

**SCHEDULE 6**

**Part 2**

**ARCHITECT'S COLLATERAL AGREEMENT**

**VANCOUVER COASTAL HEALTH AUTHORITY**

**IBI GROUP//HENRIQUEZ PARTNERS, ARCHITECTS IN JOINT VENTURE**

**PCL CONSTRUCTORS WESTCOAST INC.**

**AHV ACCESS HEALTH VANCOUVER LTD.**

Dated September 2, 2004

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## ARCHITECT'S COLLATERAL AGREEMENT

THIS AGREEMENT is dated as of September 2, 2004

AMONG:

**IBI GROUP/HENRIQUEZ PARTNERS, ARCHITECTS IN JOINT VENTURE**

(the "**Architect**")

AND:

**PCL CONSTRUCTORS WESTCOAST INC**

(the "**Prime Contractor**")

AND:

**VANCOUVER COASTAL HEALTH AUTHORITY**

("VCHA")

AND:

**AHV ACCESS HEALTH VANCOUVER LTD.**

("Project Co")

WHEREAS:

A. VCHA and Project Co have entered into an agreement dated as of September 2, 2004 (the "**Project Agreement**") whereby Project Co has agreed to design, construct, finance, operate and maintain a new academic ambulatory care centre (the "**Project**"), all as more particularly described in the Project Agreement;

B. Project Co and the Prime Contractor have entered into an agreement dated as of September 2, 2004 (the "**Construction Contract**") whereby the Prime Contractor has agreed to carry out and complete that part of the Project comprising the design, construction, testing, commissioning and completion of the Facility, as more particularly described in the Construction Contract;

C. The Architect and the Prime Contractor have entered into an agreement dated as of August 25, 2004 (the "**Architect's Contract**") whereby the Architect has agreed to provide and perform design services with respect to the Project, all as more particularly described in the Architect's Contract;

D. It is a condition of the Architect's Contract that the Architect enter into this Agreement with VCHA and Project Co.

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

## **1. INTERPRETATION**

### **1.1 Definitions**

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

### **1.2 Construction and Interpretation**

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

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

### **1.3 Governing Law**

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

## 1.4 Severability

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

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction,

except that if:

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

## 2. SUBSTITUTION PROVISIONS

### 2.1 Notice to VCHA of Intent to Terminate

Except as a result of a termination by the Prime Contractor pursuant to the terms of the Architect's Contract, the Architect will not terminate or treat as terminated its engagement under the Architect's Contract, or discontinue performing design services with respect to the Project, without first giving to VCHA and the Lenders not less than 20 Business Days' prior notice of the Architect's intention to do so, specifying the grounds for so doing.

### 2.2 Suspension of Termination

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

### 2.3 Substitution Notice

Unless the engagement of the Architect under the Architect's Contract has been terminated previously (and whether or not the Architect has served notice on VCHA pursuant to Section 2.1) and provided that:

- (a) the Project Agreement has been properly terminated in accordance with its terms; and

- (b) VCHA has not served notice upon the Prime Contractor pursuant to Section 2.3 of the Collateral Agreement between VCHA and the Prime Contractor of even date,

VCHA will be entitled at any time to serve upon the Architect and the Prime Contractor a notice requiring the Architect to thereafter accept the instructions of VCHA or its appointee to the exclusion of the Prime Contractor under and in connection with the Architect's Contract and the Architect will comply with such notice.

#### **2.4 Substitution of VCHA**

From and after the date of service of the notice under Section 2.3, the Prime Contractor will be deemed to have assigned all the rights, and VCHA or its appointee will be deemed to have accepted the assignment and assumed and agreed to perform all the obligations, of the Prime Contractor under the Architect's Contract, provided that this will not affect or derogate from any right of action the Prime Contractor may have against the Architect in respect of any breach by the Architect of its obligations under the Architect's Contract happening prior to the date of service of notice by VCHA under Section 2.3.

#### **2.5 Replacement Architect's Contract**

If the engagement of the Architect under the Architect's Contract is terminated before service of any notice under Section 2.3, the Architect will, if required to do so by notice served by VCHA not later than 20 Business Days after the date the Architect serves notice on VCHA pursuant to Section 2.1, enter into a new contract with VCHA or its appointee on the same terms as the Architect's Contract but with such revisions as each of VCHA and the Architect reasonably requires to reflect altered circumstances. In such event, references in this Agreement to "Architect's Contract" will be deemed to include such a new contract.

#### **2.6 Notice to Prevail**

As against the Prime Contractor and VCHA, the Architect will be entitled and obliged to rely upon and to comply with any notice served by VCHA under Section 2.3 or Section 2.5, and will not make, nor be required to make, any enquiry into the entitlement of VCHA as against the Prime Contractor to serve such notice.

#### **2.7 Lenders' Rights Paramount**

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

#### **2.8 Project Co Bound**

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

### **3. INSURANCE**

#### **3.1 Policy in Force**

The Architect represents and warrants to VCHA that it has obtained and will keep in force at all times until 2 years after the Substantial Completion Date or, to the extent that it is sooner, until 2 years after the termination of its engagement under the Architect's Contract, any and all policies of insurance that it is required to obtain and maintain under the Architect's Contract.

#### **3.2 Evidence of Insurance**

Upon the issue of and upon every renewal of a policy of insurance, and otherwise upon request by VCHA, the Architect will deliver to VCHA a certified copy of the policy of insurance or other evidence of insurance required under the Architect's Contract. Upon request by VCHA, the Architect will deliver proof of payment of premiums for insurance required to be obtained and maintained under the Architect's Contract.

### **4. INTELLECTUAL PROPERTY RIGHTS**

#### **4.1 Licence**

To the extent not already granted to VCHA pursuant to the Project Agreement, the Architect's Contract, the Construction Contract or a replacement contract contemplated by Section 2.5, hereby grants to VCHA a licence to use the Design in connection with the Facility, including any of the documents and information as listed in Section 6.13 of Schedule 4 (the "**Documents**"), beyond the end of the Term and for as long as the Facility exists, provided that, except for reference purposes, the plans, sketches, drawings, electronic files, graphic representations and specifications will not be used for additions or alterations to the Design or on any other project. Subject to the compliance by VCHA with its obligations under Section 19 of the Project Agreement, the Architect will deliver to VCHA a complete copy of any Document upon written request from VCHA..

#### **4.2 Third Party Infringement**

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

### **5. CONFIDENTIALITY**

#### **5.1 Confidential Information**

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

## 5.2 Exceptions

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

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

## 5.3 Announcements

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

## 6. GENERAL

### 6.1 Assignment

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

### 6.2 Enurement

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

### 6.3 Notice

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



if to Architect:

IBI Group/Henriquez Partners, Architects in Joint Venture  
Suite 700, 1285 West Pender Street  
Vancouver, British Columbia V6E 4B1

Attention: Peter Lambur  
Facsimile: 604.683.0492

if to the Prime Contractor:

PCL Constructors Westcoast Inc.  
#310 – 13911 Wireless Way  
Richmond, British Columbia V6V 3A4

Attention: DELETED  
Facsimile: DELETED

if to VCHA:

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

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

if to Project Co:

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

Attention: President  
Facsimile: 604.484.7165

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

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

- (c) if validly transmitted by fax after 5:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission.

#### **6.4 Waivers**

No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by those parties who have rights under, or hold the benefit of, the provision being waived if those parties promptly send a copy of the executed waiver to all other parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

#### **6.5 No Partnership or Agency**

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

#### **6.6 Conflicting Agreements**

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

#### **6.7 Remedies Cumulative**

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

#### **6.8 Counterparts**

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

#### **6.9 Delivery by Fax**

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

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

**IBI GROUP//HENRIQUEZ PARTNERS, ARCHITECTS IN JOINT VENTURE**

Per: \_\_\_\_\_  
Authorized Signatory

**PCL CONSTRUCTORS WESTCOAST INC.**

Per: \_\_\_\_\_  
Authorized Signatory

**VANCOUVER COASTAL HEALTH AUTHORITY**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**AHV ACCESS HEALTH VANCOUVER LTD.**

Per: \_\_\_\_\_  
Authorized Signatory