be a Compensation Event if the relevant matter in Dispute is determined in favour of Project Co.

6.11 Builders Lien Act and Builders Liens

With respect to builders liens and the requirements of the *Builders Lien Act* (British Columbia):

- (a) the Authority will not have any responsibility to be the payment certifier under any contract related to Construction;
- (b) Project Co will make all required builders lien holdbacks;

- (c) no builders lien holdback will be retained by the Authority under this Agreement;
- (d) if it is determined that any builders lien holdback is required to be retained by the Authority, then Project Co agrees that it is making and will make all of its required holdbacks as agent for the Authority;
- (e) Project Co will indemnify the Authority from any damages, costs, claims and expenses of any kind, including actual solicitors costs, arising from the failure of the Authority to retain a builders lien holdback; and
- (f) failure to hold back payment of amounts due to any Person in accordance with section 4 of the *Builders Lien Act* (British Columbia) will not constitute a Project Co Event of Default.

6.12 Safety and Protection of Property

Project Co will be solely responsible for safety at the area shown outlined in red in Appendix 2D [Construction Site Plan] during the Construction Period, including the safety of all persons on such portions of the Site (whether on the Site lawfully or not) and members of the public, and will comply with the requirements of applicable Laws, applicable construction safety legislation, regulations and codes and Good Industry Practice. Project Co will protect the Authority's property and any third party's property from damage in the performance of the Construction.

6.13 Signage

Project Co may erect signage at the Site during Construction provided such signs are acceptable to the Authority's Construction Representative, acting reasonably.

6.14 Temporary Works

During the Construction Period Project Co will:

- (a) have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use;
- (b) provide its own services necessary for Project Co's construction use including but not limited to power, telephone, water and sewage, and will not connect directly to the existing hospital buildings or infrastructure except with the Authority's prior approval; and
- (c) at its own cost replace or repair any amenities, services or structures affected by the Design or the Construction located on the Lands outside the area shown outlined in red in Appendix 2D [Construction Site Plan] including landscaping, light standards and hydrants.

6.15 Project Meetings

Without limiting the obligations pursuant to Section 2.6 of this Schedule in respect of the Construction Period Joint Committee, at the Authority's request, Project Co's Construction Representative will attend

meetings to update the Authority on the progress of Construction and to discuss any issues that have arisen. The meetings will be at least weekly unless agreed otherwise by the Authority.

6.16 Project Records

Notwithstanding any other provision of this Agreement:

- (a) As-Built Drawings and Specifications: Project Co will:
 - (1) throughout the Construction, update the Reviewed Drawings and Specifications (with respect to the drawings, such update will be in hard copy and "CAD" or other electronic format reasonably acceptable to the Authority's Representative), including all final shop drawings reviewed pursuant to Appendix 2G, so as to produce accurate as-built documents for the New Facility;
 - (2) as requested from time to time during the Construction, make available such as-built drawings and specifications to the Authority's Design Representative for review to permit the Authority's Design Representative to monitor Project Co's compliance with the requirements of this Section; and
 - (3) provide three full-size hard copies and two electronic copies in ".dwg" format of the completed as-built drawings and specifications to the Authority's Design Representative on or before Service Commencement.
- (b) Maintenance Manuals: Project Co will:
 - (1) on or before Service Commencement, make available all 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 New Facility for review by the Authority's Design Representative; and
 - (2) organize and store such information in accordance with Schedule 14 [Records and Reports];
- (c) Design Records: Project Co will retain records of the Design development;
- (d) Minutes of Meetings: Project Co will prepare minutes of meetings between the Authority and Project Co relating to the Design and Construction and will circulate such minutes to the Authority's Design or Construction Representative for review and comment as soon as reasonable after the relevant meeting, and a reasonable period in advance of the subsequent meeting so that all parties may consider the minutes and take required actions in advance of the subsequent meeting;
- (e) Inspection Reports and Tests Results: Project Co will retain official reports and certified test records of all inspections and tests which were undertaken as part of the Construction;
- (f) Utility Plans: Project Co will retain utility plans for the New Facility and the Site;

- (g) Landscape and Irrigation Plans: Project Co will retain landscape and irrigation plans for the New Facility and the Site;
- (h) Copies of all Permits: Project Co will retain copies of all Permits for the Construction and occupation of the New Facility; and
- (i) Signed Quality Assurance Plan: Project Co will retain a signed copy of the Quality Assurance Plan for the Construction and all records of the Quality Assurance Program implemented as required by this Agreement.

6.17 Equipment Operation and Training

Project Co will be knowledgeable on the proper use and maintenance of all equipment and systems Project Co installs in the New Facility, including communication systems, and will provide sufficient training and education to the Authority staff to enable the Authority to properly utilize such equipment and systems.

6.18 Fortis Upgrades

- (a) The parties agree that Fortis will require upgrades to the existing power grid infrastructure to the Other Site Facilities on the KGH Lands as of the Effective Date to provide electrical supply to the New KGH Facility and the Other Site Facilities on the KGH Lands, and that such upgrades may include provision for future needs (the "Fortis Requirements").
- (b) The parties acknowledge that Project Co has financed a provisional sum of **DELETED** (the "Fortis Provisional Sum") to provide the Fortis Requirements. Project Co will, upon drawing down the Fortis Provisional Sum under the Credit Agreement, hold such funds in an interest-bearing bank account, and will make payment from such account with the written consent of the Authority, acting reasonably. All interest on the Fortis Provisional Sum will accrue to the benefit of the Authority.
- (c) Project Co will perform the Fortis Requirements as a Change pursuant to Schedule 6, provided however that:
 - (1) Project Co shall not be entitled under Schedule 6 to refuse to perform the Change; and
 - (2) Project Co shall not be entitled to any mark-up on any payments made to Fortis or to other persons as directed by Fortis.
- (d) Within 30 days after determination of the amount to be payable for the Fortis Requirements under Schedule 6, Project Co will provide a written statement to the Authority with supporting documentation to identify the difference between the amount payable and the amount of the Fortis Provisional Sum plus the interest earned.
- (e) If such amount payable exceeds the Fortis Provisional Sum plus the interest earned, the Authority will pay the excess amount to Project Co within 30 days after receipt of such statement and supporting documentation.

- (f) If such amount is less than the Fortis Provisional Sum plus the interest earned, Project Co will at the Authority's direction apply the difference against other amounts payable under this Agreement.

7. EQUIPMENT SUPPLY AND INSTALLATION

7.1 Design and Construction Requirements

Project Co will, subject to the Authority's obligations with respect to equipment as set out in Schedule 3, comply with the provisions of the Design and Construction Specifications with respect to equipment, including procurement, delivery and installation.

8. QUALITY MANAGEMENT

8.1 Quality of the Design and Construction

Project Co is solely responsible for the quality of the Design and Construction.

8.2 Quality System

Project Co acknowledges that a comprehensive Quality System is critical for the proper and timely completion of the Design and Construction and accordingly Project Co will implement and follow a Quality System.

8.3 Project Co's Quality Consultant

Project Co will retain a qualified expert in quality management ("**Project Co's Quality Consultant**") to develop a Quality Assurance Program.

8.4 Quality Assurance Program

Project Co's quality assurance program (the "**Quality Assurance Program**") will:

- (a) detail Project Co's measures required to complete all aspects of the Design and Construction pursuant to its Quality System and in accordance with the requirements of this Agreement including this Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications];
- (b) address and be applicable to all aspects of the Design and Construction;
- (c) provide for a graded approach to quality in which the appropriate level of quality assurance requirements for various elements of the Design and Construction are defined;
- (d) describe or comply with the following:
 - (1) the required quality level for each process or activity involved in the Design and Construction and the means of achieving it;
 - (2) the steps to ensure that everyone participating in the Design or Construction is committed to the Quality Assurance Program;

- (3) the steps to ensure that the management and organizational structure and responsibilities are defined and understood by everyone participating in the Design or Construction;
- (4) require that all persons participating in the Design or Construction are competent to do their required tasks;
- (5) require that individuals involved with the Quality Assurance Program will be held accountable for their work;
- (6) provide that the right people will have the right information at the right time;
- (7) provide that relevant experience for each process or activity will be sought and used;
- (8) Design and Construction activities are planned and controlled;
- (9) the right items, processes, and practices will be used;
- (10) materials and services are verified to confirm that they are correct; persons giving verification will be sufficiently qualified and will be independent from those who perform or install the materials or services;
- (11) peer reviews and inspections will be performed on structured planned basis on all elements of the Design and Construction and:
 - (A) errors and deficiencies will be identified and recorded;
 - (B) errors and deficiencies remedied or corrected and a record maintained of the remedy or correction, and
- (12) maintain records as required by this Agreement;
- (e) provide for independent design verification in accordance with Good Industry Practice;
- (f) provide that professionals of record will carry out on-site inspections, review materials testing and inspector's reports, undertake required surveying, measuring, and verification of materials and construction methods to ensure conformance with the Reviewed Drawings and the Design and Construction Specifications; and
- (g) provide that professionals of record will provide a letter of assurance that is an attestation that the Design and Construction has been performed in accordance with the Reviewed Drawings and the Design and Construction Specifications.

8.5 Quality Assurance Plan

Project Co will provide a draft quality plan (the "**Quality Assurance Plan**"), attached as Appendix 2O (Quality Assurance Plan), that describes the implementation of the Quality Assurance Program. The Authority may, within 30 days of the Effective Date, provide comments on it to Project Co and Project Co

will, acting reasonably, take account of the comments in finalizing the Quality Assurance Plan. Project Co will promptly implement and strictly comply with the Quality Assurance Plan as recommended by Project Co's Quality Consultant.

8.6 Reporting

Project Co will deliver to the Authority a monthly report of the Quality Assurance Plan prepared by Project Co's Quality Consultant covering all aspects of the Design and Construction completed in the reporting period that are relevant to the Quality Assurance Plan. Project Co will highlight any deficiencies identified and corrective actions taken to address such deficiencies during the period covered by such report.

8.7 Quality Review by the Authority

The Authority may, at its discretion, perform its own audits of the Quality Assurance Program and for that purpose Project Co will make available for review by the Authority, upon request from the Authority, all records of the Quality Assurance Program and the Quality Assurance Plan to permit the Authority to be satisfied that Project Co is following its Quality Assurance Plan.

9. WORKERS COMPENSATION

9.1 Evidence of WCB Compliance

Project Co will provide evidence, satisfactory to the Authority's Representative, of compliance by Project Co and all Project Contractors with the requirements of the *Workers Compensation Act*, as amended, and all regulations and successor legislation thereto, including payments due thereunder at the following times:

- (a) prior to commencing the Construction; and
- (b) at any time during Construction, upon request of the Authority's Construction Representative acting reasonably.

9.2 Indemnity for WCB Non-Compliance

If Project Co or anyone employed by or through Project Co in the performance of any Construction does not comply with the requirements of the *Workers Compensation Act*, as amended, and all regulations and successor legislation thereto, including payment and deduction and remittance of any and all contributions, fees, assessments and charges required to be made pursuant to the above, Project Co will indemnify the Authority from any cost, loss, liability or obligation which the Authority may incur as a direct result.

9.3 Prime Contractor

For the purposes of applicable legislation and regulations, Project Co agrees to be, or will cause the Design-Builder to be, at all times during the Construction Period, the prime contractor as defined in the *Workers Compensation Act* and accordingly will comply, or will cause to be complied, with all resulting requirements and obligations including:

- (a) ensuring continuing coordination of the occupational health and safety activities of all employers on the site of the Construction, including the Authority, the Authority's Construction Representative, any other contractors and everyone engaged by or through any of them;
- (b) delivering any notices of the Project as required by applicable regulations; and
- (c) complying with the obligations of a prime contractor for a multi-employer workplace as prescribed by the applicable regulations.

If for any reason the Workers Compensation Board of British Columbia refuses to recognize Project Co or the Design-Builder as the prime contractor then, to the extent permitted by law, Project Co will cooperate with the Authority and perform on behalf of the Authority the obligations which the Authority is required to undertake as prime contractor in connection with the Construction by virtue of the *Workers Compensation Act* and Regulations, or other statutes.

9.4 Failure to Comply with WCB Requirements

If at any time the Construction is stopped because Project Co, or any Project Co Person providing services or work on the Project, unreasonably fails or refuses to comply with an order issued pursuant to the *Workers Compensation Act*, then such failure or refusal will be considered a Project Co Material Breach.

10. PROJECT SCHEDULE AND SCHEDULING

10.1 Initial Project Schedule

Attached as Appendix 2L [Initial Project Schedule] is the initial project schedule (the "**Project Schedule**"), which the parties have relied upon in entering into this Agreement.

10.2 Project Schedule Updates

Project Co will, as required from time to time until Service Commencement, but no less than once per calendar month by the 15th day of each month, in consultation with the Authority update the Project Schedule so that it 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 New Facility in accordance with the requirements of this Agreement. The updates will include:

- (a) adjustments resulting from Supervening Events and Changes, 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; and
 - (2) the commencement of Construction;
- (c) the planned start and completion dates of the major activities of Construction;

- (d) the Target First New Service Commencement Date, which may not be updated or otherwise changed within 12 months of such date unless the Authority, in its discretion, consents;
- (e) the Target Second New Service Commencement Date, which may not be updated or otherwise changed within 12 months of such date unless the Authority, in its discretion, consents; and
- (f) the Target Final Service Commencement Date, which may not be updated or otherwise changed within 12 months of such date unless the Authority, in its discretion, consents.

Project Co will deliver an updated Project Schedule monthly to the Authority and the Independent Certifier and upon delivery the updated Project Schedule (the “**Updated Project Schedule**”) will be the Project Schedule under this Agreement in substitution for the previously issued Project Schedule. For greater certainty, the Updated Project Schedule will be subject to Appendix 2G [Review Procedure]. If at any time the Authority does 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.

10.3 Failure to Update Project Schedule

If Project Co fails or refuses to deliver an Updated Project Schedule as required under Section 10.2 of this Schedule, then such failure or refusal will be deemed to be a Project Co Material Breach.

10.4 Compliance with Project Schedule

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

10.5 Move-In Schedule

Project Co acknowledges that the Authority will rely on each Service Commencement Date as set out in the Project Schedule (as may be adjusted under Section 10.2 of this Schedule).

As soon as reasonably practicable, but in any event no later than 180 days prior to each of the Target First New Service Commencement Date, the Target Second New Service Commencement Date and the Target Final Service Commencement Date, Project Co will deliver to the Authority’s Construction Representative a move-in schedule (the “**Move-in Schedule**”) indicating the anticipated dates when the areas in the relevant New Facility will become available for occupation by the Authority so as to facilitate and permit the Authority to progressively take up occupation in the relevant New Facility in an efficient manner. The Authority’s Construction Representative will advise Project Co of any key or significant moves or move-in requirements as set out in the Authority’s move-in plan, and Project Co will, as reasonably possible without incurring additional costs, accommodate the Authority’s requirements and requests. Project Co will, as may be required from time to time, up-date the Move-in Schedule.

11. DELAYS AND ACCELERATION

11.1 Acceleration to Recover Project Co Delays

If at any time the Authority, acting reasonably, determines that Project Co is behind the Updated Project Schedule (other than due to a Supervening Event or a Change) and will not achieve Service Commencement by the Target Final Service Commencement Date, then the Authority may deliver notice to Project Co's Construction Representative to use its best efforts, at Project Co's own cost and at no cost to the Authority, to accelerate the Construction so as to conform to the Updated Project Schedule and achieve Service Commencement by the Target Final Service Commencement Date.

12. COMMISSIONING

12.1 Project Co Commissioning

Project Co will perform all Project Co Commissioning pursuant to the relevant Final Commissioning Program.

12.2 Final Commissioning Program

- (a) Project Co will prepare a draft Final Commissioning Program and will provide a copy to the Independent Certifier and to the Authority Representative not less than 275 days prior to the Target First New Service Commencement Date and not less than 365 days prior to each of the Target Second New Service Commencement Date and the Target Final Service Commencement Date.
- (b) Each Final Commissioning Program will:
 - (1) describe the requirements necessary and the timing and sequence of each of such requirements, including a detailed breakdown of the Design and Construction to meet such requirements, in order that the Project Co Commissioning will be completed to achieve Service Commencement at each New Facility on or before the relevant Target Service Commencement Date.
 - (2) comply with the relevant requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
 - (3) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on the Authority than those set out in the Outline Commissioning Program, unless otherwise agreed to by the Authority;
 - (4) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
 - (5) include a schedule of each of the Project Co Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates; and

- (6) list the required Governmental Authorities, manufacturers and any other persons that are necessary to meet the requirements of the relevant Final Commissioning Program, applicable Laws and any other obligation hereunder to ensure the completion of commissioning of whichever is relevant of the New PUBC Facility, the New Ambulatory and Emergency Facility and the New VJH Facility.
- (c) The Authority will provide Project Co with comments on each draft Final Commissioning Program in accordance with the procedure for review of Submittals set out in Appendix 2G [Review Procedure], and Project Co will revise the draft Final Commissioning Program to the extent required by Appendix 2G [Review Procedure].

12.3 Commencement of Project Co Commissioning

- (a) Project Co will give 30 days written notice to the Independent Certifier and the Authority of the commencement of Project Co Commissioning at each of the New PUBC Facility, the New Ambulatory and Emergency Facility and the New VJH Facility.
- (b) Project Co will give a minimum of 7 days notice to, and will invite, both the Independent Certifier and the Authority's Representative to witness, and to comment on, each aspect of the Project Co Commissioning. Project Co will, together with such notice to the Authority and the Independent Certifier, provide them with all information they may reasonably require in relation thereto, including:
 - (1) tests proposed;
 - (2) test methodology; and
 - (3) expected test results.

12.4 Authority Operational Commissioning

- (a) For each of the New PUBC Facility, the New VJH Facility and the New Ambulatory and Emergency Facility, the Authority acknowledges that the Authority Operational Commissioning will be performed from and after the relevant Service Commencement Date, provided that Project Co will give access to the Authority prior to Service Commencement for any preliminary Authority Operational Commissioning at such times as may be set out in the relevant Final Commissioning Program or as otherwise agreed.
- (b) The Authority will no later than 90 days prior to each relevant Target Service Commencement Date, give notice to Project Co of the period of time, commencing the day following the relevant Service Commencement Date, that the Authority anticipates it will require for Authority Operational Commissioning (such period of time, as may be changed by Section 12.4(c), each defined herein as an "**Authority Operational Commissioning Period**").
- (c) The Authority may from time to time, not less than 30 days prior to the end of each Authority Operational Commissioning Period, change the end date of such period.

- (d) Until the completion of each Authority Operational Commissioning Period, except as provided in this Section (d) Project Co will provide the Services to a level that achieves the requirements of the Services Protocols and Specifications for the Services at the relevant Facility.
- (e) The Payment Mechanism will apply during all Authority Operational Commissioning Periods.

13. COMPLETION

13.1 LEED Project Checklist

As a condition of application for Service Commencement at each of the New PUBC Facility, the New Ambulatory and Emergency Facility and the New VJH Facility, Project Co will prepare and deliver to the Authority a LEED project checklist generally in accordance with the CaGBC requirements together with a commentary and explanation confirming that, in Project Co's judgment and as confirmed by a LEED accredited professional:

- (a) the Energy and Atmosphere Credit 1.4 – Optimize Energy Performance: 38% (MNECB) will be achieved as required by Section 4.6(b) of this Schedule; and
- (b) LEED Gold Certification will be achieved for the New Facility as required by Section 4.6 of this Schedule.

13.2 Deficiency List

Prior to and as a pre-condition of issuance of the applicable Certificate of Service Commencement under Section 3.5 of this Schedule the Independent Certifier will, in cooperation with Project Co's Construction Representative and the Authority's Construction Representative, prepare a complete list of Defects that are apparent upon inspection of whichever is relevant of the New PUBC Facility, the New Ambulatory and Emergency Facility and the New VJH Facility (the "**Deficiencies**") and deliver to Project Co and the Authority's Construction Representative the list of Deficiencies. The Authority or Project Co may refer matters relating to the accuracy or completeness of the list of Deficiencies to the Dispute Resolution Procedure. Project Co acknowledges that the timing set out in Section 3.4 may not be sufficient for the Independent Certifier to complete the inspection and prepare the relevant list of Deficiencies, and agrees Project Co will give the Authority and the Independent Certifier no less than 30 days advance notice of the date Project Co anticipates achieving the applicable Service Commencement and Project Co will assist the Independent Certifier to make any advance inspection requested by the Independent Certifier. The Independent Certifier will not delay issuance of a Certificate of Service Commencement solely because there are Deficiencies, but for greater certainty all the items listed in the definition of "Service Commencement" must be completed prior to Service Commencement. For greater certainty, the parties acknowledge that LEED Gold Certification will be obtained from CaGBC after the relevant Service Commencement Date and as a result cannot be included as a Deficiency in any list of Deficiencies prepared as a pre-condition of the issuance of the applicable Certificate of Service Commencement.

13.3 Correction of Deficiencies

Upon issuance of the Certificate of Service Commencement Project Co will proceed expeditiously to correct all Deficiencies. If Project Co fails or refuses to correct any Deficiency as required by this Section 13.3 then the Authority may exercise all rights and remedies provided under this Agreement, including Section 11 of this Agreement and the right to make any Deductions.

Appendix 2A

INDEPENDENT CERTIFIER AGREEMENT

Appendix 2B

NOT USED

Appendix 2C

PROPOSAL EXTRACTS (DESIGN AND CONSTRUCTION)

Appendix 2D

CONSTRUCTION SITE PLAN

Appendix 2E

Not Used

Appendix 2F

Not Used

Appendix 2G

REVIEW PROCEDURE

1. SUBMITTALS

The provisions of this Appendix 2G will apply to any and all items, documents and anything else required or specified by this Agreement, including Section 5.3 (Design Process) of this Schedule, in respect of the Design and the Construction to be submitted to, reviewed, accepted or otherwise processed by the Authority prior to Service Commencement or after Service Commencement in respect of the completion of Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Submittal**” or “**Submittals**” as applicable).

2. SUBMITTAL SCHEDULE

- (a) The parties agree that the schedule for Submittals (the “Submittal Schedule”) is attached as Attachment 1 to this Appendix 2G. The Schedule may be amended by agreement of the parties in accordance with the terms of this Section 2. Any amendment to the Submittal Schedule will provide for a progressive and orderly flow of Submittals from Project Co to the Authority as appropriate to allow sufficient time for review of each Submittal by the Authority, taking into account both the resources necessary to be available to the Authority to conduct such review (as anticipated by or inferred from the Submittal Schedule attached as Attachment 1 to this Appendix 2G to this Schedule) and any user group consultations in accordance with the User Consultation Protocol.
- (b) Unless a longer period is required by this Agreement or is otherwise reasonably required by the Authority, the Submittal Schedule will allow a minimum of:
 - (1) 15 Business Days for review of Submittals submitted in relation to the Design phases as described in Section 5.3(b) of this Schedule, or
 - (2) 10 Business Days for other Submittals,from the date of receipt for review of and response to each Submittal, provided that if Project Co has made major changes to the grouping and volume of Submittals, such period of time will be adjusted, acting reasonably, taking into account the factors set forth in this Section 2.
- (c) Project Co will in scheduling Submittals and in the performance of the Design and the Construction, allow adequate time prior to performing the Design and the Construction that are the subject of the Submittals, for review of the Submittals and for Project Co to make changes to the Submittals, the Design and the Construction that may be required if comments are received on the Submittals.
- (d) If the Submittal Schedule indicates that a large number of Submittals will be made at one time, the Authority may request a longer period for review or a staggering of the Submittals, and Project Co will revise the Submittal Schedule accordingly, taking into account both the availability of resources required by the Authority to conduct such

review and whether delay in the review of the subject matter of the Submittal will have a material impact on Project Co's ability to progress future anticipated Submittals and the Design or Construction in accordance with the Project Schedule.

- (e) Project Co will submit the current Submittal Schedule, including amendments, to the Authority on a monthly basis until the Final Service Commencement Date.
- (f) All amended Submittal Schedules will be required to meet all the requirements of this Section 2.
- (g) Project Co will submit all Submittals to the Authority in accordance with the current amended Submittal Schedule.
- (h) Project Co will bear the risk of delays and additional costs caused as a result of the late submission of Submittals to the Authority, by Submittals which are rejected and required to be re-submitted in accordance with the terms of this Appendix 2G, or by changes in the Design and Construction required as a result of comments made pursuant to this Appendix 2G.

3. GENERAL REQUIREMENTS FOR SUBMITTALS

- (a) Unless otherwise specified by the Authority, Project Co will issue 3 printed copies of all Submittals to the Authority, together with an electronic copy in a format agreed by the parties acting reasonably.
- (b) Project Co will compile and maintain a register of the date, contents and status of the submission of all Submittals, including the date of receipt and content of all returned Submittals and comments thereon.
- (c) All Submittals will be in English.
- (d) All Submittals required by this Agreement or by applicable Law to be signed or sealed by persons with professional designations (including where applicable by registered professional architects or engineers) will be so signed and, where applicable, sealed.
- (e) All Submittals will include all documents to be reviewed and will clearly identify the purpose of the Submittal, Project Co's proposed course of action relating to the Submittal and the Design and the Construction that are the subject of the Submittal.
- (f) All Submittals will refer to the relevant provisions of the Design and Construction Specifications, the Services Protocols and Specifications (if applicable) and to any matter that has previously been subject to review.
- (g) All Submittals will be clearly identified as a Submittal and will be delivered with appropriate covering documentation, which will include a list of all attached Submittals and for each Submittal: the document number(s) or drawing number(s); revision numbers (if applicable); document or drawing title(s); name of entity that prepared the Submittal; the Submittal history showing date and delivery information and/or log number of all

previous submissions of that Submittal; and identification of any previous Submittal superseded by the current Submittal.

4. COMMENTS

- (a) The Authority will review and respond to each Submittal in accordance with the applicable time periods for the Submittal.
- (b) The Authority will return Submittals to Project Co and assign one of the following 3 comments:
 - (1) "REVIEWED";
 - (2) "CORRECT DEFICIENCIES"; or
 - (3) "REJECTED".
- (c) The comment "REVIEWED" will be assigned to those Submittals that, in the opinion of the Authority, conform to the requirements of this Agreement. Project Co will comply with and implement such Submittals.
- (d) The comment "CORRECT DEFICIENCIES" will be assigned to those Submittals that, in the opinion of the Authority, generally conform to the requirements of this Agreement, but in which minor deficiencies have been found and identified by the Authority's review. Project Co will to the extent necessary correct these Submittals and provide a copy of such Submittals to the Authority before Project Co implements the portions of such Submittals that have received comments, but may proceed on the portions of such Submittals that have not received comments. Project Co will comply with and implement such corrected Submittals. If at any time it is discovered that Project Co has not corrected the deficiencies on Submittals that were correctly stamped "CORRECT DEFICIENCIES", then Project Co will be required to modify the Submittals and the relevant Design and the Construction as required to correct the deficiencies and Project Co may be required, at the Authority's discretion, acting reasonably, to resubmit relevant Submittals.
- (e) The comment "REJECTED" will be assigned to those Submittals that, in the opinion of the Authority, acting reasonably, contain significant deficiencies or do not generally conform with the requirements of this Agreement, including this Appendix 2G. Project Co will correct and re-submit these Submittals within 10 Business Days after the comment has been provided to Project Co. The Authority will then review such corrected Submittals and assign a comment to the corrected Submittal. The Submittals will be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. Except with the written consent of the Authority, Project Co will not proceed with any Design or Construction to which such Submittals receiving the comment "REJECTED" relate until Project Co obtains a comment that permits Project Co to proceed.

- (f) The Authority may request additional time for the review of any Submittal, including where the Submittal is voluminous or requires extensive review by representatives (including consultants) of the Authority, and Project Co will extend such time for any reasonable requests by the Authority.
- (g) If the Authority does not respond to a Submittal within the applicable time periods for the Submittal, the Submittal will be deemed "REVIEWED" and Project Co may proceed with and implement the Design and the Construction on the basis set forth in the applicable Submittal without any further action or documentation required.
- (h) Where the Authority issues the comment "CORRECT DEFICIENCIES" or "REJECTED", the Authority will provide detailed reasons for the comment, referencing the particulars of the Section(s) of the Project Agreement (including the Design and Construction Specifications) that the Submittal fails to satisfy, and if requested by Project Co, the Authority will meet with Project Co to discuss the reasons for the comment.
- (i) If at any time after assigning any comment to a Submittal or where Section 4(g) above has applied, the Authority or Project Co discovers deficiencies or any failure to conform to the requirements of this Agreement, the Authority may revise the comment assigned to any Submittal. If the parties agree or it is determined in accordance with the Dispute Resolution Procedure that the revised comment is correct, Project Co will make all such corrections to the Submittals and the Design and the Construction.
- (j) For the purpose of facilitating and expediting the review and correction of Submittals, the Authority and Project Co's Design or Construction Representative will meet as may be mutually agreed to discuss and review any outstanding Submittals and any comments thereon.
- (k) Where an individual Submittal item is voluminous, the Authority at his or her discretion may elect to stamp only the cover page or first sheet of the Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages not returned without such an explanation as to their status will be deemed to be "REVIEWED" by the Authority.
- (l) In lieu of returning a Submittal, the Authority may by letter notify Project Co of the comment assigned to the Submittal and if such comment is "CORRECT DEFICIENCIES" or "REJECTED" the letter will contain comments in sufficient detail for Project Co to identify the correction sought.
- (m) Upon review and comment or deemed review, the Submittals (or if applicable the portions of the Submittals) that Project Co is entitled to proceed with for purposes of the Design and the Construction will be referred to in this Agreement as the "Reviewed Drawings and Specifications".

5. DISPUTES

If Project Co disputes any comment issued by the Authority in respect of a Submittal, Project Co will promptly notify the Authority of the details of such Dispute and will submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Authority will review the Submittal, the reasons and supporting documentation and within 7 Business Days after receipt thereof will either confirm the original comment or notify Project Co of a revised comment. Nothing in this Section 5 will limit either party's right to refer a Dispute to the Dispute Resolution Procedure.

6. EFFECT OF REVIEW

Any review of and comment by the Authority of any Submittals are for general conformity to the obligations and requirements of this Agreement, and any such review and comment will not relieve Project Co of the risk and responsibility for the Design and the Construction and for meeting all of its obligations and requirements of this Agreement, and will not create any new or additional obligations or liabilities for the Authority. Without limiting the generality of the foregoing any and all errors or omissions in Submittals or of any review and comment will not exclude or limit Project Co's obligations or liabilities in respect of the Design or the Construction under this Agreement or exclude or limit the Authority's rights in respect of the Design and the Construction under this Agreement.

7. SUBMITTAL EXPLANATION

At any time, the Authority may, acting reasonably, require Project Co, including Project Co's consultants, Sub-Contractors, and any other relevant personnel, at no additional cost to the Authority, to explain to the Authority and the Authority's advisors the intent of Project Co's Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Design and Construction Specifications.

8. REVISIONS

- (a) Project Co will ensure that Submittals keep the same, unique reference number throughout the review process, and that all subsequent revisions of the same Submittal are identified by a sequential revision number. Correspondence related to such Submittal will reference the reference number and revision number.
- (b) Re-submittals will clearly show all revisions from the previous Submittal. Bound documents, including reports and manuals, will contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents will be used (e.g. deletions struck out and additions underscored). Revised portions of drawings will be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision will be included on the drawing.
- (c) All revisions on print media will be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and will identify

the persons who initialled the Submittal. Electronic versions of the Submittal will identify the persons who initialled the revisions to the printed version of the Submittal.

- (d) Project Co will keep all Reviewed Drawings and Specifications current. If any Reviewed Drawings and Specifications are revised as part of a Submittal, all other Reviewed Drawings and Specifications relying on or based on that Reviewed Drawings and Specifications will also be revised accordingly. All such revised Reviewed Drawings and Specifications will also be submitted with the Submittal to which it relates.

9. AUDIT BY THE AUTHORITY

- (a) Without limiting any other right under the Agreement, the Authority will have the right to audit all Submittals, including comparing all Submittals to previous Submittals.
- (b) If during an audit or at any other time it is discovered by the Authority or Project Co that any Submittals were not correctly implemented, Project Co will at its sole cost immediately take all necessary steps to correct and modify the applicable Submittals and the Design and Construction to which they relate and will advise the Authority of all such corrections and modifications.

ATTACHMENT 1 (APPENDIX 2G)

SUBMITTAL SCHEDULE

Appendix 2H

USER CONSULTATION PROCESS

1. USER CONSULTATION PROCESS

- (a) A protocol (the "**User Consultation Protocol**") for consultation with the User Consultation Group is attached as Attachment 1 (User Consultation Protocol) to this Appendix 2H that includes:
 - (1) the number of consultation meetings, the location of meetings in either Kelowna or Vernon as applicable, and the notice requirements to set meetings, including delivery of Design information in advance for consideration by the groups;
 - (2) minutes and record keeping for the consultation meetings; and
 - (3) the manner in which disputes can be resolved and the Design finalized
- (b) At a minimum, consultation will take place at each of the Schematic Design Phase, the Design Development Phase and the Working Drawings Phase as set out in Section 5.3(b).
- (c) The Authority will specify from time to time the particular persons to be consulted, which may include Plant Services, IMIT, Infection Control, Ergonomics, IHA Planner/PM, Biomedical, Logistics and Portering, Housekeeping, Food Services, Laundry, Foundation, Switchboard, Fire, Ambulance, RCMP and the City.
- (d) The parties will have further consultations with the user groups with respect to the Design if any amendments to the Design are proposed or required by reason of a change in Laws, a requirement by the City or result from the Design process set out in Section 5.3 which, in any of the foregoing cases, will have a material effect on the users of the New Facility.
- (e) The Authority will not be bound by any input or comments provided to Project Co in connection with the consultations with the User Consultation Group.

ATTACHMENT 1 (APPENDIX 2H)

USER CONSULTATION PROTOCOL

Nature and Timing

The proposed consultation meeting dates with specified groups of Facility Users will take place between three and four weeks prior to the dates defined in the Submittal Schedule. Each consultation meeting period will consist of one week of intensive meetings between Project Co and the relevant Facility User groups reviewing documents and drawings. Any changes to time and dates will be made in consultation with the Authority.

Any other meetings will be established in accordance with this Protocol.

The specified groups of Facility Users are:

- Interventional Short Stay
- Surgical Services
- Specialty Clinics / Express Testing
- ACC / General Clinics
- Core / Shell / Site/ Parkade
- Helipad
- UBC Medical Program / Academics
- Renal Services
- Emergency Department
- Administration
- Support Spaces
- Pre-Admissions Clinic
- Maternity / Child
- ICU
- CSR

Nature and Level of Detail

Unless otherwise agreed by the Authority, Project Co will provide the Facility Users with an advanced draft of relevant drawings, specifications and other documentation and materials that form the basis for what Project Co anticipates submitting to the Authority as a Submittal under the Review Procedure.

Project Co will provide a minimum of 3 printed copies of the materials and an electronic PDF copy.

Number of Meetings

The number of consultation meeting periods will be equal to the number of Submittals set out in the Submittal Schedule.

Unless otherwise agreed by the Authority, additional meetings will be required if Project Co does not provide the required drawings, specifications and other documentation and materials or makes material changes to, or a re-submission to the Authority is required for, any drawings, specifications and other documentation and materials that were the subject of a consultation meeting. Additional meetings will also be held if required by Appendix 2H, Section 1.1 (d) or if reasonably requested by either Project Co or the Authority.

Location of Meetings

Unless otherwise agreed between Project Co and the Authority, meetings for the New KGH Facility will be held in Kelowna and meetings for the New VJH Facility will be held in Vernon.

The Authority will provide the meeting room. Project Co will provide all necessary audio-visual and other equipment.

Notice of Meetings and Materials

Project Co will confirm meetings a minimum of 5 Business Days in advance of meeting dates set out in the master design schedule referred to in Section 5.5 of this Schedule to confirm the date.

Project Co will provide a minimum of 10 Business Days notice if Project Co wishes to change a date of a meeting.

The Authority will provide a minimum of 10 Business Days notice if the Authority wishes to change a date of a meeting.

Project Co will provide the Authority with all notices of meetings setting out details of the meeting, including the proposed Chair.

Project Co will provide all materials a minimum of 2 Business Days prior to the applicable meeting.

Minutes and Record Keeping

Project Co will keep records of the meetings and prepare and issue minutes within 3 Business Days. Except as expressly provided for elsewhere in this Agreement, no records or minutes of the meeting will bind either party unless incorporated into a formal Submittal and response by the Authority under the Review Procedure. The Authority will provide any comments on the meeting minutes within 2 Business Days of receipt.

Disputes

Any Disputes between Project Co and the Authority are to be resolved pursuant to the Dispute Resolution Procedure under the Project Agreement.

Disputes in the User Consultation Process within the Authority's team, including Facility Users, will be resolved by the Authority.

Disputes in the User Consultation Process within Project Co's team, including the Design Builder, the Architect and the Service Provider, will be resolved by Project Co.

Other

Project Co will appoint a Chair of each meeting acceptable to the Authority, acting reasonably. Project Co will propose the Chair in each notice confirming a meeting.

Project Co will provide sufficient technical resources at each meeting to provide meaningful consultation on the details of the materials provided for the meeting.

The Authority will provide appropriately briefed and knowledgeable Facility Users and technical and managerial representatives with sufficient authority at each meeting to provide meaningful consultation in a controlled manner at the meetings.

Appendix 2I

Not Used

Appendix 2J

Not Used

Appendix 2K

Not Used

Appendix 2L

INITIAL PROJECT SCHEDULE

Appendix 2M

Not Used

Appendix 2N

GEOTECHNICAL REPORTS

1. KGH GEOTECHNICAL REPORTS

- (a) Levelton Consultants Ltd. Geotechnical Report, May 24, 2007, as updated by letter dated June 4, 2007 and letter dated October 16, 2007, together with Soils Logs for April 07 and October 07 site investigations
- (b) Levelton Consultants Ltd. Letter dated January 14, 2008.
- (c) Golder Associates Consulting Geotechnical & Mining Engineers, report for KGH proposed addition, January 1981
- (d) Golder Associates Consulting Geotechnical & Mining Engineers, report for KGH Multi Storey Addition, November 26, 1987
- (e) Golder Associates Ltd Summary of Vibro Compaction proposed Cancer Centre Royal Avenue, May 23, 1996
- (f) Golder Associates Ltd Completion Report to KGH for Summary of Foundation Works Vibro Compaction, March 22, 1990
- (g) Golder Associates Ltd Geotechnical Investigation proposed MRI Addition, June 28, 2001
- (h) Golder Associates Ltd Summary of Vibro Compaction Proposed MRI Addition, September 20, 2001.

2. VJH GEOTECHNICAL REPORTS

- (a) Levelton Consultants Ltd. Geotechnical Report, May 25, 2007

Appendix 20

QUALITY ASSURANCE PLAN

Appendix 2P

OUTLINE COMMISSIONING PROGRAM