

DESIGN-BUILD AGREEMENT

Valleyview Project

**HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
AS REPRESENTED BY THE MINISTRY OF TECHNOLOGY, INNOVATION AND
CITIZENS' SERVICES**

and

PCL CONSTRUCTORS WESTCOAST INC.

Dated: February 6, 2017

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DESIGN-BUILD AGREEMENT

THIS AGREEMENT dated for reference as of February 6, 2017 (the “Effective Date”) is entered into:

BETWEEN:

Her Majesty the Queen in Right of the Province of British Columbia, as
represented by the Ministry of Technology, Innovation and Citizens’
Services

(the “Owner”)

AND:

PCL Constructors Westcoast Inc.

(the “Design-Builder”)

WHEREAS:

- A. The Owner has selected the Design-Builder to perform all Work for the Project referred to as the “Valleyview Project”, as further described in this Agreement; and
- B. The parties wish to enter into this Agreement to set out their respective rights and obligations.

NOW THEREFORE in consideration of the premises and the mutual obligations contained in this Agreement, the parties agree as follows:

PART A – DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words and expressions have the following meanings:

“Agreement” means this agreement, including the documents referred to in Section 1.2;

“Apprenticeship Policy” has the meaning set out in Schedule 8 – Apprenticeship Policy;

“Architect” means a professional architect registered and in good standing under the *Architects Act* (British Columbia);

“BC Housing” means the British Columbia Housing Management Commission;

“BC Hydro” means British Columbia Hydro and Power Authority;

“Bonds” has the meaning set out in Section 60.1;

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in British Columbia;

“Change” means a change in the Work, including any addition, deletion, alteration, revision or substitution;

“Change Directive” means a written instruction referenced as a “Change Directive” executed by the Owner and directing the Design-Builder to proceed with a Change;

“Change Order” means a written document referenced as a “Change Order” executed by the Owner and the Design-Builder and setting out a Change and the value or method of valuation of a Change and any adjustments to the Contract Price and Contract Time;

“Commissioning Plan” has the meaning set out in Section 33.1;

“Commissioned” or “Commissioning” has the meaning set out in Section 6.11.1.1 of Schedule 1 – Statement of Requirements;

“Confidential Information” means information of a party that the party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information;

“Construction” means all things, other than Design, necessary to complete the Work;

“Construction Site” means the area within the Site where the physical construction is to be performed, as indicated on the Site Plan;

“Contaminants” means any materials, substances or hazardous wastes, the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated under the *Environmental Management Act* (British Columbia) and regulations;

“Contract Price” means the price set out in Section 2.1;

“Contract Time” means the time within which the Design-Builder will achieve Substantial Completion as set out in Section 3.1;

“Credit Provider” has the meaning set out in Section 12.2;

“Design” means the design for the Project;

“Design-Builder” has the meaning set out on the first page of this Agreement;

“Design-Builder’s Consultant” means HDR CEI Architecture Associates, Inc. as the principal Architect and coordinating professional and any other architectural or engineering firm or person, including any Architect or Professional Engineer, engaged by the Design-Builder to prepare the Drawings and Specifications, or to otherwise consult to the Design-Builder on the Project;

“Design-Builder’s Representative” has the meaning set out in Section 5.2;

“Disclosed Data” means any information, data and documents (including in PLS-CADD or any other electronic format) made available or issued to the Design-Builder or any Subcontractor or other person on behalf of the Design-Builder or any Subcontractor in connection with the Project by or on behalf of the Owner, including any information relating to the Land or the requirements of any governmental authority, whether before or after the Effective Date;

“Dispute” means any disagreement, failure to agree or other dispute between the Owner and the Design-Builder arising out of or in connection with this Agreement, including in respect of the

interpretation, breach, performance, validity or termination of this Agreement, whether in the law of contract or any other area of law;

“Drawings” means all drawings for the Project that are prepared by or for the Design-Builder and submitted to the Owner under the Review Procedure and that the Design-Builder is entitled to proceed with under the Review Procedure;

“Effective Date” has the meaning set out on the first page of this Agreement;

“End Date” means the date described in Section 4.1;

“Facility” means the buildings, related structures, utility connections, landscaping and other improvements to be constructed by the Design-Builder pursuant to this Agreement;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (British Columbia);

“Force Majeure” means labour disputes, strikes, lock-outs, fire, unusual delay by common carriers or unavoidable casualties or, without limiting any of the foregoing, causes beyond the Design-Builder’s reasonable control, but excludes:

- (i) any event that is the result of breach of this Agreement or Law;
- (ii) economic hardship or lack of financing;
- (iii) equipment failure;
- (iv) unavailability of personnel, labour or Subcontractors;
- (v) unavailability of materials;
- (vi) labour disputes, strikes or lock-outs of the personnel of the Design-Builder or the Subcontractors;
- (vii) delays resulting from adverse weather conditions; and
- (viii) unsuitable or unanticipated Site conditions, including subsurface conditions;

“GST” means the goods and services tax imposed pursuant to Section IX of the *Excise Tax Act* (Canada);

“Health and Safety Plan” has the meaning set out in Section 31.5;

“Indemnified Parties” has the meaning set out in Section 58.1;

“Installation” or “Installed” has the meaning set out in Section 6.11.1.1 of Schedule 1 – Statement of Requirements;

“Insurance Conditions” means the terms and conditions set out in Schedule 3 – Insurance Conditions;

“Key Individuals” means the persons identified in Schedule 5 – Key Individuals;

“Land” means the lands legally described as Lot 1, District Lots 60, 170, and 305, Group 1, New Westminster District, Plan LMP22802;

“Laws” means the common law and any and all laws, statutes, enactments, by-laws, regulations, rules, orders, directives, policies, permits, licences, codes and rulings of any government, and any ministries, agencies, board, commission or tribunal of any government;

“LD Holdback” has the meaning set out in Section 43.1;

“LEED Authority” means either the U.S. Green Building Council or the Canada Green Building Council;

“LEED Gold Certification” means the award of LEED Gold certification from the LEED Authority under the LEED Rating System;

“LEED Rating System” means the Canada Green Building Council’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System for New Construction & Major Renovations LEED Canada NC 2009;

“Lien Holdback” means the 10% holdback required under the *Builders Lien Act* (British Columbia);

“Maples” means the Maples Adolescent Treatment Centre operated by the Ministry of Children and Family Development;

“Other Contractor” means any person employed by or having a separate contract directly or indirectly with the Owner for work related to the Project, other than the Work;

“Owner” has the meaning set out on the first page of this Agreement;

“Owner’s Consultant” means IBI Group unless replaced in accordance with Section 5.4;

“Owner’s Representative” has the meaning set out in Section 5.1;

“PAC” means the Provincial Assessment Centre operated by Community Living BC under the auspices of the Ministry of Social Development and Social Innovation;

“Performance Holdbacks” has the meaning set out in Section 43.1;

“Professional Engineer” means a professional engineer registered and in good standing under the *Engineers and Geoscientists Act* (British Columbia);

“Project” means the design, construction, testing and commissioning of the Facility and all other works in accordance with this Agreement;

“Project Binder” has the meaning set out in Section 45.1;

“Project Credits” means any incentive, income, credit, rebate, right, benefit or advantage provided by a governmental authority or industry group relating to energy, design, materials or environmental matters, including means of production of energy, input sources, use of products or materials, efficiencies, type and level of emissions, and compliance with any energy or environmental laws, regulations, rules or orders;

“Project Management Plan” means the management plan that (i) sets out a high level workplan to describe the manner in which the Design-Builder will manage the Project, including to address related matters such as traffic management and communications, and (ii) is prepared by or for the Design-Builder and submitted to the Owner;

“Proposal Extracts” means Schedule 7 – Proposal Extracts;

“PST” means the tax under the *Provincial Sales Tax Act* (British Columbia) and any regulation thereunder, including any transition provisions;

“Quality Management Plan” means the plan for quality management including quality control and quality assurance with respect to the Work, a draft of which is included in the Proposal Extracts, together with such changes to the plan that are prepared by the Design-Builder and submitted to the Owner under the Review Procedure and that the Design-Builder is entitled to proceed with under the Review Procedure;

“Record Drawings” means the as-built Drawings and Specifications that record the completed Facility;

“Review Procedure” means Schedule 2 – Review Procedure;

“Riverview Campus” means the lands located in Coquitlam, BC which are generally bounded by Lougheed Highway to the east; Riverview Forest, Riverview Crescent / Chilko Drive and residential developments to the west; Como Lake Road to the north; and Cape Horn to the south;

“Schedule of Values” means the schedule to be provided by the Design-Builder pursuant to Section 40.4 and reviewed by the Owner under the Review Procedure that allocates the Contract Price set out in Schedule 6 – Schedule of Prices over the course of the Project and that is the basis for monthly payments by the Owner for Work properly performed pursuant to this Agreement;

“Site” means the area on the Land that aligns with the area indicated on the Site Plan;

“Site Occupation Date” means the date that is the third Business Day after the Effective Date unless otherwise agreed by the Owner and the Design-Builder;

“Site Plan” means the plan of the Site attached as Appendix 1E to the Statement of Requirements;

“Site Reports” means those reports contained in the Disclosed Data relating to geotechnical conditions, archaeological conditions, Site surveys, Site services, trees and other conditions on the Site;

“Specifications” means all construction and other specifications for the Project prepared by or for the Design-Builder and submitted to the Owner under the Review Procedure and that the Design-Builder is entitled to proceed with under the Review Procedure;

“Standards” means any and all Laws, professional standards and specifications applicable to the Work, or to work such as the Project, as they are in force from time to time in the latest current version thereof;

“Statement of Requirements” means Schedule 1 – Statement of Requirements;

“Subcontract” means a contract with a Subcontractor;

“Subcontractor” means a person or entity, including the Design-Builder’s Consultant, having a contract with the Design-Builder or with a subcontractor of any tier to perform a part or parts of the Work or to supply products or materials for the Work;

“Submittal” means any and all items, documents and anything else required or specified by this Agreement (including by Section 17), and any and all subsequent revisions, amendments and changes thereto, in respect of the Design and the Construction to be submitted to, reviewed, accepted or otherwise processed or considered by the Owner;

“Submittal Schedule” has the meaning set out in Section 1.1 of Schedule 2 – Review Procedure;

“Substantial Completion” has the meaning set out in Section 44.2;

“Substantial Completion Certificate” means the certificate issued to the Design-Builder by the Owner’s Consultant upon the achievement of Substantial Completion, as described in this Agreement;

“Substantial Completion Date” means the date that Substantial Completion has been achieved by the Design-Builder, as set out in the Substantial Completion Certificate;

“Target Substantial Completion Date” has the meaning set out in Section 3.1;

“Term” means the period commencing on the Effective Date and ending on the End Date;

“Time Schedule” means the general schedule for timing of the Work as set out in the Proposal Extracts and as updated pursuant to Section 7;

“Total Completion” has the meaning set out in Section 44.11;

“Total Completion Certificate” means the certificate issued to the Design-Builder by the Owner’s Consultant upon the achievement of Total Completion;

“Total Completion Date” means the date that Total Completion has been achieved, as set out in the Total Completion Certificate;

“User Consultation Groups” has the meaning set out in Section 4.1 of Schedule 2 – Review Procedure;

“Variance Relief Event” has the meaning set out in Section 51.2;

“Warranty Holdback” has the meaning set out in Section 43.1;

“Warranty Period” means the period defined in Section 38.1 during which the Design-Builder is required to repair any deficiencies or defects that arise in the Work;

“Work” means everything to be undertaken by the Design-Builder under this Agreement; and

“Workers’ Compensation Board” or “WorkSafe BC” means the board constituted pursuant to the *Workers Compensation Act* (British Columbia).

1.2 This Agreement includes the following schedules and all sub-schedules, appendices and attachments to those schedules:

- (a) Schedule 1 – Statement of Requirements;
- (b) Schedule 2 – Review Procedure;
- (c) Schedule 3 – Insurance Conditions;

- (d) Schedule 4 – Communication Roles;
- (e) Schedule 5 – Key Individuals;
- (f) Schedule 6 – Schedule of Prices;
- (g) Schedule 7 – Proposal Extracts; and
- (h) Schedule 8 – Apprenticeship Policy.

1.3 This Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Agreement otherwise require:

- (a) no rule of law will apply that would construe this Agreement or any part of it against the party who (or whose counsel) drafted, prepared or put forward the Agreement or any part of it;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (c) neither the organization of the Statement of Requirements, the Proposal Extracts or any other documents included in this Agreement into divisions, sections and parts, or the arrangement of drawings or specifications included in this Agreement will control the Design-Builder in dividing the Work among Subcontractors or in establishing the Work to be performed by a trade;
- (d) each reference to a Section or Schedule is a reference to a Section of or Schedule to this Agreement;
- (e) a Schedule includes all of the sub-schedules, appendices and other attachments attached to that Schedule;
- (f) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provisions of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- (g) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (h) each reference to time of day is a reference to Pacific Standard Time or Pacific Daylight Saving Time, as the case may be;
- (i) words importing the singular include the plural and vice versa;
- (j) words importing a particular gender include all genders;

- (k) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (l) unless the context otherwise requires, each reference to “parties” means the parties to this Agreement and each reference to a “party” means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement;
- (m) all monetary amounts are expressed in Canadian Dollars;
- (n) whenever this Agreement obliges a party (the “Payor”) to pay any amount to the other party (the “Payee”) in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Payee:
 - (i) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis (including when the payment is made to an affiliate of the Payee), so much of them as are proper and reasonable; and
 - (ii) the Payee will, when requested by the Payor, provide supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums;
- (o) the Owner will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of any of those of its employees or agents (including the Owner’s Representative) who have responsibilities in connection with the conduct of the Work;
- (p) without limiting the extent of its actual knowledge, the Design-Builder will for all purposes of this Agreement be deemed to have such knowledge in respect of the Work as is held (or ought reasonably to be held) by all persons involved in carrying out the Work including the Design-Builder and the Subcontractors (including the Design-Builder’s Consultant) and the officers, agents, employees or workers of any of them;
- (q) each requirement for a thing or action to be “in accordance with” or “in compliance with” any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- (r) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (s) the terms “will”, “shall” and “must” are synonymous and when used in relation to the Design-Builder they will be construed and interpreted as an obligation of the Design-Builder;
- (t) the Statement of Requirements includes provisions written in the imperative, and all such provisions will be construed as obligations of the Design-Builder;
- (u) when a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Agreement;

- (v) any consent contemplated to be given under this Agreement must be in writing;
- (w) general words are not given a restrictive meaning:
 - (i) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (x) words or abbreviations which have well-known technical or trade meanings are used in accordance with those meanings;
- (y) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Design-Builder, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit, provided that the foregoing will not require the Owner to:
 - (i) take any action which is contrary to the public interest, as determined by the Owner in its discretion; or
 - (ii) undertake any mitigation measure that might be available arising out of its status as a public body that would not normally be available to a private commercial party;
- (z) the expressions “by the Design-Builder” and “by or through the Design-Builder” and expressions of like import are synonymous and mean by the Design-Builder or by anyone employed by or through the Design-Builder, including the Design-Builder and all Subcontractors and their respective officers, agents, employees and workers;
- (aa) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied;
- (bb) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (cc) each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect; and
- (dd) each release, waiver of liability and indemnity in this Agreement expressed to be given in favour of a party is and will be interpreted as having been given in favour of and may be enforced by that party and, in the case of the Owner, by the Indemnified Parties.

- 1.4 All documents forming this Agreement are complementary, and what is required by any one will be as binding as if required by all.
- 1.5 If there is a conflict within the documents forming this Agreement:
- (a) the provisions establishing the higher quality, manner or method of performing the Work, using the more stringent standards, will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, reliability, durability, performance and service will prevail;
 - (b) the order of priority of documents from highest to lowest will be:
 - (i) the part of this Agreement from the first page to the page with the signatures of the persons executing this Agreement;
 - (ii) the schedules (including appendices, sub-schedules and attachments to the schedules), except Schedule 7 – Proposal Extracts, in the order in which they are listed in Section 1.2;
 - (iii) Schedule 7 - Proposal Extracts;
 - (c) specifications will govern over drawings;
 - (d) drawings of a larger scale will govern over those of a smaller scale of the same date;
 - (e) dimensions shown in drawings will govern over dimensions scaled from drawings; and
 - (f) later dated documents will govern over earlier dated documents of the same type.

PART B – PRICE, TIME, TERM

2. CONTRACT PRICE

- 2.1 The Owner will pay the Contract Price of \$ 57,350,000 plus applicable GST to the Design-Builder for performance of the Work.
- 2.2 The Contract Price is the entire compensation to the Design-Builder for performance of the Work.
- 2.3 The Contract Price is subject to adjustments as provided in this Agreement.
- 2.4 The Owner will pay the Contract Price to the Design-Builder as provided in this Agreement.
- 2.5 The Design-Builder acknowledges and agrees that the Owner and the Owner's obligation to pay the Design-Builder under this Agreement are subject to British Columbia's *Financial Administration Act*, including section 28(2) which reads as follows: "It is a term of every agreement providing for the payment of money by the government that payment of money that becomes due under the agreement is subject to an appropriation being available for that agreement in the fiscal year when the payment falls due." The parties acknowledge and agree that such term is included in this Agreement.

3. CONTRACT TIME

- 3.1 The Design-Builder will commence the Work within 7 days after the Effective Date and will thereafter diligently perform the Work in accordance with this Agreement and achieve Substantial Completion on or before November 30, 2018 (the "Target Substantial Completion Date") and Total Completion on or before February 29, 2019.
- 3.2 The Design-Builder will perform the Work in compliance with the Time Schedule, as may be modified in accordance with the terms of this Agreement.
- 3.3 If the Design-Builder fails to achieve Substantial Completion on or before the Target Substantial Completion Date and the Owner has not extended the Time Schedule in accordance with this Agreement, the Design-Builder will pay to the Owner by way of liquidated damages and not as a penalty the sum of _____ per day for each and every day after the Target Substantial Completion Date that Substantial Completion is not achieved (or if the Owner has extended the Time Schedule in accordance with this Agreement, such other date established for the Target Substantial Completion Date). The maximum aggregate amount of such liquidated damages will be _____ of the Contract Price. If this Agreement is terminated, the reference in this Section 3.3 to the "Contract Price" will be deemed only for purposes of this Section 3.3 to be the amount to which the Design-Builder would have been entitled if the Design-Builder had properly performed and completed the Work and this Agreement had not been terminated. The liquidated damages will be the Owner's sole claim for damages against the Design-Builder for failure to achieve Substantial Completion by the Target Substantial Completion Date. The liquidated damages will not relieve the Design-Builder from its obligation to complete the Work or from any other duties, obligations or responsibilities of the Design-Builder under this Agreement, and will not limit the Owner's rights to terminate this Agreement for default of the Design-Builder under this Agreement.
- 3.4 The Owner and the Design-Builder agree that the amount in Section 3.3 represents a genuine pre-estimate of the damages and expenses that the Owner is likely to incur for such failure to meet the Target Substantial Completion Date for the Work and both parties expressly agree that such amount is not a penalty. The Owner may, in its discretion, either deduct the daily sums in respect of liquidated damages from the Performance Holdbacks or any amounts payable to the Design-Builder under this Agreement or may require payment thereof by the Design-Builder on demand.

4. TERM

- 4.1 With the exception of provisions that are expressly stated to survive the expiry of the Term, this Agreement is effective for the period commencing on the Effective Date and ending on the date (the "End Date") that (i) this Agreement is terminated in accordance with its terms or (ii) all of the following conditions are fulfilled:
- (a) the Design-Builder and the Owner have performed all obligations required under this Agreement;
 - (b) the Total Completion Certificate has been issued in accordance with Section 44.12; and
 - (c) the Design-Builder has fulfilled all of its obligations pursuant to Section 38.

5. REPRESENTATIVES, OWNER'S CONSULTANT AND KEY INDIVIDUALS

- 5.1 Within 7 days after the Effective Date, the Owner will give written notice to the Design-Builder designating its representative for the purposes of this Agreement (the "Owner's Representative"). The Owner will give written notice to the Design-Builder of any change of the Owner's

Representative. The Owner or the Owner Representative may by written notice delegate any or all of the functions of the Owner's Representative to any other person, including for a specified period of time in the absence of the Owner's Representative.

- 5.2 The representative of the Design-Builder for the purposes of this Agreement (the "Design-Builder's Representative") will be the person designated as such in Schedule 5 – Key Individuals, unless otherwise agreed by the Owner. The Design-Builder's Representative may by written notice delegate any or all of the functions of the Design-Builder's Representative to any other person, including for a specified period of time in the absence of the Design-Builder's Representative.
- 5.3 The Design-Builder's Representative will represent the Design-Builder at the Site and written instructions given to the Design-Builder's Representative by the Owner will be deemed to have been given to the Design-Builder.
- 5.4 The Owner will engage the Owner's Consultant to provide, without limitation, the following services, duties and responsibilities:
- (a) determining of amounts owing to the Design-Builder based on the Owner's Consultant's observations and evaluations of the Design-Builder's applications for payment;
 - (b) issuing of certificates of payment;
 - (c) interpreting, in the first instance, of the requirements of this Agreement and the making of findings as to the performance hereunder by both the Owner and the Design-Builder without showing partiality to either the Owner or the Design-Builder, and in no event incurring liability for the result of such interpretations or findings rendered in good faith in such capacity;
 - (d) interpreting and finding, in the first instance, of Disputes;
 - (e) assisting the Owner with advisory team services, including assisting with review of the Design;
 - (f) rejecting Work which does not conform to the requirements of this Agreement;
 - (g) testing and inspection of the Construction by the Owner's Consultant, whether or not such Construction has been fabricated, installed, or completed;
 - (h) determining the dates of substantial performance under the *Builders Lien Act* (British Columbia), Substantial Completion and Total Completion and the issuing of certificates for same;
 - (i) verification of the Design-Builder's applications for release of the Performance Holdbacks;
 - (j) reviewing any defects or deficiencies in the Work at Substantial Completion and during the Warranty Period and the issuance of appropriate instructions for the correction of same; and
 - (k) such other work that may be required by the Owner from time to time and that is acceptable to the Owner's Consultant.

The Owner reserves the right, on notice from the Owner to the Design-Builder, to perform or appoint an alternate advisor or consultant to perform, the services, duties and responsibilities

- identified in paragraphs (a) and (b) above (including determining amounts owing, evaluating applications for payment and issuing certificates of payment), and similar or ancillary services, duties and responsibilities, and upon any such notice the applicable provisions of this Agreement will be deemed to refer to the Owner or such alternate advisor or consultant in place of the Owner's Consultant.
- 5.5 If the Owner's Consultant's engagement is terminated, the Owner will engage a new Owner's Consultant to provide the Owner's Consultant's services. The Owner will notify the Design-Builder in writing before appointing a new Owner's Consultant and the Owner will not appoint any person to be the new Owner's Consultant to whom the Design-Builder may reasonably object.
- 5.6 Attached as Schedule 5 - Key Individuals is a list of Key Individuals that the Design-Builder will utilize in undertaking the Design and Construction as described in that Schedule. Unless agreed by the Owner, no individual will hold more than one position set out in Schedule 5 - Key Individuals.
- 5.7 With respect to each of the Key Individuals:
- (a) the Design-Builder will use all reasonable efforts to retain the Key Individuals to perform the roles described in Schedule 5 - Key Individuals; and
 - (b) if for any reason a Key Individual resigns or is otherwise unavailable to perform the roles described in Schedule 5 - Key Individuals then the Design-Builder will use all reasonable efforts to retain a replacement with similar expertise and experience to the unavailable Key Individual satisfactory to the Owner acting reasonably, and the Design-Builder will not replace such Key Individual without the Owner's consent, acting reasonably.
- 5.8 Within 10 days of the Design-Builder having knowledge that a Key Individual is or will be unavailable, the Design-Builder will:
- (a) notify the Owner; and
 - (b) immediately commence the process to retain a replacement prior to the unavailability of such Key Individual or promptly thereafter and will replace the Key Individual no later than 20 Business Days after the unavailability of such Key Individual.
- 5.9 If either the Owner or the Design-Builder reasonably considers that a replacement cannot reasonably be retained within such 20 Business Days, the Design-Builder will deliver to the Owner a reasonable program (set out, if appropriate, in stages) for retaining the replacement. The program will specify in reasonable detail the manner in, and the latest date, by which the replacement will be retained.
- 5.10 The Owner will have 10 Business Days from receipt of the program within which to notify the Design-Builder that the Owner, acting reasonably, does not accept the program, failing which the Owner will be deemed to have accepted the program. If the Owner notifies the Design-Builder that it does not accept the program as being reasonable, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such five Business Days, the question of whether the program (as it may have been amended by agreement) will result in the retainer of a replacement in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with Part K - Dispute Resolution.
- 5.11 The Design-Builder acknowledges that the success of the Project to both the Design-Builder and the Owner is dependent on the retention at all times of the Key Individuals, and that if any of the

Key Individuals are not available and are not replaced as required by this Agreement, the Owner will not be obtaining the Design and Construction at the quality and level assumed to be included in the payments to be made to the Design-Builder hereunder and that in addition the Owner may incur costs and expenses.

- 5.12 If either (i) the position of any Key Individual remains unfilled for more than 20 Business Days after the applicable individual Key Individual ceased to hold the position or ceased to perform the functions of that position, or (ii) the Owner has accepted a program under Section 5.10 and the Design-Builder at any time fails to comply with any part of the program:
- (a) the Design-Builder will pay the Owner's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs related to any measures the Owner considers are reasonably incurred in relation to the position being unfilled, including the costs to ensure that Design-Builder meets its requirements for Design and Construction and for the Owner to review and consider any replacement under this Section 5; and
 - (b) the Owner at its election may deem the position of the Key Individual to be a Change (other than the requirements to comply with this Section 5) and for the period of time that the Key Individual position has remained unfilled the Owner will be credited with the amount of the cost (wages, benefits, fees and other costs) that would have been incurred by the Design-Builder and Subcontractors in respect of the Key Individual plus a markup as set out in Section 49.2(b).

PART C - THE WORK

6. GENERAL

- 6.1 The Design-Builder will perform the Work in accordance with the requirements of this Agreement, including Schedule 1 – Statement of Requirements.
- 6.2 The Design-Builder will perform and provide all professional design services, construction administration and construction work and all labour, services, products, materials, tools, water, heat, light, power, transportation, equipment, machinery and other facilities and services and everything else necessary for the performance of the Work.

7. TIME SCHEDULE

- 7.1 The Design-Builder will submit for review by the Owner, by no later than 14 days after the Effective Date and, in any event, before the Owner is required to make the first payment, a Time Schedule consistent with the form of Time Schedule included in the Proposal Extracts.
- 7.2 The Design-Builder will ensure that the Time Schedule will be consistent with and meet all applicable requirements of this Agreement, including the Target Substantial Completion Date and the date required for Total Completion.
- 7.3 The Design-Builder will submit for review by the Owner an updated Time Schedule at intervals of 1 month, reflecting progress to date and including a comparison to the previously submitted Time Schedule, the reasons for any changes from the previous Time Schedule and a forecast to achieving Substantial Completion and Total Completion.
- 7.4 If at any time the actual progress of the Work does not materially conform with the Time Schedule, the Design-Builder will:
- (a) submit to the Owner a report identifying the reasons for such non-conformity; and

- (b) submit to the Owner a revised Time Schedule that meets all applicable requirements of this Agreement and provides for the Work to be pursued diligently to Substantial Completion and Total Completion.

8. CONTROL AND SUPERVISION OF THE WORK

8.1 The Design-Builder will effectively direct and supervise the Work using its best skill and attention. The Design-Builder will be solely liable and responsible for:

- (a) all design and all construction means, methods, techniques, sequences and procedures with respect to the Work; and
- (b) coordinating all parts of the Work under this Agreement and for coordinating the Work with work of Subcontractors and, in accordance with Section 22.2, with work of Other Contractors,

in accordance with generally accepted management and supervisory practices in British Columbia.

8.2 The Design-Builder will 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. The Design-Builder will engage and pay for Professional Engineers and Architects to perform these functions where required by Law, and in all cases where such temporary facilities and their method of construction are of such a nature that the education, training and qualifications of the Architect or Professional Engineer are required to produce safe and satisfactory results.

8.3 The Design-Builder will execute the Work in a continuous and diligent manner, and perform all its obligations in conformance with this Agreement, including the Project Management Plan and the Time Schedule.

8.4 Unless otherwise stated in this Agreement, the Design-Builder will perform the Work at the times, in the order of procedure and in the manner and method that the Design-Builder considers appropriate provided such Work is in conformance with this Agreement, including the Project Management Plan, Site Plan and the Time Schedule.

8.5 The Design-Builder will employ a competent construction manager, and necessary assistants, at the Site at all times during the progress of the Work.

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

8.7 The Design-Builder will at all times maintain good order and discipline among its employees engaged on the Work.

8.8 Before commencing the Work, the Design-Builder will:

- (a) purchase and deliver the Bonds as set out in Section 60 to the Owner; and
- (b) file with the Owner certificates of all insurance policies and necessary endorsements to comply with the Insurance Conditions.

8.9 The Design-Builder will not perform any Construction on the Site prior to the Site Occupation Date and will not commence any Construction until the Design-Builder has submitted a Design for that portion of the Work to be constructed that is in conformance with this Agreement, submitted

to the Owner under the Review Procedure and that the Design-Builder is entitled to proceed with under the Review Procedure.

8.10 If agreed to in writing by the Owner, the Design-Builder may perform necessary limited investigative and preparatory activities on the Site prior to the Site Occupation Date.

8.11 The Design-Builder will comply with the provisions of Schedule 8 – Apprenticeship Policy.

9. QUALITY MANAGEMENT

9.1 The Design-Builder is solely responsible for the quality of the Work and will diligently implement its Quality Management Plan.

9.2 The Design-Builder will establish, implement and submit for the review by the Owner, by no later than 30 days after the Effective Date, a Quality Management Plan consistent with the form of Quality Management Plan included in the Proposal Extracts and the requirements of this Section 9. The Design-Builder will perform the Work in accordance with, and meet the requirements of, the Quality Management Plan.

9.3 The Quality Management Plan will:

- (a) meet all applicable requirements of this Agreement;
- (b) outline the procedures to be implemented to ensure robust and thorough quality control and quality assurance by the Design-Builder and its Subcontractors;
- (c) clearly indicate the processes, testing, certification and auditing that will be performed to verify all parts of the Work comply with this Agreement;
- (d) clearly indicate the timing of the elements of the Quality Management Plan and the documentation to demonstrate compliance that will be obtained by the Design-Builder and its Subcontractors and provided to the Owner;
- (e) include all processes, testing, certification, auditing and documentation reasonably required by the Owner's Consultant; and
- (f) ensure that the Work will meet the requirements of this Agreement.

9.4 The Design-Builder will not commence any Construction until:

- (a) the quality control and quality assurance procedures applicable to that part of the Work have been developed and included in the Quality Management Plan and the Design-Builder is entitled to proceed with the Quality Management Plan in accordance with the Review Procedure; and
- (b) such quality control and quality assurance procedures are fully implemented by the Design-Builder.

9.5 The Owner may at any time audit the Quality Management Plan and its implementation and may, at the Owner's expense, carry out independent quality control testing at any time.

9.6 Nothing in this Section 9 and no review, audit, inspection, acceptance, comment, approval, action or inaction by the Owner, the Owner's Representative, the Owner's Consultant or any person on behalf of the Owner or by or on behalf of any governmental authority will derogate from or relieve the Design-Builder from its obligations under this Agreement including sole responsibility for the

quality of the Work, the Quality Management Plan and implementation of the Quality Management Plan.

- 9.7 The Owner, the Owner's Representative, the Owner's Consultant and other persons designated by the Owner will, subject to the terms of this Agreement relating to health and safety, have access to the Work at all times at the Site and wherever the Work is in preparation or progress and the Design-Builder will provide reasonable facilities for such access.
- 9.8 If any of the Work requires tests, inspections or approvals by this Agreement, or by the written instructions of the Owner or the Owner's Consultant, or by applicable Laws, the Design-Builder will give the Owner reasonable notice of when such Work is ready for review and inspection. The Design-Builder will arrange for and will give the Owner reasonable notice of the date and time of inspections by any governmental authorities.
- 9.9 The Design-Builder will furnish promptly to the Owner, on request, a copy of certificates and inspection reports relating to the Work.
- 9.10 If the Design-Builder covers, or permits to be covered, Work that has been designated for tests, inspections or approvals before such tests, inspections or approvals are made, given or completed, the Design-Builder will, if so directed, uncover such Work, have the inspections or tests satisfactorily completed, and make good the covering work at the Design-Builder's expense.
- 9.11 Subject to Section 9.10, the Owner may order any portion or portions of the Construction to be examined to confirm that such Construction is in accordance with the requirements of this Agreement. If the Construction is not in accordance with the requirements of this Agreement, the Design-Builder will correct the Construction and pay the cost of examination and correction. If the Construction is in accordance with the requirements of this Agreement, the Owner will pay all costs incurred by the Design-Builder as a result of such examination and the restoration of the Construction.
- 9.12 If the results of any testing or other aspect of the Quality Management Plan or implementation of the Quality Management Plan disclose that any part of the Work is incomplete or defective in any way, the Design-Builder will immediately complete that part of the Work or correct the defect at its own expense.
- 9.13 If the Owner's Consultant or other representatives of the Owner makes more than one review of any aspect of the Work as a result of such Work being incomplete or defective or reviews more than one test, inspection or approval in respect of any aspect of the Work as a result of such Work being incomplete or defective, the Design-Builder will bear the costs and expenses of the Owner, the Owner's consultant and other representative.
- 9.14 Prior to Total Completion, the Design-Builder will deliver to the Owner all tests and results taken and generated by the implementation of the Quality Management Plan.
- 9.15 The Design-Builder will permit access to the Site and to the Design and the Construction to persons designated by the Owner including persons representing other governmental authorities.

10. LEED GOLD CERTIFICATION

- 10.1 The Design-Builder will obtain LEED Gold Certification of the Facility in accordance with the following:
- (a) the Owner will register the Facility with the LEED Authority and will pay the registration fees only; the Design-Builder will be responsible all for all other costs associated with pursuing LEED Gold Certification;

- (b) the Design-Builder will, achieve all necessary prerequisites, credits and points under the LEED Rating System required to achieve the LEED Gold Certification and may in its discretion determine which of the credits and points to pursue, provided that the Owner will not accept:
 - (i) EA Credit: Green Power; or
 - (ii) any other credit that requires action or obligation on the part of the Owner, Maples or PAC, unless the Design-Builder has received prior written consent from each of the Owner, Maples and PAC, which consent may be withheld at the consent providers' sole discretion;
- (c) if at any time after the Effective Date the requirements to achieve LEED Gold Certification under the LEED Rating System change and the Design-Builder is required to comply with such change in order to achieve LEED Gold Certification for the Facility, then the Design-Builder will forthwith notify the Owner of such change and such change will be a Change;
- (d) the Design-Builder will compile and submit the required documents for certification;
- (e) if for any reason the Design-Builder fails to obtain LEED Gold Certification for the Facility within 24 months of the Substantial Completion Date then the Design-Builder will, upon written demand from the Owner, immediately pay to the Owner \$300,000;
- (f) upon payment of the amount, if any, owing under this Section 10 the Design-Builder will have no further obligations in respect of obtaining LEED Gold Certification, except to provide the Owner with such information and administrative assistance as the Owner 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 default by the Design-Builder under this Agreement; and
- (g) the Owner and the Design-Builder expressly agree that the amounts payable from the Design-Builder in this Section 10.1 are liquidated damages that represent a genuine pre-estimate of the damages and expenses that the Owner is likely to incur for such failure to achieve LEED Gold Certification and both parties expressly agree that such amount is not a penalty.

10.2 As a condition of Substantial Completion, the Design-Builder will deliver to the Owner:

- (a) a LEED project checklist, generally in accordance with the LEED Authority's requirements, together with a written confirmation that, in the Design-Builder's judgment LEED Gold Certification will be achieved for the Facility as required by Section 10; and
- (b) a written opinion from a LEED accredited professional supporting the confirmation described in Section 10.2(a) above.

11. ENERGY

11.1 The Design-Builder acknowledges that BC Hydro and FortisBC will each provide to the Owner a rebate or other Project Credits in respect of energy modelling of the Facility, and the Design-Builder will assist the Owner in obtaining such rebate and any other Project Credits, including by performing the following tasks:

- (a) registering the Facility with all applicable BC Hydro and FortisBC programs;
- (b) engaging a consultant acceptable to BC Hydro and FortisBC;

- (c) submitting the Design and conducting any necessary baseline testing;
 - (d) conducting all energy modelling that may be required by BC Hydro, FortisBC or the Owner;
 - (e) engaging with BC Hydro and FortisBC during the development of design to create an energy compliance checklist;
 - (f) completing the Work in accordance with the energy compliance checklist;
 - (g) facilitating any BC Hydro or FortisBC inspection or review of Construction and construction materials; and
 - (h) taking any other steps necessary to obtaining BC Hydro and FortisBC rebates and other Project Credits.
- 11.2 As a condition of Substantial Completion, the Design-Builder will deliver to the Owner a BC Hydro and FortisBC energy modelling compliance checklist together with a written confirmation that:
- (a) the Project has been designed and constructed to maximize available BC Hydro and FortisBC rebates and other Project Credits; and
 - (b) all steps have been performed, including providing all required documentation and information to the Owner, BC Hydro and FortisBC, to obtain BC Hydro and FortisBC rebates and other Project Credits (other than those steps that may only be performed by the Owner).
- 11.3 The Owner acknowledges that BC Hydro and FortisBC rebates and other Project Credits may be received after Substantial Completion.
- 11.4 This Section 11 will not limit any requirements of the Statement of Requirements for energy modelling for any purpose.
- 12. PROJECT CREDITS**
- 12.1 The Owner will be entitled to any and all Project Credits related to the Work, the Facility and its operation.
- 12.2 The Design-Builder will, on behalf of the Owner, apply to BC Hydro and FortisBC (subject to Section 11), the LEED Authority, and any other applicable incentive programs ("Credit Provider") and take all reasonable steps to obtain for the Owner the maximum benefits (funding, rebates, incentives and cost savings) offered by each Credit Provider under such program(s).
- 12.3 Without limitation, the Design-Builder will:
- (a) meet with Credit Providers at an early stage of the design of the Project;
 - (b) carry out any required studies;
 - (c) collaborate with each Credit Provider to identify potential improvements to the Facility design and methods of performing the Work that may achieve greater Project Credits; and

- (d) use all commercially reasonable efforts to maximize available Project Credits through the Design and Construction of the Facility (to the extent possible while maintaining consistency with the Statement of Requirements).

13. PRE-CONSTRUCTION SURVEY

13.1 The Design-Builder will:

- (a) prior to the start of any Construction, conduct a pre-Construction survey of existing structures, buildings, roadways, services, infrastructure and adjacent properties, in a form and detail satisfactory to the Owner, acting reasonably, which will without limitation include field observations and photographs of existing conditions, with spot elevations by a British Columbia Land Surveyor (BCLS) registered surveyor at locations that will be accessible throughout and following Construction for ongoing settlement monitoring, and deliver a copy of the pre-Construction survey report to the Owner; and
- (b) re-survey the spot elevations at regular intervals throughout Construction and at 6 months following Substantial Completion to determine ongoing long-term settlement effects, and deliver monitoring surveys to the Owner in a form and detail satisfactory to the Owner, acting reasonably.

13.2 The Design-Builder will protect the Work, the Site and property adjacent to the Site from settlement, will be responsible for all settlement caused by the Work by the Design-Builder and the Subcontractors and the Facility from and after the Effective Date and will make good all damage to the Work, the Site and property adjacent to the Site at its own expense or pay all costs incurred by the Owner or others in making good such damage. Nothing in this Section 13.2 limits the responsibility of the Design-Builder to take into account in the Design and Construction possible post-Warranty Period settlement and to take measures to minimize such settlement.

14. EQUIPMENT AND FURNISHINGS

14.1 Without limiting the requirements of the Statement of Requirements in respect of equipment and furnishings, the Design-Builder will complete the Design and Construction to integrate and accommodate all equipment and furnishings in the Facility as identified in the Statement of Requirements, including all required electrical and plumbing connections, structural support, seismic restraints and space for efficient access, all to the tolerances and specifications as may be specified and required by the manufacturers or vendors of the equipment (which may be of a higher standard than specified in this Agreement). The Design-Builder will include equipment and furnishings identified in the Statement of Requirements as part of the development of Design under this Agreement.

15. REVIEW PROCEDURE

15.1 The Review Procedure will apply to all Submittals and the parties will comply with the requirements of that Schedule.

16. GENERAL DESIGN REQUIREMENTS

16.1 The Design-Builder is responsible for the means, methods, techniques, sequences and procedures necessary to properly complete the Design in conformance with this Agreement, including the Project Management Plan and the Time Schedule.

16.2 The Design-Builder will:

- (a) ensure that the Work, including the Design, is fully compliant with all requirements of this Agreement (including the Statement of Requirements) and all applicable Laws; and
- (b) perform and complete the Design and the Work so as to provide the completed Project that is fit for the intended uses as described in the Statement of Requirements.

16.3 The Design-Builder will:

- (a) cause all portions and aspects of the Drawings and Specifications to be prepared under the direction of, and to be sealed under the professional seal of, the Design-Builder's Consultant;
- (b) cause the Design-Builder's Consultant to confirm to the Owner, under his or her professional seal (if applicable), that in the opinion of the Design-Builder's Consultant:
 - (i) the Drawings and Specifications implement and otherwise conform to the Statement of Requirements;
 - (ii) the Drawings and Specifications implement and otherwise conform to the Proposal Extracts;
 - (iii) the Drawings and Specifications have been prepared in accordance with, and substantially comply with, all Standards; and
 - (iv) the Design-Builder's Consultant has carried out the general reviews of the progress of the Construction, to the extent necessary, in order to determine to the Design-Builder's Consultant's satisfaction that the Construction is performed in general conformity with the requirements of the Agreement (including the Statement of Requirements), the Drawings and Specifications, Standards and applicable Laws; and
- (c) provide the Owner and all applicable governmental authorities with all letters of professional assurance as required pursuant to applicable Laws.

16.4 The Design-Builder will not construct any part of the Work that is not based on the most recent Drawings and Specifications or that does not meet the Statement of Requirements and other requirements of this Agreement. To the extent that the Drawings and Specifications conflict with, modify or deviate from the Statement of Requirements and other requirements of this Agreement, the Design-Builder will revise the Drawings and Specifications and submit them to the Owner under the Review Procedure.

16.5 The Design-Builder will make, or cause the Design-Builder's Consultant to make, any revisions to the Drawings or Specifications as are necessary from time to time due to Changes and, for clarity, the Design-Builder will comply with Section 16.3 with respect to any such revisions.

16.6 Nothing in this Section 16, or otherwise in or under this Agreement, makes the Owner, the Owner's Representative, the Owner's Consultant or any other person on behalf of the Owner responsible for the Design of the Project, including compliance of the Drawings and Specifications with the Statement of Requirements and all Standards, and the Design-Builder will, notwithstanding any review or acceptance under the Review Procedure or this Section 16 or other act of the Owner, remain solely liable and responsible for compliance of the Drawings and Specifications with the Statement of Requirements and all Standards.

16.7 Without limiting any of the obligations of the Design-Builder under this Agreement, the duties and responsibilities of the Design-Builder with respect to the Design include:

- (a) review of the documents, reports, drawings, Statement of Requirements and other information provided by the Owner and reporting promptly to the Owner any error, inconsistency or omission the Design-Builder may discover;
 - (b) preparation of a Design that meets the Statement of Requirements, all Standards, all applicable Laws and all terms of this Agreement;
 - (c) the coordination required to integrate all parts of the Design in the Work;
 - (d) preparation of all reports, documents, information, schemes and presentation materials as required by this Agreement;
 - (e) inspecting the progress of the Construction in order to determine that the Work is in compliance with the requirements of the Design, Specifications, all Standards and all terms of this Agreement;
 - (f) liaising with the Owner and local authorities having jurisdiction as required during the Design and Construction and providing copies of all correspondence with such local authorities to the Owner; and
 - (g) providing all required assurances to local authorities having jurisdiction respecting substantial conformance of the Design with all Standards and as may be required for the issuance of or compliance with any permits, licenses or approvals.
- 16.8 The Design-Builder will ensure that the Design-Builder's Consultant and all other Architects, Professional Engineers and other professionals performing professional services related to the Design fulfill their duties and responsibilities to the standard of diligence, skill and care that such persons would customarily provide in accordance with their professional and legal obligations in similar circumstances and in the same general geographic location as the Site. Any failure by any of the Design-Builder's Consultants or other Architects, Professional Engineers or professionals performing professional services in relation to the Design will not relieve the Design-Builder of any responsibility for ensuring that the Work is carried out in conformance with this Agreement including the Statement of Requirements, the Design and all Standards.
- 16.9 If the Design-Builder's Consultant's engagement is terminated, the Design-Builder will engage a new Design-Builder's Consultant to provide the Design. The Design-Builder will notify the Owner in writing before appointing or re-appointing the Design-Builder's Consultant, and the Design-Builder will not appoint any Design-Builder's Consultant to whom the Owner may reasonably object.

17. DESIGN PROCESS

- 17.1 Unless otherwise agreed by the Owner, the Design-Builder will submit Drawings and Specifications and supporting information to the Owner for review under the Review Procedure in accordance with the Statement of Requirements at the following Design stages:
- (a) 30% (schematic design);
 - (b) 60% (design development);
 - (c) 90% (pre-tender); and
 - (d) 100% (issued for construction).

- 17.2 Within 30 days after the Effective Date, the Design-Builder will deliver to the Owner the schematic design Drawings and Specifications for the Project.
- 17.3 After review of the Submittals at the pre-tender Drawings and Specifications stage by the Owner, the Design-Builder will finalize and complete the "issued for construction" Drawings and Specifications. The Design-Builder will provide 3 copies of the final "issued for construction" Drawings and Specifications, and any revisions, to the Owner together with a certificate from the Design-Builder's Consultant that the "issued for construction" Drawings and Specifications conform to the requirements of this Agreement and Submittals from the pre-tender Drawings and Specifications stage (including to address comments received from the Owner). The Design-Builder will provide the Drawings and Specifications on CD in AutoCAD DWG and Adobe PDF format acceptable to the Owner, acting reasonably.
- 17.4 Without limiting the generality of Section 17.1, each of the Submittals in this Section 17 must be formatted in a manner and contain detail that is satisfactory to the Owner. The Submittals must have clearly identified sections for:
- (a) architectural design;
 - (b) site development and landscaping;
 - (c) civil design;
 - (d) structural design;
 - (e) mechanical design; and
 - (f) electrical design.
- 17.5 Each of the Submittals in this Section 17 must contain:
- (a) 2 sets of Drawings at 50% scale (11x17 acceptable) and 2 sets of Drawings at full scale;
 - (b) 3 sets of Specifications;
 - (c) 3 sets of supporting material (such as: code analysis, energy cost models, acoustic design reports, correspondence, etc.);
 - (d) relevant design calculations and material specifications;
 - (e) reports showing the Design decision process, criteria and assumptions used to develop the Design;
 - (f) at 30% stage, exterior perspectives;
 - (g) at 60% stage, interior perspectives;
 - (h) at 60% stage, all development and building permit drawings and design;
 - (i) any other information the Design-Builder determines will assist the Owner (such as: models or three-dimensional renderings);
 - (j) a certificate from the Design-Builder's Consultant that the Drawings and Specifications conform to the requirements of this Agreement; and

(k) any other information that the Owner may reasonably request.

17.6 The Design-Builder will comply with any requirements set out in the Statement of Requirements in relation to the stages and process for Design, including with respect to meetings, presentations, mock-ups and user groups.

17.7 Unless otherwise required by the Owner, the Design-Builder will provide and use, and make available to the Owner and representatives of the Owner, a secure and confidential internet-based system for the storage and exchange of Design documentation in electronic format acceptable to the Owner.

18. OWNERSHIP OF DOCUMENTS

18.1 The Design-Builder acknowledges and agrees that this Agreement contains intellectual property that is protected by copyright and that this intellectual property is intended to be used solely for the purposes of the Project. The Design-Builder will obtain prior written permission and will require the Design-Builder's Consultant and any other Subcontractors to obtain prior written permission for any other use.

18.2 Copyright for the Design and Drawings belongs to the Design-Builder, the Design-Builder's Consultant or other consultants who prepared them.

18.3 Plans, sketches, Drawings, graphic representations and Specifications, including computer generated designs, when prepared by the Design-Builder's Consultant or other consultants are instruments of their service and will remain their property whether the construction for which they are made is executed or not.

18.4 Submission or distribution of the Design-Builder's Consultants' or other consultants' plans, sketches, Drawings, graphic representations and Specifications to meet official regulatory requirements or for other purposes in connection with the Work is not to be construed as publication in derogation of their reserved rights.

18.5 The Owner may retain copies, including reproducible copies, of all plans, sketches, Drawings, graphic representations and Specifications and other material including the Record Drawings. The Design-Builder hereby grants to the Owner a non-exclusive, royalty-free, fully paid, world-wide, perpetual and irrevocable licence to use the Design and any and all such material for any purpose related to the use and ownership of the Facility and the Land (including any renovations, additions or alterations to the Facility), for completion of any Work in the event of termination of this Agreement and for reference purposes in connection with other operations, projects and facilities of the Owner. Such licence may be sublicensed or assigned, at the discretion of the Owner, to any third party who has or may acquire an interest or obligation related to the Facility, including for any facilities maintenance, life cycle repair/replacement or other services to the Owner or others in relation to the Facility. The Design-Builder at the Owner's request, and prior to any payment after such request is made, will deliver to the Owner a consent and acknowledgement signed by the Design-Builder's Consultant confirming such licence.

18.6 Models and renderings furnished by the Design-Builder are the property of the Owner.

19. ERRORS IN DESIGN

19.1 The Design-Builder is responsible for the Design, including all errors, omissions or deficiencies in the Design.

19.2 The Design-Builder will give written notice to the Owner immediately upon becoming aware of any error, omission or deficiency in the Design.

- 19.3 The Design-Builder will remedy at its own cost any error, omission or deficiency identified in the Design, including any resulting error, omission or deficiency in the Design that results in defects or deficiencies in any part of the Construction that has been commenced or completed. The Design-Builder will ensure that such remediation will conform to the requirements of this Agreement.

20. LABOUR AND PRODUCTS

- 20.1 Unless otherwise expressly provided in this Agreement, the Design-Builder will provide and pay for all labour, products, materials, tools, equipment, machinery, water, heat, light, power, transportation and all other facilities, things and services (including services for Design) necessary for the performance of the Work in accordance with this Agreement.
- 20.2 All products, materials, equipment and machinery intended to be incorporated into the Work will be new unless otherwise expressly specified in this Agreement.

21. SUBCONTRACTS

- 21.1 The Design-Builder will preserve and protect the rights of the Owner under this Agreement with respect to any Work to be performed by a Subcontractor, so that the subcontracting does not prejudice the Owner's rights under this Agreement.
- 21.2 The Design-Builder will be responsible to the Owner for the performance of all Subcontractors and will require the Subcontractors to perform their work in accordance with the terms and conditions of this Agreement.
- 21.3 The Design-Builder will be as fully responsible to the Owner for acts and omissions of Subcontractors and of persons directly or indirectly employed by them as for the acts and omissions of persons directly employed by the Design-Builder.
- 21.4 Nothing contained in this Agreement will create any contractual relationship between the Owner and any Subcontractors or their officers, agents, employees or workers.
- 21.5 The Design-Builder will require every Subcontractor to observe the terms of this Agreement so far as they apply to that portion of the Work to be performed directly or indirectly by that Subcontractor. The Design-Builder will require that the terms of this Agreement that are applicable to the portion of the Work to be performed by a Subcontractor will form part of that Subcontract.
- 21.6 The Design-Builder will require that every Subcontract for designers and Subcontractors require such designers and Subcontractors, where requested by either the Owner or the Design-Builder, to attend any Dispute resolution process including discussions, negotiations, mediation or arbitration between the Design-Builder and the Owner; provide frank, candid and timely disclosure of relevant information and documentation; and, bona fide negotiations to resolve such Disputes.

22. OTHER CONTRACTORS

- 22.1 The Owner reserves the right to enter into separate contracts with Other Contractors in relation to the Project or to perform work itself. The Design-Builder will cooperate with and coordinate the Work with all concurrent construction activities by the Owner or Other Contractors on the Site or adjacent to the Site.
- 22.2 The Design-Builder will:

- (a) coordinate the Work with that of Other Contractors and connect the Work with the work of Other Contractors as applicable; and
 - (b) ensure that performance of the Work is carried out in accordance with the Time Schedule so that Other Contractors are not delayed in their work.
- 22.3 The Design-Builder will promptly report to the Owner any apparent deficiencies in Other Contractors' work that could affect the Work as soon as they come to the Design-Builder's attention, and will confirm such report in writing promptly.
- 22.4 Where a Change is required as a result of the coordination and connection of the work of Other Contractors or the Owner with the Work, the Changes will only be made as provided in Section 47.
- 22.5 The Owner will require Other Contractors to coordinate and schedule their construction activities at the Site in accordance with the reasonable instructions of the Design-Builder, acting as prime contractor, related to health and construction safety at the Site and compliance with the *Workers Compensation Act* (British Columbia).
- 22.6 The Design-Builder acknowledges that other persons working at the Site may be union or non-union and that the Owner wishes to ensure that labour peace is maintained. The Design-Builder will comply with all requirements of the Owner in respect of labour relations and the Design-Builder will take all reasonable precautions to avoid labour disruptions caused by, or contributed to by the Design-Builder, its Subcontractors or any persons performing the Work. The Design-Builder will bear the sole cost and expense of preventing, avoiding or removing any matter or events giving rise to a labour dispute.
- 22.7 The Owner will assure, where possible, that Other Contractors are bound to equivalent terms as those found in this Section 22.
- 22.8 Claims, disputes, and other matters in question between the Design-Builder and Other Contractors will be dealt with as provided in Section 63 provided the Other Contractors have reciprocal obligations. The Design-Builder will be deemed to have consented to arbitration of any dispute with any Other Contractor whose contract with the Owner contains a similar requirement to Section 63.

23. ACCESS TO AND USE OF SITE

- 23.1 Subject to the Site Plan, the Project Management Plan and any limitations in this Agreement, the Owner grants to the Design-Builder a licence to enter and be upon the Site from the Site Occupation Date until Substantial Completion, to perform the Work that is required to be performed on the Site.
- 23.2 After Substantial Completion, the Owner will provide access to the Facility and the Site as reasonably required for completion of the Work and rectification of deficiencies including warranty deficiencies, taking into account the Owner's use and occupancy of the Facility and the Site.
- 23.3 After Substantial Completion, the Design-Builder will:
- (a) coordinate with the Owner to ensure timely completion of the Work and rectification of deficiencies including warranty deficiencies;
 - (b) comply with the Owner's requirements as set out in Section 32 with respect to dust, noise and vibration;

- (c) minimize disruption to the Owner's use and occupancy of the Facility and will comply with all directions of the Owner with respect to timing, security and access for the rectification of deficiencies including warranty deficiencies; and
- (d) comply with the security requirements of the Owner as set out in the Statement of Requirements.

23.4 The Design-Builder will:

- (a) limit its physical construction activities to the areas within the Construction Site;
- (b) limit its activities to the areas within the Site which are identified in the Site Plan and Project Management Plan as required to perform the particular aspect of Work, unless the Design-Builder obtains permission to occupy or use other lands;
- (c) not access any areas of the Site or adjacent properties, including airspace, which it is not permitted to access under the Site Plan or Project Management Plan, without the prior written permission of the Owner; and
- (d) obtain any construction easements and permits that may be required for construction of the Project. When requested to do so by the Design-Builder, the Owner may at its discretion provide reasonable assistance to the Design-Builder in obtaining such construction easements and permits required for the construction of the Project but, in no circumstance will the Owner be required to incur any costs or make any payments.

23.5 The Design-Builder will:

- (a) comply with all requirements related to trees as set out in the Statement of Requirements;
- (b) not remove or disturb any other vegetation for purposes of the Work, including for the purpose of providing a lay down area unless the vegetation is restored with other vegetation of similar size and kind and in accordance with any applicable Laws and the Statement of Requirements; and
- (c) rehabilitate all construction lay down areas to a standard not less than that observed for pre-existing conditions before Site Occupation Date and recorded in the Pre Construction Survey.

23.6 There is pay parking throughout the Riverview Campus which the Design-Builder, the Subcontractors and their respective workers may use. Additionally, the Design-Builder, the Subcontractors and their respective workers may park on the Site. The Design-Builder will not use tenant or film industry designated park and will otherwise comply with all applicable parking rules and restrictions when parking on the Riverview Campus or in surrounding areas.

24. PROJECT MANAGEMENT PLAN

24.1 The Design-Builder will carry out the Construction in accordance with the Project Management Plan which will include, among other things:

- (a) all Site preparation;
- (b) Construction of the Facility, including the requirements and timing for construction and commissioning (including all systems and equipment);

- (c) restricting Construction to the Facility until it is completed by the Design-Builder and made available to the Owner for occupancy;
- (d) not carrying out any Construction on the remainder of the Site until the Facility is completed by the Design-Builder and made available to the Owner for occupancy;
- (e) demolition (if any);
- (f) Site landscaping (if any);
- (g) a Site fencing plan;
- (h) an emergency response plan;
- (i) a waste management strategy that minimizes negative impacts on the local environment and community;
- (j) a plan for ensuring roadways, pathways and other transportation routes that may be impacted by the construction are kept tidy and free of waste and debris in accordance with Section 35.1;
- (k) quality management, design management, procurement management, construction management, health and safety management and commissioning management;
- (l) parking, access and traffic flows management, including maintaining adequate vehicle, delivery and pedestrian access, and the Design-Builder will specifically address the items set out in Section 24.4; and
- (m) compliance with all requirements of this Agreement,

and the Design-Builder will submit the Project Management Plan to the Owner within 30 days after the Effective Date and will not proceed until the Project Management Plan has received the notation "Reviewed" under Schedule 2 - Review Procedure. If the Design-Builder proposes revisions to the Project Management Plan, the Design-Builder will submit the proposed revised Project Management Plan to the Owner and will not proceed with revised Project Management Plan until it has received the notation "Reviewed" under Schedule 2 - Review Procedure.

24.2 The Design-Builder will:

- (a) comply with the reviewed Project Management Plan;
- (b) install at least a six foot high fence around the perimeter of the area in which it is performing the Work and such hoarding as may be prescribed in the Statement of Requirements, including any hoarding required to protect the public and separate the area of the Work from the other portions of the Site;
- (c) perform all Construction activities within the areas of the Site provided in the Site Plan and Project Management Plan, except as approved by the Owner for any work required in other areas of the Site;
- (d) perform all Construction activities without blocking or disrupting vehicle, delivery or pedestrian access, except as may be permitted pursuant to the Project Management Plan;

- (e) cause the Design-Builder's personnel, Construction workers, Subcontractors and suppliers to enter or exit the Site only at the access routes indicated on the Site Plan, the Project Management Plan and as set out in the Statement of Requirements, unless otherwise approved by the Owner;
 - (f) not use any explosives without the Owner's consent;
 - (g) take reasonable steps to ensure that Construction workers or suppliers do not smoke on any portion of the Site other than designated smoking areas;
 - (h) provide a 24-hour hotline (and post the phone number in a prominent location on the Site) for:
 - (i) Owner staff to notify the Design-Builder of any Construction related emergencies; and
 - (ii) neighbours and passers-by to contact the Design-Builder,and the Design-Builder will respond to any phone calls made on the hotline within 1 hour of receipt;
 - (i) provide the neighbourhood committee with the name and contact information of a representative to direct their concerns;
 - (j) provide a community liaison officer (who may be the same individual as the representative referred to in Section 24.2(i)) to provide a single point of contact regarding construction and development issues; and
 - (k) before commencing the Construction, prepare and implement in co-operation with the Owner a construction fire safety plan for the Project, which plan will describe emergency access routes to and from the Facility and the Site during an emergency.
- 24.3 If the Design-Builder performs any Construction outside of the area designated at the Site, the Design-Builder will comply with all policies and other requirements of the Owner.
- 24.4 The Design-Builder's Project Management Plan will address how the Design-Builder plans to ensure the safe movement of vehicles, material handling equipment and people during Construction, and will specifically identify:
- (a) hazards and suitable traffic flow arrangements;
 - (b) how many trucks can be safely parked at any particular time;
 - (c) the adequacy of width and turning radiuses for trucks and equipment given the constraints of the Site and the Riverview Campus;
 - (d) the routing of trucks and equipment through the Riverview Campus to minimize negative impacts to existing property;
 - (e) the vehicle movement area(s), loading / unloading area(s), parking area(s), people movement area(s) and storage area(s);
 - (f) all flag person stations and number of personnel to be assigned to such stations; and
 - (g) all first aid muster stations.

25. FIRST NATION CONTRACTING OPPORTUNITIES

- 25.1 The Design-Builder will advise the Kwikwetlem First Nation on a timely basis of any subcontracting opportunities that may become available, including any opportunities related to field investigation and drilling, excavation, soil disposal, Site remediation, shoring underground utilities such as water, sewer, storm, electricity and telephone, directional drilling, pump and lift station construction, concrete crushing and recycled material supply, asphalt disposal and crushing, and staging on Kwikwetlem IR 2 for short term material and prefabrication.
- 25.2 The Design-Builder will be solely responsible for managing the applicable subcontracting process and for determining whether subcontracting proposals submitted by the Kwikwetlem First Nation are qualified and competitive.
- 25.3 The Owner will provide the Design-Builder with applicable Kwikwetlem First Nation contact information.

26. SIGNAGE

- 26.1 The Design-Builder may erect signage at the Site during Construction to identify the Design-Builder and Subcontractors provided such signage and its location(s) is acceptable to the Owner, acting reasonably. The Design-Builder will also erect the Owner's signage as required by the Owner.

27. USE OF SITE

- 27.1 The Design-Builder will confine its construction machinery and equipment, tools, storage of materials and products, and the operations of workers to limits indicated in the Site Plan or Project Management Plan, or by or under all applicable Laws, and will not unreasonably encumber the Site or other activities on the Site.
- 27.2 The Design-Builder will comply with the Owner's policies, procedures and instructions, including the document entitled "Riverview Lands Rules and Regulations".
- 27.3 The Design-Builder will not load or permit to be loaded any part of the Construction with a weight or force that endangers the safety of the Project.
- 27.4 The Design-Builder will ensure that the Work does not adversely impact the ongoing operations of the Owner, or any person on behalf of the Owner, near or adjacent to the Site, including the operation of Cottage 1, Cottage 2, Cottage 3, Cottage 122, Unit #8, Unit #6, Cypress Lodge, Cottonwood Lodge, Connelly Lodge, the Kids Cottage Daycare in the Auditorium, Unit #5, the Hillside building and the Brookside building.
- 27.5 The Design-Builder will confirm the location of all utilities and ensure that all of its labour force, employees, Subcontractors and any other workers at the Site:
- (a) are made aware of the location of all utilities in connection with the Project and the importance of avoiding damage to those underground utilities;
 - (b) observe any instructions in connection with those utilities issued by the Owner on behalf of any applicable utility owners; and
 - (c) protect all such utilities.

28. CONDITIONS AT SITE/DISCLOSED DATA

28.1 The Design-Builder acknowledges and agrees that:

- (a) it has received and reviewed a copy of all Site Reports;
- (b) it has had the opportunity to undertake examinations and investigations of the Site in order to satisfy itself as to Site conditions and the impact they could have on any or all of the Work (including Design and Construction), Contract Time and Contract Price;
- (c) only objective geotechnical borehole logs provided in the Site Reports can be relied upon for accuracy (subject to any qualifications or conditions set out in such information or this Agreement) but such data cannot be relied upon for sufficiency, relevancy or interpretation;
- (d) neither the Owner, the Owner's Representative, the Owner's Consultant nor any other person on behalf of the Owner is in any way responsible or liable for the completeness, interpretation or accuracy of the Site Reports (except the accuracy of objective geotechnical borehole logs identified in Section 28.1(c)) or for any variation between Site conditions actually encountered by the Design-Builder and those set out in the Site Reports; and
- (e) subject to Sections 28.4, 29 and 30, the Design-Builder is not entitled to any adjustment in the Contract Time or Contract Price, or to any other remuneration, compensation or damages whatsoever, in any way connected with Site conditions.

28.2 It is the Design-Builder's responsibility to have conducted its own analysis and review of the Project and, before the execution of this Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project. Except with respect to the accuracy of objective geotechnical borehole logs identified in Section 28.1(c) the Design-Builder will not be entitled to and will not make (and will ensure that no Subcontractor makes) any claim against the Owner or any Indemnified Party, whether in contract, tort or otherwise including any claim in damages for extensions of time or for additional payments under this Agreement on the grounds:

- (a) of any misunderstanding or misapprehension in respect of the Disclosed Data;
- (b) that the Disclosed Data was incorrect or insufficient; or
- (c) that incorrect or insufficient information relating to the Disclosed Data was given to it by any person other than the Owner,

nor will the Design-Builder be relieved from any obligation imposed on or undertaken by it under this Agreement on any such ground.

28.3 The Design-Builder, in order to design the Facility, is responsible for obtaining sufficiently accurate, complete and applicable geotechnical information necessary to properly design a foundation and structure of the Facility that is appropriate for the soils conditions. This may require supplementing the Disclosed Data. Accordingly, the Design-Builder is not entitled to any adjustment in the Contract Time or Contract Price, or to any other remuneration, compensation or damages whatsoever, in any way connected with Site conditions, including the matters described in Section 28.2 if it has failed to obtain sufficient geotechnical information necessary to prepare a Design that reasonably anticipates the soils conditions actually encountered.

28.4 If the Design-Builder is delayed in performing the Work as a result of inaccuracy in the objective geotechnical borehole logs provided in the Site Reports, the Design-Builder's entitlement to an extension of the Contract Time and reimbursement of costs will be determined in accordance with Section 51. If the Design-Builder is not delayed in performing the Work but incurs additional costs as a result of inaccuracy in the objective geotechnical borehole logs provided in the Site Reports, adjustment in the Contract Time or the Contract Price will be agreed upon or determined in accordance with Section 48.

29. ARCHAEOLOGICAL ITEMS

29.1 Upon discovery at the Site of any fossils, remains, coins, articles of value or antiquity, including all heritage objects (as defined in the *Heritage Conservation Act* (British Columbia)), the Design-Builder will:

- (a) immediately notify the Owner;
- (b) take all steps not to disturb the item and, if necessary, stop Construction to the extent required if performing the Construction would endanger the object or prevent or impede its excavation;
- (c) take all necessary steps to preserve the item in the same position and condition in which it was found; and
- (d) comply with all Laws and regulations and all requirements of governmental authorities with respect to such discovery including pursuant to the *Heritage Conservation Act* (British Columbia).

29.2 If the Design-Builder is delayed in performing the Work taking steps required under Section 29.1, the Design-Builder's entitlement to an extension of the Contract Time and reimbursement of costs will be determined in accordance with Section 51. If the Design-Builder is not delayed in performing the Work but incurs additional costs as a result of taking steps required under Section 29.1, adjustment in the Contract Time or the Contract Price will be agreed upon or determined in accordance with Section 48.

30. CONTAMINANTS AND ENVIRONMENTAL MANAGEMENT

30.1 The Owner is responsible for the management, remediation (which may include removal and disposal) of Contaminants at the Site that existed at the Site prior to the Design-Builder commencing Work at the Site if the Contaminants exceed the applicable risk based or numerical standards for the Contaminant in soil, groundwater or vapour as prescribed by the Ministry of Environment (British Columbia) for the proposed land use.

30.2 If the Design-Builder encounters or becomes aware of the existence of any Contaminant on, in or under the Site that reasonably might be considered a workplace hazard, the Design-Builder will at once:

- (a) take all reasonable steps as necessary to ensure that no person or property suffers injury, sickness, death, damage or destruction as a result of exposure to, or the presence of, that Contaminant;
- (b) report the existence of such Contaminant to the Owner and BC Housing and, if required by applicable Law, to the relevant governmental authorities; and
- (c) if the Contaminant existed at the Site prior to the Design-Builder commencing Work at the Site:

- (i) permit an Other Contractor retained by the Owner or BC Housing to access the applicable part of the Site for the purposes of investigation, management, and if applicable, removal and disposal of the Contaminant, and cooperate with that Other Contractor as contemplated in Section 22.1. If requested, the Design-Builder will recommend to the Owner and BC Housing for approval soil remediation or removal and disposal, or in lieu thereof any containment works that the Design-Builder could perform to avoid the need for soil remediation or removal and disposal work, and, if any such works are approved, implement such works;
- (ii) if requested by the Owner or if necessary to comply with Section 30.2(a), suspend performance of the Work but only to the extent necessary to allow the Other Contractor to perform the activities at the Site as described in Section 30.2(c)(i); and
- (iii) if the Design-Builder suspended performance of the Work at the request of the Owner under Section 30.2(c)(ii), resume full performance of the Work immediately upon receipt of a notice from the Owner that the presence of the Contaminant at the Site has been managed such that the Design-Builder can perform the Work in accordance with the terms of this Agreement.

30.3 If the Design-Builder is delayed in performing the Work by taking steps required under Section 30.2(c)(ii) and the concentration of the Contaminant at the Site encountered by the Design-Builder exceeds the applicable risk based or numerical standards for the Contaminant in soil, groundwater or vapour as prescribed by the Ministry of Environment (British Columbia) for the proposed land use, then the Design-Builder's entitlement to an extension of the Contract Time and reimbursement of costs will be determined in accordance with Section 51. If the Design-Builder is not delayed in performing the Work by taking steps required under Section 30.2(c)(ii) but incurs additional costs due to such a discovery of Contaminants at the Site that exceed the applicable risk based or numerical standards for the Contaminant in soil, groundwater or vapour as prescribed by the Ministry of Environment (British Columbia) for the proposed land use, the adjustment in the Contract Price will be agreed upon or determined in accordance with Section 48. If the Design-Builder incurs additional costs in designing and implementing the soil remediation, or removal and disposal or containment works described in Section 30.2(c)(i), the adjustment in the Contract Price will be agreed upon or determined in accordance with Section 48.

30.4 The Design-Builder will not introduce any Contaminant into the environment on, in or under the Site or on, in or under lands proximate thereto, other than strictly in compliance with applicable Law. The Design-Builder is responsible for the management, removal, abatement, containment and disposal of all Contaminants that are brought onto the Site by reason of any act or omission of the Design-Builder or of any representative, agent, employee, officer, director, consultant of the Design-Builder or of any Subcontractor and, notwithstanding any other law to the contrary, any such Contaminants will remain the property of the Design-Builder, and not the Owner.

30.5 The Design-Builder will indemnify and save harmless the Indemnified Parties from and against any and all losses, claims, damages, actions, causes of action, costs and expenses (including actual legal and other professional fees and disbursements) that any of the Indemnified Parties may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any breach of the Design-Builder's obligations in this Section 30, or failure to perform any of the Design-Builder's obligations in this Section 30, by the Design-Builder or any representative, agent, employee, officer, director, consultant of the Design-Builder or by any Subcontractor.

30.6 The Design-Builder will comply with the Owner's policy entitled "Contractor Environmental Responsibility Package, May 2016", as may be reasonably updated or modified by the Owner from time to time.

31. SITE SAFETY

31.1 The Design-Builder agrees to be the "prime contractor" for the purposes of all applicable occupational health and safety Laws, including the *Workers Compensation Act* (British Columbia), and the Design-Builder is responsible for filing any documents necessary to comply with the *Workers Compensation Act* (British Columbia), including a notice of project. The Design-Builder will comply with all requirements of the *Workers Compensation Act* (British Columbia) and any other occupational health and safety Laws, applicable to the Project, the Work or to the Site. The Owner will comply, and will cause Other Contractors to comply, with occupational health and safety requirements established by the Design-Builder to fulfil the Design-Builder's obligations as "prime contractor".

31.2 Prior to commencing the Work and as a condition of receiving payment on Substantial Completion and on Total Completion, the Design-Builder will provide the Owner with satisfactory written evidence of compliance by the Design-Builder with all requirements under the *Workers Compensation Act* (British Columbia), including payments of assessments due under it to the Workers' Compensation Board. Without limiting the foregoing, the Owner may at any time require the Design-Builder to provide evidence of compliance with all requirements under the *Workers Compensation Act* (British Columbia), or payment of assessments due under it to the Workers' Compensation Board, or both.

31.3 When required to do so by the Owner, the Design-Builder will provide the Owner with evidence of its compliance and compliance of any or all of its Subcontractors under Section 31.2.

31.4 Following the Site Occupation Date, the Design-Builder will coordinate health and safety for the Site for all activities performed by its workers as well as those of Subcontractors, utilities, inspectors, the Owner, Other Contractors and any others performing any activities at the Site.

31.5 The Design-Builder will establish, implement and provide for the review by the Owner, by no later than 30 days after the Effective Date, a plan (the "Health and Safety Plan") that meets all applicable requirements of this Agreement with respect to health and safety at the Site and that addresses the safety of the Owner, patients and others who may be on the Site or property in the vicinity of the Site. The Design-Builder will provide safety fencing and hoarding as necessary to limit access to the Site in accordance with the Health and Safety Plan.

31.6 The Design-Builder will ensure that its Health and Safety Plan is consistent with, and accommodates any requirements of, the Owner's policies regarding safety and that it specifically addresses the safety of the Owner, patients, visitors and others who may be on the Site or on property in the vicinity of the Site.

31.7 The Design-Builder will maintain and comply with the Health and Safety Plan in all material respects during execution of the Work.

31.8 Prior to any person accessing the Site pursuant to this Agreement, the Design-Builder will provide health and safety orientation and information to such person in accordance with its Health and Safety Plan.

31.9 The Design-Builder will from time to time provide Site safety orientations for residents of the Riverview Campus and BC Housing personnel upon receipt of not less than 48 hours prior written notice from the Owner. Such orientations will include traffic management, emergency contact

protocols and project scheduling. The Design-Builder will notify BC Housing in advance of, and permit BC Housing representatives to attend, any Site emergency drills.

32. DUST, NOISE AND VIBRATION

32.1 The Design-Builder will carry out its Construction to minimize dust and noise and vibration.

32.2 Without limiting Section 32.1, the Design-Builder will:

- (a) notify the Owner at least 5 Business Days in advance of any expected dust, noise or vibration from the Construction activities that may affect users of the buildings listed in Section 27.4, such notification to include the duration and amount of dust, noise or vibration, as applicable;
- (b) plan operations to minimize disruption to the activities of the users of the buildings listed in Section 27.4; and
- (c) will carry out its Construction activities, so that dust, noise and vibration transfer does not unreasonably and adversely affect such buildings or the use of properties in the vicinity of the Site, and in accordance with the Statement of Requirements.

33. TESTING AND COMMISSIONING

33.1 The Design-Builder will prepare and deliver to the Owner a detailed plan (the "Commissioning Plan") setting out the testing, commissioning, training and other activities the Design-Builder intends to carry out to satisfy this Section 33.1 and to achieve Substantial Completion. The Commissioning Plan will include, among other things:

- (a) a description of the specific equipment and systems to be tested and commissioned and the associated commissioning requirements;
- (b) supporting documentation, including as appropriate:
 - (i) detailed method statements and procedures;
 - (ii) design calculations and/or assumptions;
 - (iii) manufacturer's specifications;
 - (iv) a description of all systems which will be tested and commissioned for integration to other systems;
 - (v) identification of all equipment and systems that require or are provided with redundancy or spare capacity and that will include complete successful demonstration in real time under full stress conditions; and
 - (vi) a description of all systems and equipment where the Owner's clinical staff will be required to develop functional scenarios and to test and witness these functional scenarios;
- (c) a description of the training and education that the Design-Builder intends to provide to the Owner's staff to enable the Owner to properly utilize the equipment and systems installed in the Facility, including all training and education to be completed before Substantial Completion;

- (d) the name of the commissioning agent and the names of other persons to be involved in testing, commissioning and training;
- (e) a description of the Design-Builder's system for managing records of tests, inspections, quality assurance and training;
- (f) a general description of the Design-Builder's transition plans for handover to the Owner of the Facility at Substantial Completion;
- (g) a schedule, related to the Time Schedule, showing:
 - (i) the timing of all testing and commissioning, training and clinical acceptance testing;
 - (ii) for each requirement of Substantial Completion relating to commissioning (described in Section 44.2), the date upon which the Design-Builder anticipates achieving the requirement;
 - (iii) a matrix of all equipment and systems, including all integrated equipment and systems, and how they integrate with each other, along with an overview of the procedures that will be followed to demonstrate that integration of all equipment and systems has been and will be achieved; and
 - (iv) the timing and development of the functional scenarios with the Owner's clinical staff; and
- (h) any other requirements as set out in Schedule 1 - Statement of Requirements.

33.2 The Commissioning Plan must be reasonable having regard to the requirements of this Section 33 and Schedule 1 - Statement of Requirements, and will be developed and finalized as follows:

- (a) the Design-Builder will deliver a preliminary draft of the Commissioning Plan to the Owner not less than 6 months before the Target Substantial Completion Date, failing which, the Design-Builder will pay to the Owner by way of liquidated damages and not as a penalty the sum of \$2,500 per week for each week or part thereof that the Design-Builder fails to deliver the preliminary draft. If the Design-Builder has not delivered to the Owner a preliminary draft of the Commissioning Plan by the date falling 4 months before the Target Substantial Completion Date, the liquidated damages applicable under this Section 33.2 will increase to \$5,000 per week for each week or part thereof that the Design-Builder has not delivered to the Owner the aforementioned preliminary draft;
- (b) the Owner will provide its comments, if any, on the preliminary draft of the Commissioning Plan to the Design-Builder within 20 Business Days of receipt of the preliminary draft;
- (c) the Design-Builder will deliver a revised draft of the Commissioning Plan to the Owner not less than 40 Business Days after receipt of the Owner's comments on the preliminary draft, failing which, the Design-Builder will pay to the Owner by way of liquidated damages and not as a penalty the sum of \$5,000 for each week or part thereof after the date falling 40 Business Days after the Owner's comments were received by the Design-Builder until the Design-Builder has delivered to the Owner a revised draft of the Commissioning Plan;
- (d) The liquidated damages in Section 33.2(a) and 33.2(c) will be the Owner's sole claim for damages against the Design-Builder for failure to deliver the preliminary draft or the

revised draft of the Commissioning Plan by the required dates, as the case may be. The liquidated damages will not relieve the Design-Builder from its obligation to complete the preliminary or revised draft of the Commissioning Plan or from any other duties, obligations or responsibilities of the Design-Builder under this Agreement, and will not limit the Owner's rights to terminate this Agreement for default of the Design-Builder under this Agreement. The Owner and the Design-Builder agree that the amounts in Section 33.2(a) and 33.2(c) represent a genuine pre-estimate of the damages and expenses that the Owner is likely to incur for such failure of the Design-Builder to deliver the preliminary or revised draft of the Commissioning Report, as the case may be, and both parties expressly agree that such amount is not a penalty. The Owner may, in its discretion, either deduct the weekly sums in respect of liquidated damages from the Performance Holdbacks or any amounts payable to the Design-Builder under this Agreement or may require payment thereof by the Design-Builder on demand.

- (e) the Owner will, within 15 Business Days of receipt of the revised draft, advise the Design-Builder whether the Owner accepts the Commissioning Plan, and if the Owner does not accept it the Owner will provide its reasons for such non-acceptance in sufficient detail to allow the Design-Builder to address them;
- (f) if the Owner does not accept the Commissioning Plan, the parties will, acting reasonably, diligently work together with a view to revising the Commissioning Plan to address the Owner's reasons for non-acceptance; and
- (g) if the Owner has not accepted the Commissioning Plan by the date that is four months before the Target Substantial Completion Date, the Design-Builder may refer the Dispute for resolution in accordance with Section 63.

33.3 The Design-Builder will retain a qualified independent commissioning agent (acceptable to the Owner, acting reasonably) to test and commission all equipment and systems in the Facility to demonstrate to the Owner that the Facility equipment and systems, including all major systems, are fully operational and that the Owner may occupy the Facility for its intended use, as described in the Statement of Requirements. The commissioning agent will prepare a written report to confirm the foregoing and confirm completion of all commissioning activities before Substantial Completion. Testing and commissioning will include, among other things, the following:

- (a) a complete and successful demonstration in real time under full stress conditions for all equipment and systems that require or are provided with redundancy or spare capacity;
- (b) end to end testing and commissioning of key equipment and systems including but not limited to communication systems (wireless communications, intercom, overhead paging, telephones) and door controls;
- (c) clinical validation or proper functioning of all equipment and systems and all points of integration between such equipment and systems; and
- (d) provision of adequate training for the Facility operators so that they become familiar with the various mechanical and electrical systems and controls.

34. DOCUMENTS AT THE SITE

34.1 The Design-Builder will keep at least 1 copy of the following documents at the Site in good order and available to the Owner:

- (a) a copy of this Agreement;

- (b) a copy of all development, building, electrical and plumbing permits and inspection reports;
- (c) up to date and current Drawings and Specifications, including any shop drawings prepared or obtained in respect of the Work;
- (d) the Project Management Plan;
- (e) the Time Schedule;
- (f) the Quality Management Plan; and
- (g) the Health and Safety Plan.

35. CLEANUP AND FINAL CLEANING OF WORK

- 35.1 The Design-Builder will maintain the Work, and all roadways, pathways and other transportation routes that may be impacted by construction, in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the Owner, Other Contractors or their employees.
- 35.2 The Design-Builder will promptly remove all surplus products, tools, construction machinery and equipment, and any waste and debris.
- 35.3 The Design-Builder will:
- (a) use reasonable efforts to achieve a construction waste diversion target rate of 80%; and
 - (b) complete and submit the BC Housing "Contractor's Waste Management Tracking Form" to the Owner with each application for payment under Section 40 of this Agreement.
- 35.4 The Design-Builder will leave the Facility clean and suitable for occupancy and use by the Owner by the Substantial Completion Date in accordance with the Owner's standards of cleanliness.
- 35.5 The Design-Builder will leave the Site clean and suitable for occupancy and use by the Owner by the Substantial Completion Date.
- 35.6 In connection with any Work after the Substantial Completion Date, the Design-Builder will at all times leave the Work and Site clean and suitable for occupancy and use by the Owner but is not required to remove waste caused by the Owner.

36. REMEDIAL WORK

- 36.1 The Design-Builder will do all remedial work that may be required to make the several parts of the Work comply with the Statement of Requirements.
- 36.2 The Design-Builder will coordinate the Time Schedule for the Work to ensure that the requirement under Section 36.1 is kept to a minimum.
- 36.3 Remedial work will be performed by specialists familiar with the materials affected and will be performed in a manner to neither damage nor endanger any Work.

37. REJECTED WORK

- 37.1 Defective Work, whether the result of poor design, poor workmanship, use of defective equipment or materials, or damage through carelessness, default or other acts of the Design-Builder or any Subcontractor, and whether incorporated in the Work or not, which has been rejected by the Owner as failing to conform to any of the Statement of Requirements, the Design or the Standards, will be removed promptly by the Design-Builder and replaced and re-executed promptly and properly at the Design-Builder's expense.
- 37.2 If the Design-Builder does not remove such defective Work within the time fixed by written notice by the Owner, the Owner may remove them and store any materials at the expense of the Design-Builder.
- 37.3 Other Contractor's work destroyed or damaged by such removals or replacements will be made good by the Design-Builder promptly at the Design-Builder's expense.

38. WARRANTY

- 38.1 The Design-Builder will promptly correct, at its own expense, any Work that is not in accordance with this Agreement and any defects or deficiencies in the Work that appear during the period of 24 months after the Substantial Completion Date (the "Warranty Period").
- 38.2 The Design-Builder will correct defects or deficiencies at times and in a manner which causes as little inconvenience to the occupants of the Facility and the Owner's operations on and adjacent to the Site as is reasonably possible.
- 38.3 The Owner may carry out, or have others carry out, rectification work at the Design-Builder's cost if:
- (a) the Owner gives notice to the Design-Builder of a defect or deficiency and the Design-Builder does not correct the defect or deficiency within a reasonable time, not to exceed 14 days, unless the nature of the defect or deficiency is such that it cannot be corrected within such time and the Owner, acting reasonably, agrees to an extension of such time; or
 - (b) the nature of the defect is such that it creates a risk to the health or safety of any occupant or user of the Facility, or risk of damage to the Facility, the environment or any property and the Owner gives notice to the Design-Builder within a reasonable time after the commencement or completion of the rectification work.
- 38.4 If the Owner carries out or has others carry out the rectification work pursuant to Section 38.3 the Design-Builder remains responsible for the Work (including the rectification work).
- 38.5 The Design-Builder will provide to the Owner extended warranties from Subcontractors where required by the Proposal Extracts or other provisions of this Agreement and any other extended warranties provided by Subcontractors.
- 38.6 The Design-Builder will correct, at its own cost, or pay the Owner for any damage resulting from the defects or deficiencies and the corrections required under Section 38.1.
- 38.7 Issuance of the Substantial Completion Certificate and the Total Completion Certificate, and final payment to the Design-Builder, do not relieve the Design-Builder from its responsibility under this Section 38.

39. TITLE AND RISK

- 39.1 Title to the Work will vest only in the Owner. Without prejudice to any of the rights of the Owner under this Agreement, title to the Work or any part of the Work will vest in the Owner at the earliest of:
- (a) the time that the Work or part of it is at the Site;
 - (b) for any material and equipment stored off-Site in accordance with Section 40.13, the time such material and equipment is delivered to the off-Site storage location;
 - (c) the time that the Owner has paid for the Work or part of the Work; and
 - (d) the time of installation or construction of the Work or part of the Work.
- 39.2 The Work will remain under the care, custody and control of the Design-Builder and at the risk of the Design-Builder until Substantial Completion or until such earlier date determined by the Owner, and notified in writing to the Design-Builder, for occupancy and use by the Owner. The Design-Builder will exercise all reasonable care to avoid loss of, or damage to, the Work.
- 39.3 The Design-Builder represents and warrants that title to the Work and any part of the Work will pass to the Owner free and clear of all liens, charges and encumbrances.

PART D - PAYMENT AND COMPLETION

40. APPLICATIONS FOR PAYMENT

- 40.1 The Design-Builder will make applications for payment in accordance with this Section 40.
- 40.2 Applications for payment will be:
- (a) submitted to the Owner's Consultant;
 - (b) dated the last day of the monthly period;
 - (c) for the value, proportionate to the amount of the Contract Price, of Work performed and material and equipment delivered to the Site or stored off-Site in accordance with Section 40.13, to and at the date of submission; and
 - (d) submitted no more than once per month during the performance of the Work.
- 40.3 Pending determination of the final result of any Change, the undisputed value of the Work performed as a result of a Change is eligible to be included with payment applications.
- 40.4 The Design-Builder will submit to the Owner's Consultant for review, at least 14 days before the first application for payment, a Schedule of Values of the various parts of the Work, aggregating to the total amount of the Contract Price and divided so as to facilitate evaluation of applications for payment. The Schedule of Values will be consistent with the information set out in the breakdown of the Contract Price set out in Schedule 6 – Schedule of Prices and made out in such form and supported by such evidence as to its correctness as the Owner's Consultant may reasonably require. The Owner's Consultant will provide comments to the Design-Builder on the Schedule of Values, the Design-Builder will revise the Schedule of Values to address the comments, and so on, until such time as the Owner's Consultant is satisfied with the Schedule of Values. The Schedule of Values will be used as the basis for all applications for payment, unless it is found at any time to be in error, in which case it will be corrected in accordance with the

Owner's Consultant's directions. If the Schedule of Values is not finalized prior to an application for payment, the Owner's Consultant may consider the applications for payment on the basis of the Schedule of Values under review and the Owner's Consultant's comments on such Schedule of Values or such other basis as determined by the Owner's Consultant.

- 40.5 When making applications for payment, the Design-Builder will submit a statement based upon the Schedule of Values. Claims for material and equipment delivered to the Site but not yet incorporated into the Work will be supported by such evidence as the Owner's Consultant may reasonably require to establish the value and their delivery.
- 40.6 Subject to any further information that may be required by the Owner, the application for payment will include:
- (a) the amount applied for in the application;
 - (b) the value of Work performed and material and equipment delivered to the Site, provided that the Design-Builder has not already applied for payment with respect to such material and equipment pursuant to Section 40.6(c);
 - (c) if the Design-Builder has complied with Section 40.13, the value of material and equipment stored off-Site;
 - (d) payment amounts in respect of any Changes to which the Design-Builder is entitled under this Agreement, including under Section 40.3;
 - (e) any adjustments to the Contract Price under this Agreement;
 - (f) the balance of the Contract Price to complete the Work;
 - (g) the amount of Lien Holdback;
 - (h) the amount of Performance Holdbacks;
 - (i) the amount of any withholding or amount to be released under Section 40.8;
 - (j) certification by the Design-Builder that the Project Binder includes documentation current to within at least 30 days prior to the application, including all inspection reports;
 - (k) a statutory declaration of an officer or senior management employee of the Design-Builder stating that all accounts for labour, subcontracts, materials, construction machinery and equipment and other indebtedness which may have been incurred by the Design-Builder in performing the Work and for which the Owner might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute; and
 - (l) a clearance letter from the Workers' Compensation Board indicating that all current assessments due from the Design-Builder and all Subcontractors with subcontracts larger than \$50,000 in value have been paid.
- 40.7 Applications for release of the Lien Holdback will be made under Section 42 (Lien Holdback) and applications for any payment at Substantial Completion or Total Completion will be made under Section 44 (Substantial Completion and Total Completion).

40.8 It is a condition of payment that the following, and all documentation, certification and requirements of the following, are complete and up to date as of the date of each application for payment:

- (a) Health and Safety Plan;
- (b) Project Management Plan;
- (c) Time Schedule;
- (d) Quality Management Plan;
- (e) Project Binder updated as described in Section 45.3;
- (f) issued for construction Drawings and Specifications, commencing with the first application for payment 180 days prior to the Target Substantial Completion Date; and
- (g) Commissioning Plan commencing with the first application for payment 180 days prior to the Target Substantial Completion Date.

The Design-Builder will not be required to re-submit documentation previously provided. The Design-Builder will identify any changes to previously submitted documentation and at the Owner's request submit revised documentation.

The Owner acknowledges that the requirement in Section 40.8(f) for issued for construction Drawings and Specifications does not require the Design-Builder to provide such Drawings and Specifications prior to the date such Drawings and Specifications are required to perform the Work and in accordance with the other provisions of this Agreement.

If any of the foregoing listed items, including the required certification, documentation and certification for each listed item, is not complete and up to date, then the Owner may, for each listed item that is not complete and up to date, withhold from payment the amount of 3% of the total application for payment. This withholding will apply to each month for which such item or items are not complete and up to date. The applicable withholding will be released with the next monthly payment when such item is completed and up to date.

In addition, in relation to the Quality Management Plan, if the Owner's Consultant considers that the Design-Builder has not demonstrated that the Work to which the Quality Management Plan relates was satisfactorily performed, then the Owner's Consultant may, in accordance with Section 40.10, reduce payment by the amount of such unsatisfactory Work plus the cost of the required processes, testing, certification, auditing and documentation required to ensure compliance with the Quality Management Plan.

40.9 Notwithstanding the actual progress, the following will apply:

- (a) payment of the cost of the Bonds and cost of insurance will be made to the Design-Builder upon presentation of all bonding and insurance documentation required by this Agreement and upon presentation of satisfactory proof of payment of related fees or premiums; and
- (b) payment for mobilization identified in the Schedule of Values will be a maximum of 1% of the Contract Price and payment will be made in two parts: 25% when the Design-Builder occupies the Site, and 75% when the Design-Builder has established a fully functional site office, construction equipment is on the Site and construction has commenced.

40.10 The Owner's Consultant, will, within 10 Business Days of receipt of the Design-Builder's application for payment, either:

- (a) accept the amount set out in the application for payment; or
- (b) adjust the amount of any payment to reflect the Owner's estimate of Work satisfactorily performed as of the date of the application for payment.

If the Owner's Consultant amends the application for payment, the Owner's Consultant will promptly notify the Design-Builder in writing and give reasons for the amendment.

40.11 Provided the Design-Builder is not in material default of any provision in this Agreement, the Owner will pay the Design-Builder within 10 Business Days of the Owner's Consultant approving or adjusting the Design-Builder's application for payment in accordance with Section 40.10 and the Schedule of Values .

40.12 Whenever any sum of money is recoverable from or payable by the Design-Builder pursuant to this Agreement or is an amount for which the Owner may be liable on account of a default by the Design-Builder, the Owner may deduct or set off such sum from, or may reduce, any amounts then due or that may thereafter become due to the Design-Builder under this Agreement. Without limiting the generality of the foregoing, the Owner may set-off any amounts for liquidated damages set out in this Agreement.

40.13 Notwithstanding that the Owner is under no obligation to pay for any material and equipment that not been delivered to the Site, the Design-Builder may make requests from time to time, and on a case-by-case basis, for the Owner to consent to arrangements to facilitate payment for material and equipment which have been delivered to an off-Site storage facility or site, with any such consent at the sole discretion of the Owner. In the event that the Owner provides such consent, the following will apply:

- (a) the Owner's prior consent will be in writing;
- (b) material and equipment will be stored at a location and in conditions that are to the satisfaction of the Owner and the Owner's Consultant;
- (c) storage will be secure and safe and the material and equipment will be held apart, singly and solely for the purposes of the Project and protected from the weather;
- (d) labelling of the material and equipment will not damage, permanently deface or harm the material and equipment in any way and will be clearly labelled as "The Property of the Ministry of Technology, Innovation and Citizens' Services";
- (e) each piece of material and equipment will be assigned and labelled with a unique identifier code such that the Owner's Consultant will be able to identify the material and equipment in the Design-Builder's application for payment;
- (f) the Design-Builder will provide a written summary of any material and equipment not stored at the Site for which prior consent for payment has been provided by the Owner, and the Design-Builder will provide this to the Owner's Consultant prior to inspection of the material and equipment;
- (g) the Design-Builder will provide the Owner and the Owner's Consultant with such reasonable, unfettered and safe access as reasonably necessary to view or identify any material and equipment not delivered to the Site with one Business Day advance notice;

- (h) payment for material and equipment not delivered to the Site does not imply or infer that the material and equipment has been inspected, verified, or accepted in any way, and the Design-Builder will retain the entire responsibility and expense for securing and protecting any material and equipment that has not been delivered to the Site, irrespective of whether or not the Owner has made any payment in respect of the material and equipment; and
- (i) within one Business Day of a written request by the Owner or the Owner's Consultant, the Design-Builder will provide the Owner with written that confirmation the storage location and conditions meet the requirements of this Section 40.13.

41. TAXES AND DUTIES

- 41.1 The Contract Price is inclusive of all applicable customs duties and taxes (including PST), other than GST, in effect at the Effective Date.
- 41.2 The Design-Builder will remit all customs duties and taxes to the applicable governmental authority as and when required by the relevant Law and will without limiting Section 58 (Indemnification), indemnify and hold the Indemnified Parties harmless from and against any customs duties and taxes that the Design-Builder fails to remit as and when due, and from and against any costs and penalties and interest that may be levied against the Indemnified Parties.
- 41.3 Any increase or decrease in costs to the Design-Builder due to changes in taxes or duties that are in effect at the Effective Date of this Agreement will increase or decrease the Contract Price accordingly.
- 41.4 Where an exemption or refund of taxes, customs duties or excise taxes is applicable to this Agreement by way of the Design-Builder filing claims for, or cooperating fully with the Owner and the proper authorities in seeking to obtain such exemption or refund, the Design-Builder will make such applications and provide such cooperation.
- 41.5 Refunds that are properly due to the Owner and have been recovered by the Design-Builder will be promptly refunded to the Owner.

42. LIEN HOLDBACK

- 42.1 The Owner will retain and release the Lien Holdback in accordance with the provisions of the *Builders Lien Act* (British Columbia).
- 42.2 For purposes of the *Builders Lien Act* (British Columbia), the Owner's Consultant will be the payment certifier for this Agreement.
- 42.3 For purposes of progressive release of portions of the Lien Holdback in respect of Subcontracts, the Owner's Consultant will be the payment certifier under the *Builders Lien Act* (British Columbia).
- 42.4 The Design-Builder will make application to the Owner's Consultant for certification under the *Builders Lien Act* (British Columbia). As a condition of making any application and as a condition of any certification, the Design-Builder will provide the Owner's Consultant with all information required by the Owner's Consultant.
- 42.5 Without limiting Section 58, the Design-Builder will, at its sole risk and expense, do everything necessary, including through the institution, prosecution or defence of legal proceedings, to promptly discharge from title to the Site any claims of builder's lien, builder's liens or certificates of pending litigation by any Subcontractor or other person claiming under or through the Design-

Builder or Subcontractor. If the Owner becomes aware that any such claim of builder's lien, builder's liens or certificate of pending litigation is threatened or has been registered against title to the Site, the Owner may withhold out of the Lien Holdback or any other monies payable to the Design-Builder such amounts as the Owner reasonably considers necessary in order to secure the discharge of such claim of builder's lien, builder's liens or certificate of pending litigation. The Owner will cooperate with the Design-Builder in securing the discharge of any of the foregoing, subject to such arrangements being made as the Owner reasonably considers necessary before any such additional holdback monies are paid to any person or into court.

43. PERFORMANCE HOLDBACKS

- 43.1 In addition to the Lien Holdback and any amount retained under this Agreement (including for deficiencies under Section 44.4), the Owner will retain:
- (a) a holdback of _____ of the Contract Price (the "LD Holdback") if at any time after the date that is 6 months before the Target Substantial Completion Date (or if the Owner has extended the Time Schedule in accordance with this Agreement, such other date established for the Target Substantial Completion Date), the Owner's Consultant determines that the Substantial Completion Date is not reasonably likely to occur on or before the Target Substantial Completion Date (or if the Owner has extended the Time Schedule in accordance with this Agreement, such other date established for the Target Substantial Completion Date);
 - (b) a holdback of \$300,000 (the "LEED Holdback"); and
 - (c) a holdback of _____ of the Contract Price (the "Warranty Holdback")
- (collectively, the "Performance Holdbacks").
- 43.2 The Performance Holdbacks will be calculated as a percentage of the Contract Price and that percentage will be withheld from all payments, subject to Section 43.1(a), due by the Owner. The percentage will be adjusted from time to time if the Contract Price is adjusted.
- 43.3 The Owner will release the LD Holdback, less liquidated damages payable by the Design-Builder under Section 3.3 upon the achievement of Substantial Completion.
- 43.4 The Owner will release the LEED Holdback, less liquidated damages payable by the Design-Builder under Section 10, upon the achievement of LEED Gold Certification.
- 43.5 The Owner will release the Warranty Holdback, less deductions for amounts owing to the Owner, upon the completion of the Warranty Period and satisfaction of all obligations of the Design-Builder under Section 38.
- 43.6 The Owner may apply the Performance Holdbacks against any amount owing by the Design-Builder to the Owner either prior to the Substantial Completion Date or during the Warranty Period. If any amount is applied against the Performance Holdbacks, the Design-Builder will at the Owner's option, acting reasonably, either pay such amount to the Owner to replenish the Performance Holdbacks then required to be withheld, or the Owner may withhold such amount from the next payment or payments due to the Design-Builder.
- 43.7 The Design-Builder will apply for payment of the applicable Performance Holdback and payment will be made in accordance with Section 40.

- 43.8 The Performance Holdbacks are not held in trust for the Design-Builder, property of the Design-Builder, earned by the Design-Builder or due and payable by the Owner until the conditions for release of the Performance Holdbacks are satisfied.
- 43.9 The Design-Builder as an alternative to the retention of the Performance Holdbacks may propose to the Owner to provide either a clean irrevocable standby letter of credit from a financial institution in Canada in a form acceptable to the Owner, or another form of performance security acceptable to the Owner. If the Owner accepts the proposal, the Owner will upon receipt of the performance security release the Performance Holdbacks to the Design-Builder.

44. SUBSTANTIAL COMPLETION AND TOTAL COMPLETION

44.1 The Design-Builder may make application to the Owner for the Substantial Completion Certificate at any time after it believes it has achieved Substantial Completion, as described in this Section 44 and has provided to the Owner's Consultant the items as required in Section 44.2(b).

44.2 "Substantial Completion" means that all of the following have been achieved:

- (a) the Owner's Consultant has certified that substantial performance of the Work under the *Builders Lien Act* (British Columbia) has been achieved;
- (b) the Facility is ready for use by the Owner or is being used by the Owner for the purpose intended, and the following items have been submitted to the Owner or completed by the Design-Builder:
 - (i) all Design-Builder provided, procured, Installed or Commissioned equipment, mechanical and other systems are in place, commissioned, received required certifications, and are fully operational;
 - (ii) a complete Project Binder, provided that:
 - (A) the commissioning reports may be preliminary; and
 - (B) the inspections, certificates, guarantees and warranties, and certifications may exclude only the items of Work that remain to be completed;
 - (iii) up to date and current Drawings and Specifications;
 - (iv) maintenance and operating tools, replacement parts or products as specified in the Statement of Requirements;
 - (v) a clearance letter from the Workers' Compensation Board indicating that all current assessments due from the Design-Builder and all Subcontractors have been paid;
 - (vi) a statement reconciling all Change Orders and claims under this Agreement with respect to the Work to the date of the application for Substantial Completion;
 - (vii) all approvals necessary for the Project from local authorities having jurisdiction, provided that for the approval necessary from BC Housing for the "works and services" (as defined in a Riverview Lands Services Agreement to be entered into between the Design-Builder and BC Housing), the Design-Builder will provide written confirmation from BC Housing that:

- (A) upon issuance of the Substantial Completion Certificate pursuant to Section 44.3, BC Housing will issue a certificate of substantial completion for the “works and services”; and
 - (B) such certificate of completion for the “works and services” will be deemed to be effective as of the same date as the Substantial Completion Certificate under this Agreement;
- (viii) an occupancy permit for the Facility as required from local authorities having jurisdiction;
 - (ix) a statutory declaration of an officer or senior management employee of the Design-Builder stating that all accounts for labour, subcontracts, materials, construction machinery and equipment and other indebtedness which may have been incurred by the Design-Builder in performing the Work and for which the Owner might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute;
 - (x) demonstration and training to the Owner’s satisfaction of all mechanical and electrically operated devices to the Owner’s operating and maintenance staff;
 - (xi) all training required by the Statement of Requirements;
 - (xii) the LEED Project Checklist and written opinion as required by and in accordance with Section 10.2;
 - (xiii) the BC Hydro energy modelling compliance checklist, as required by and in accordance with Section 11; and
 - (xiv) the requirements of Section 35 (Cleanup and Final Cleaning of Work) have been fulfilled to the extent required by the Substantial Completion Date; and
 - (xv) any other conditions specified in this Agreement with respect to achieving Substantial Completion;
- (c) a comprehensive deficiency list, including an estimated value for each item, has been submitted to the Owner’s Consultant by the Design-Builder which will be supplemented by the Owner’s Consultant acting reasonably; and
 - (d) a schedule for completion of all remaining Work has been submitted to the Owner by the Design-Builder.

44.3 The Owner’s Consultant with input from the Design-Builder’s Consultant will, not later than 10 days after the receipt of an application from the Design-Builder for the Substantial Completion Certificate, review and assess the Work to verify that the application and the Work conform to the requirements set out in Section 44.2. The Owner’s Consultant will, not later than 7 days after the review, notify the Design-Builder of approval, or the reasons for disapproval, of the application. In the event of disapproval, the Design-Builder will rectify all matters that prevent the issuance of the Substantial Completion Certificate and the Owner’s Consultant will within 7 days after notice from the Design-Builder of rectification, approve or disapprove of the application, and so on, until such time as the Owner’s Consultant determines that Substantial Completion has been achieved. When the Owner’s Consultant determines that Substantial Completion has been achieved, the Owner’s Consultant will issue the Substantial Completion Certificate. Following the issuance of the Substantial Completion Certificate, the Owner’s Consultant, with input from the Design-Builder, will establish a reasonable date for work still to be satisfactorily performed or replaced as

- specified in the list of deficiencies, which will be no later than the date specified for Total Completion in Section 3.1. The Design-Builder will be responsible for all costs of any additional reviews by the Owner's Consultant after the first review that are necessary under this Section, where such additional reviews reveal that previously identified deficiencies or non-conformances to the requirements set out in Section 44.2 have not been corrected or completed in a manner satisfactory to the Owner's Consultant. Such costs will be deducted from any monies then due to the Design-Builder.
- 44.4 The Owner may retain out of the amount due and owing to the Design-Builder upon Substantial Completion:
- (a) any sums required by law to satisfy any liens against the Work;
 - (b) an amount equal to 2 times the estimated value of the Work, as determined by the Owner's Consultant, that is still to be satisfactorily performed or rectified or replaced to address the issues specified in the list of deficiencies; and
 - (c) any amount withheld pursuant to Section 42.5.
- 44.5 No payment will be made to the Design-Builder from amounts withheld under Section 44.4(b) until the completion or rectification or replacement of all the deficiencies and incomplete work specified in the deficiency list.
- 44.6 The Design-Builder will perform the work specified in the list of deficiencies at times and in a manner which causes as little inconvenience to the occupants of the Facility and the Owner's operations on and adjacent to the Site as is reasonably possible.
- 44.7 The Owner may carry out, or have others carry out, the work specified in the list of deficiencies at the Design-Builder's cost if:
- (a) the Design-Builder does not complete the work by the date established by the Owner's Consultant in Section 44.3 and if the Owner gives notice to the Design-Builder and the Design-Builder does not complete, correct or replace the defect, deficiency or incomplete work within a reasonable time, not to exceed 14 days, unless the nature of the defect, deficiency or incomplete work is such that it cannot be completed or corrected within such time and the Owner, acting reasonably, agrees to an extension of such time; or
 - (b) the nature of the work is such that it creates a risk to the health or safety of any occupant or user of the Facility, or risk of damage to the Facility, the environment or any property and the Owner gives notice to the Design-Builder within a reasonable time after the commencement or completion of the rectification work.
- 44.8 If the Owner carries out or has others carry out the work pursuant to Section 44.7 the Design-Builder remains responsible for the work.
- 44.9 The Design-Builder will correct, at its own cost, or pay the Owner for any damage resulting from the work specified in the list of deficiencies.
- 44.10 The Design-Builder may make application to the Owner for the Total Completion Certificate at any time it believes it has achieved Total Completion as described in Section 44.11 and has provided to the Owner's Consultant the items as required in Section 44.11(d).
- 44.11 "Total Completion" means that all of the following have been achieved:
- (a) the entire Work has been performed to the requirements of this Agreement other than:

- (i) work required to be performed under Section 38; and
 - (ii) achievement of LEED Gold Certification under Section 10;
 - (b) all deficiencies specified in the deficiency list(s) have been rectified or completed to the Owner's satisfaction;
 - (c) the requirements of Section 35 have been fulfilled; and
 - (d) the following items have been submitted by the Design-Builder and are acceptable to the Owner:
 - (i) all Submittals, including certified Record Drawings in accordance with Section 45;
 - (ii) the final Project Binder, including final commissioning reports, final inspections (structural, environmental, etc.) and deficiency reports;
 - (iii) a statutory declaration of an officer or senior management employee of the Design-Builder stating that all accounts for labour, subcontracts, materials, construction machinery and equipment and other indebtedness which may have been incurred by the Design-Builder in performing the Work and for which the Owner might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute, dated at least 45 days after the date of substantial performance under the *Builders Lien Act* (British Columbia);
 - (iv) a written statement of the Design-Builder that all claims for payment for Work done under this Agreement including claims and Change Orders have been presented to the Owner;
 - (v) a clearance letter from the Workers' Compensation Board indicating that all current assessments due from the Design-Builder and all Subcontractors have been paid; and
 - (vi) certification, acceptable to the Owner, that all taxes, employment assistance payments, Canada Pension Plan contributions, duties, royalties and all other monies required to be paid by law or statute have been paid in full.
- 44.12 Upon receipt by the Owner of the Design-Builder's application for the Total Completion Certificate:
- (a) the Owner's Consultant will, subject to the conditions contained in Section 44.11 , and not later than 10 days after the receipt of an application from the Design-Builder for the Total Completion Certificate, review and assess the Work to verify that the application and the Work conform to the requirements set out in Section 44.11;
 - (b) the Owner's Consultant will, and not later than 7 days after the review contemplated in Section 44.12(a), notify the Design-Builder of approval, or the reasons for disapproval, of the application. In the event of a disapproval, the Design-Builder will rectify all matters that prevent the issuance of the Total Completion Certificate and the Owner's Consultant will within 7 days after notice from the Design-Builder of rectification, review and assess the Work and approve or disapprove of the application, and so on, until such time as the Owner's Consultant determines that Total Completion has been achieved; and

- (c) the Design-Builder will be responsible for all costs of additional reviews required for by Section 44.12(b), such costs to be deducted from the monies due to the Design-Builder, where any additional review undertaken by the Owner's Consultant pursuant to this Section reveals that previously identified deficiencies have not been corrected in a manner satisfactory to the Owner's Consultant.

When the Owner's Consultant determines that Total Completion has been achieved, the Owner's Consultant will issue the Total Completion Certificate and certify for payment the monies due to the Design-Builder under this Agreement, less any amount still retained for the Lien Holdback or the Performance Holdbacks, amounts withheld under Section 42.5 or any amount set-off in accordance with this Agreement. The date of Total Completion will be as stated in the Total Completion Certificate.

- 44.13 No payment made by the Owner under this Agreement, or partial or entire use or occupancy of the Work by the Owner, will constitute an acceptance of Work not in accordance with the requirements of this Agreement.
- 44.14 By issuing any certificate, the Owner and the Owner's Consultant do not guarantee, or otherwise become liable or responsible in any way for, the correctness or completeness of the Work, including the Design, and no certificate makes the Owner or Owner's Consultant in any way responsible or liable for adequacy of the Design or for the Work, all of which remain the responsibility of the Design-Builder.
- 44.15 As of the date of Total Completion, the Design-Builder expressly waives and releases the Owner from all claims against the Owner, including those that might arise from the negligence or breach of this Agreement by the Owner, except those made in writing prior to the Design-Builder's application for payment upon Total Completion and still unsettled and those arising in connection with the obligations of either party to be performed after Total Completion.
- 44.16 In the event of conflict between the provisions of this Section 44 and any other Section of this Agreement, the provisions of this Section 44 govern.
- 44.17 Without limiting any other withholding or set-off under this Agreement, the Owner may deduct from any payment to the Design-Builder under this Agreement the amount paid by the Owner to put the Design-Builder into compliance with the Insurance Conditions if the Design-Builder has defaulted in complying with the Insurance Conditions.

45. PROJECT BINDER AND RECORD DRAWINGS

- 45.1 The Design-Builder will prepare and provide to the Owner a set of documentation that is bound in one or more binders (the "Project Binder").
- 45.2 The Project Binder will include the following:
- (a) commissioning reports satisfactory to the Owner;
 - (b) all inspections, certifications, guarantees and warranties;
 - (c) maintenance manuals and operating instructions;
 - (d) certification by all testing, cleaning or inspection authorities or associations;
 - (e) confirmation of the Design-Builder's Consultant in accordance with Section 16.3(b);
 - (f) copies of all warranties and guarantees from Subcontractors; and

- (g) all other documentation that is reasonably required by the Owner or by any party on behalf of the Owner to operate and maintain the Facility.
- 45.3 The Project Binder will be updated on a monthly basis with all documentation to Work completed up to the date is updated. The Design-Builder will provide and update 3 copies of the Project Binder, and will include 1 electronic file on a flashdrive, unless directed to use a different format by the Owner, acting reasonably.
- 45.4 Within 60 days after achieving Substantial Completion, the Design-Builder will provide to the Owner the following:
- (a) 2 complete sets of paper print Record Drawings, signed and sealed by the Design-Builder's Consultant, showing the as-built Work and identified in bold letters with the words "CERTIFIED AS-BUILT"; and
- (b) 1 complete copy of the Record Drawings on CD in both AutoCAD DWG and Adobe PDF format acceptable to the Owner, acting reasonably.

46. CASH ALLOWANCES

- 46.1 This Section 46 applies only if cash allowances are stated in this Agreement.
- 46.2 The Contract Price includes cash allowances, if any, stated in this Agreement. The allowances will be expended, if at all, only as the Owner authorizes. The scope of work or costs included in such cash allowances will be as described in this Agreement.
- 46.3 Cash allowances cover the net cost to the Design-Builder of services (including design services), materials, products, construction machinery and equipment, freight, unloading, handling, storage, installation and other expenditures authorized by the Owner that are incurred in performing the work stipulated under the cash allowances but do not include GST payable by the Owner to the Design-Builder.
- 46.4 The Contract Price, and not the cash allowances, includes the Design-Builder's overhead and profit in connection with such cash allowances.
- 46.5 Where the actual costs expended by the Design-Builder for work under a cash allowance exceed the amount of the cash allowance, the Design-Builder will be compensated for any excess incurred and substantiated plus an amount for overhead and profit as set out in Section 49.2(b). Where the actual costs expended by the Design-Builder for work under a cash allowance is less than the amount of the cash allowance, the Owner will be credited for the unexpended portion of the cash allowance, but not for the Design-Builder's overhead and profit on such amount. Multiple cash allowances will not be combined for the purpose of calculating the foregoing.
- 46.6 The Contract Price will be adjusted to provide for any difference between the amount of each cash allowance and the actual cost of the work under that cash allowance.
- 46.7 The value of the Work performed under a cash allowance is eligible to be included in the monthly applications for payment.
- 46.8 The Design-Builder and the Owner will jointly prepare a schedule that shows when the Owner, through the Owner's Consultant, must authorize the ordering of items called for under cash allowances to avoid delaying the progress of the Work.

PART E – CHANGES

47. CHANGES

- 47.1 The Owner, without invalidating this Agreement, may require Changes, with the Contract Price and Contract Time adjusted in accordance with Section 48. The Owner may issue any Change Order or Change Directive, which can include a stop Work order or resume Work order, to the Design-Builder's Representative or to any other person authorized by the Design-Builder to receive a Change Order.
- 47.2 No Change will be made without a Change Order or Change Directive from the Owner.
- 47.3 The Design-Builder will not be entitled to a Change Order or Change Directive, or to any adjustments to the Contract Price or the Contract Time, for any Change for which the Design-Builder has not, prior to commencing the performance of a Change, obtained from the Owner a Change Order or Change Directive except where expressly allowed in this Agreement at Sections 28.4, 29.2 and 30.3.
- 47.4 The Owner may, at any time, require the Design-Builder to assess the impact of a proposed Change on the Contract Price and the Contract Time and the Design-Builder will provide the Owner with such assessment within 10 days after the Owner's request or such other time as may be agreed by the Owner, acting reasonably.

48. VALUATION AND CERTIFICATION OF CHANGES

- 48.1 The value of any Change will be determined by one or more of the following methods:
- (a) by estimate and acceptance of a lump sum; or
 - (b) by unit prices or fee rates agreed upon (and which may include a maximum upset price).
- 48.2 The following process will be followed for Changes:
- (a) where a Change is proposed or required by the Owner, the Design-Builder will promptly, and in any case within 10 days after the Change is proposed or required by the Owner, present to the Owner its claims for any adjustment to the Contract Price or the Contract Time that arise from the Change;
 - (b) where the Design-Builder claims a Change in Contract Price, the Design-Builder will provide a full breakdown of labour, material and other cost information;
 - (c) where the Owner and Design-Builder agree to the Change, including adjustments in the Contract Price and Contract Time, or to the method to be used to determine the adjustments, such Change will be effective when recorded in a Change Order; and
 - (d) the value of the Work performed as the result of a Change Order will be included in payment applications.
- 48.3 In the case of Changes to be paid for under Section 48.2(c), the form of presentation of costs and methods of measurement will be agreed to by the Owner and the Design-Builder before proceeding with the Change. The Design-Builder will keep accurate records of quantities or costs as agreed upon and will present an account of the costs of the Change, together with vouchers where applicable, at least once each month during performance of the Change, and will present a final account upon completion of the Change.

48.4 If the methods of valuation, measurement and value of any Change or any adjustment to the Contract Time cannot be promptly agreed upon, and in any case within 7 days after the proposed Change, and the Change is required by the Owner in writing to be proceeded with, then the Change will be performed by the Design-Builder and the value of the Change and adjustment to the Contract Time will be determined in accordance with the Dispute resolution process described in Section 63.

48.5 It is intended in all matters involving Changes that both the Owner and the Design-Builder will act promptly and in accordance with the times set out in this Section 48.

49. DETERMINATION OF COST

49.1 Subject to Section 49.2 whenever it is necessary for the purposes of this Agreement to determine the cost of a Change, the cost will be the amount agreed upon by the Design-Builder and the Owner within a reasonable time after the issue arises in any given instance.

49.2 If the Design-Builder and the Owner cannot agree as to the cost of the Change as contemplated in Section 49.1, the sole cost to which the Design-Builder will be entitled for the Change will be equal to the aggregate of:

- (a) all reasonable and proper amounts actually expended by or legally payable by the Design-Builder in respect of the labour, equipment or material (supported by invoices, purchase orders, timesheets and other customary industry documentation) that are directly attributable to the subject matter of the Change and that are within one of the classes of expenditures described in Section 49.3; plus
- (b) to cover other costs, including overhead and profit, the following applicable markup on the amounts charged pursuant to Section 49.2(a):
 - (i) 5% when the expenditure is a payment to a Subcontractor; or
 - (ii) 10% when the Design-Builder performed the Change.

49.3 Classes of expenditure that are allowable (all without additional markups except as otherwise noted in Section 49) for the purposes of Section 49.2 are:

- (a) payments to Subcontractors;
- (b) wages, salaries and reasonable traveling expenses of employees of the Design-Builder while they are actually and properly engaged on the Work, other than wages, salaries, bonuses, reasonable living and travelling expenses of personnel of the Design-Builder generally employed at the head office, or at a general office, of the Design-Builder unless such personnel is engaged at the site of the Work, with the approval of the Owner;
- (c) payments for materials necessary for and incorporated in the Work or necessary for and consumed in the performance of the Work;
- (d) payment for equipment necessary for and incorporated in the Work;
- (e) payments for tools, other than tools customarily provided by tradespersons, necessary for and used in the performance of the Work;
- (f) payments for preparation, inspection, delivery, installation, commissioning and removal of equipment and materials necessary for the performance of the Work;

- (g) assessments payable under any statutory scheme relating to workers compensation, unemployment insurance or holidays with pay;
- (h) payments for renting equipment (but not tools) and allowances for equipment (but not tools) owned by the Design-Builder, necessary for the performance of the Work, provided that such payments or allowances are reasonable or have been agreed to by the Design-Builder and the Owner; and
- (i) other payments, made with the prior approval of the Owner, that are necessary for the performance of the Work, as determined by the Owner.

49.4 If the Design-Builder and the Owner cannot agree as to the cost of labour, equipment or material as contemplated in Section 49.1, and the Owner considers that a Change or series of related Changes may exceed \$50,000, the Owner may require the Design-Builder, and the Design-Builder will, obtain a minimum of 3 competitive quotations or tenders for all or any part of such Change or Changes as directed by the Owner.

49.5 The applicable markup set out in this Section 49 will apply to any credit to the Owner for reductions in the costs relating to a Change. Where both increases and reductions in costs relate to a Change, the applicable markup will apply to the net increase or reduction in costs.

50. CHANGE DIRECTIVE

50.1 The Owner may issue a Change Directive to the Design-Builder directing the Design-Builder to proceed with a Change. The Design-Builder will proceed with the Change and the valuation and adjustments to the Contract Price and the Contract Time will be made as soon as reasonably possible after the implementation of the Change in the same manner as a Change for which a Change Order would be issued under this Agreement.

50.2 The Owner may issue Change Directives at any time, including prior to commencing the process for a Change Order or if there is a Dispute in relation to a Change or Change Order (including a Dispute as to whether there is a Change).

PART F – DELAYS

51. DELAYS

51.1 If the Design-Builder is delayed in performing the Work as a direct result of a failure of the Owner to provide access to the Site, or a breach by the Owner of the terms of this Agreement or by an order issued by any court or public authority having jurisdiction (providing such order was not issued as the result of any act or fault of the Design-Builder or a Subcontractor), or the events referred to in Sections 28.4, 29.2 or 30.3, then:

- (a) the Contract Time will be extended for such reasonable time, taking into account the critical path as agreed by the Owner and the Design-Builder, acting reasonably, and the Design-Builder will be reimbursed for any costs directly incurred by it as the result of such delay, determined in accordance with Section 49; or
- (b) if the Owner determines that the Target Substantial Completion Date can still be met and requests in writing that the Design-Builder accelerate the Work, the Design-Builder will accelerate its efforts to meet the Target Substantial Completion Date as directed by the Owner. The Design-Builder will be reimbursed for all reasonable and direct costs plus the markup set out in Section 49.2(b) incurred by it as a result of undertaking such acceleration efforts.

51.2 If the Design-Builder:

- (a) requires a variance to the City of Coquitlam's applicable zoning bylaw regarding the Facility's maximum allowable height in order to design and construct the Facility in accordance with the Design, and such variance is described in the Proposal Extracts;
- (b) submits to the City of Coquitlam, in a timely manner, a height variance application that is complete and compliant, as determined by the Owner acting reasonably; and
- (c) has not received approval of the variance from the City of Coquitlam within 60 days of the date that the City of Coquitlam received such application,

then the Design-Builder will be entitled to schedule relief (a "**Variance Relief Event**") as described in Section 51.3.

51.3 To the extent that the Design-Builder is delayed in performing the Work by a Variance Relief Event, then:

- (a) the Contract Time will be extended by the number of days that elapse from the day following the end of the 60 day period described in 51.2(c) through and including the day on which the City of Coquitlam approves the height variance application; or
- (b) if the Owner determines that the Target Substantial Completion Date can still be met and requests in writing that the Design-Builder accelerate the Work, the Design-Builder will accelerate its efforts to meet the Target Substantial Completion Date as directed by the Owner. The Design-Builder will be reimbursed for all reasonable and direct costs plus the markup set out in Section 49.2(b) incurred by it as a result of undertaking such acceleration efforts.

Except as provided in Section 51.3(b) for acceleration of the Work required by the Owner, the Design-Builder will not be entitled to any costs incurred in relation to the Variance Relief Event or delays arising from the Variance Relief Event. The Design-Builder will not be entitled to schedule relief if the Design-Builder would otherwise be unable to proceed with the Work for reasons unrelated to the Variance Relief Event (for example, permits or approvals necessary to proceed with the Work other than the height variance approval are outstanding).

51.4 If the Design-Builder is delayed in performing the Work by an event of Force Majeure then:

- (a) the Contract Time will be extended for such reasonable time taking into account the critical path, as agreed by the Owner, and the Design-Builder acting reasonably; or
- (b) if the Owner determines that the Target Substantial Completion Date can still be met and requests in writing that the Design-Builder accelerate the Work, the Design-Builder will accelerate its efforts to meet the Target Substantial Completion Date as directed by the Owner. The Design-Builder will be reimbursed for all reasonable and direct costs plus the markup set out in Section 49.2(b) incurred by it as a result of undertaking such acceleration efforts.

Except as provided in Section 51.4(b) for acceleration of the Work required by the Owner, the Design-Builder will not be entitled to any costs incurred in relation to the Force Majeure or delays arising from the Force Majeure.

51.5 If the Design-Builder is delayed in the performance of the Work for any reason other than that for which an extension of time is permitted under this Section 51 or if the Design-Builder does not perform the Work substantially in accordance with the Time Schedule to meet the Target

Substantial Completion Date, the Design-Builder will at its cost accelerate the Work to meet the Target Substantial Completion Date.

- 51.6 The Design-Builder is not entitled to any extension of time or any reimbursement of costs for delay under this Section 51 unless written notice is given to the Owner not later than 7 days after the date that the Design-Builder becomes aware of the event causing the delay. In the case of a continuing cause of delay only one notice is necessary. The notice will include the reason for the delay, the justification under this Agreement for the claim and an estimated value for the claim including all impacts of the delay and all steps taken or reasonably available to mitigate the delay and impact. The Design-Builder will provide a full, detailed, and organized account of the delay and amount claimed, including any supporting information or documentation, as required by the Owner or Owner's Consultant, before any delays or impacts will be considered. The information and documentation must be presented promptly to the Owner, and in any event, no later than 30 days or such later date as the parties may agree, after the date on which the Design-Builder delivered notice, and in the event of a continuing delay such information and documentation must be updated every 30 days. No such account or update will be deemed to extend the time for delivery of notice, or revive a claim that has been waived. The Design-Builder waives any claim for extension of Contract Time or adjustment to the Contract Price, or any other compensation, expenses, loss or damages incurred as the result of a delay unless the Design-Builder provides such notice of the delay within the time period specified and provides the account of the delay and amount claimed and all required updates within the time periods specified.
- 51.7 In the case of any delay under Section 51.1, Section 51.3 or Section 51.4 the Design-Builder will use all reasonable efforts to mitigate the costs and impacts of the delay including removing the cause of the delay as promptly as practicable such that the Time Schedule is maintained and that acceleration efforts, if requested by the Owner, are minimized.

PART G – SUSPENSION AND TERMINATION

52. NON-DEFAULT SUSPENSION/TERMINATION

- 52.1 Notwithstanding that the Design-Builder may not be in default of the terms of this Agreement, if conditions arise which in the Owner's reasonable opinion make it necessary, the Owner may suspend performance of the Work or terminate this Agreement by giving 5 days' written notice to that effect to the Design-Builder and the suspension or termination is effective in the manner specified in the notice.
- 52.2 Without limiting Section 52.1, the Owner may, if it determines that there is an emergency, by notice to the Design-Builder, do either or both of the following:
- (a) suspend the Work whenever in its opinion such suspension may be necessary to ensure the safety or life of others or of the Work or neighbouring property; or
 - (b) make Changes, and order, assess and award the cost of such Changes that are extra to the Contract Price in accordance with Section 48 and Section 49 as determined to be necessary.
- 52.3 The Owner will within 2 Business Days after a Change under Section 52.2(b) confirm in writing any Change instructions and if a Change has been performed by order of the Owner, the Design-Builder retains its right to claim the value of such Change.
- 52.4 The Design-Builder upon receiving notice of suspension or termination from the Owner will immediately suspend all operations except those, which, in the Design-Builder's reasonable opinion, are necessary to ensure the safety of personnel and the public or for the care and preservation of the Work and materials. Subject to any directions in the notice of suspension or

- termination, the Design-Builder will discontinue ordering materials, will not enter into any further Subcontracts (except such Subcontracts as are necessary for the safety of personnel or for the care and preservation of the Work) and will make every reasonable effort in the event of termination to cancel existing Subcontracts and orders on the best terms available.
- 52.5 During the period of suspension the Design-Builder will not remove from the Site any of the Work, or any material, without the prior written consent of the Owner.
- 52.6 If the period of suspension is 30 days or less, the Design-Builder, upon the expiration of the period of suspension, will resume the performance of the Work and will be paid for all costs reasonably incurred by the Design-Builder in complying with the suspension, determined in accordance with Section 49 and for costs reasonably incurred for acceleration of the Work so that Substantial Completion is achieved by the Target Substantial Completion Date where the Owner requires such acceleration by written notice to the Design-Builder. If the Owner does not require the acceleration of the Work, or if it is not possible for the Design-Builder, using all reasonable efforts, to achieve Substantial Completion by the Target Substantial Completion Date despite an intended acceleration of the Work, the Owner and the Design-Builder will, acting reasonably, agree on a new Target Substantial Completion Date.
- 52.7 If the period of suspension is greater than 30 days and, before 120 days after the date of the notice of suspension, the Owner and the Design-Builder agree to continue with and complete the Work, the Design-Builder will resume operations and complete the Work in accordance with any terms and conditions agreed upon by the Owner and the Design-Builder and the Design-Builder will be paid for all costs reasonably incurred by the Design-Builder in complying with the suspension, determined in accordance with Section 49.
- 52.8 If the period of suspension is greater than 30 days and the Owner and the Design-Builder do not agree to continue with and complete the Work, or they fail to agree on the terms and conditions upon which the Design-Builder is to resume operations and complete the Work, before 120 days after the date of the notice of suspension, this Agreement will be deemed to have been terminated.
- 52.9 If this Agreement is terminated pursuant to this Section 52:
- (a) the Owner will pay the Design-Builder:
 - (i) in accordance with this Agreement, for all Work performed and for all of the Design-Builder's obligations under Subcontracts that it was unable to cancel, or asked by the Owner not to cancel, less any payments made by the Owner prior to termination; and
 - (ii) all costs reasonably incurred by the Design-Builder in complying with the suspension or termination order, determined in accordance with Section 49, less any costs already paid to the Design-Builder pursuant to Section 52.6; and
 - (b) the Owner will be entitled to:
 - (i) take possession of the Work or any part of the Work;
 - (ii) take possession of the Drawings and Specifications and make use of them in accordance with the rights granted under this Agreement; and
 - (iii) finish the Work or any part of the Work by whatever reasonable method the Owner may consider expedient.

52.10 The Design-Builder's obligations as to quality, correction and warranty of any Work performed continue in force after termination under this Section 52.

52.11 The Design-Builder, by giving written notice to the Owner, may suspend performance of the Work to the extent the Work is stopped for a period in excess of 30 days by an order of any court or public authority having jurisdiction through no act or fault of the Design-Builder or of anyone employed by it.

53. DEFAULT AND TERMINATION OF AGREEMENT

53.1 The Owner may give written notice to the Design-Builder of default under this Agreement if the Design-Builder:

- (a) is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency, or fails to make payment to creditors when payment is due;
- (b) abandons the Work;
- (c) breaches a material term of this Agreement;
- (d) makes a material misrepresentation of a representation or warranty set out in this Agreement;
- (e) has delivered a statutory declaration in support of application for a payment under this Agreement that was false or materially inaccurate; or
- (f) has made an assignment of this Agreement without the required consent of the Owner.

53.2 If a default referred to in Section 53.1 occurs, other than a default referred to in Section 53.1(a) or 53.1(b), the Design-Builder will remedy the default within a 7 day rectification period after the notice given under Section 53.1. If the nature of such default is that it cannot be remedied within such 7 day period, the Design-Builder will within such 7 day period provide the Owner with a schedule acceptable to the Owner for remedying the default and the Design-Builder will remedy the default in accordance with that schedule.

53.3 If a default referred to in Section 53.1(a) or 53.1(b) occurs or if the Design-Builder fails to remedy any other default within the rectification period described in Section 53.2 or in accordance with the schedule acceptable to the Owner, the Owner may without prejudice to any other right or remedy exercise any or all of the following:

- (a) suspend all or part of the Work;
- (b) terminate the Design-Builder's right to continue with the Work in whole or in part;
- (c) remedy the default and deduct the cost thereof from any payment then or thereafter due to the Design-Builder; and
- (d) terminate this Agreement.

53.4 If the Owner terminates the right to continue with all or part of the Work or terminates this Agreement pursuant to Section 53.3, the Owner will be entitled to:

- (a) take possession of the Work or any part of the Work;

- (b) take possession of the Drawings and Specifications and make use of them in accordance with the rights granted under this Agreement;
- (c) use construction machinery and equipment, subject to the rights of third parties;
- (d) finish the Work or any part of the Work by whatever reasonable method the Owner may consider expedient;
- (e) charge the Design-Builder the amount by which the full cost of finishing the Work and a reasonable allowance to cover the cost of corrections to Work performed by the Design-Builder that may be required under Section 38 exceeds the unpaid balance of the Contract Price; and
- (f) on expiry of the Warranty Period, charge the Design-Builder the amount by which the cost of corrections to Work under Section 38 exceeds the allowance provided for such corrections.

53.5 The termination of the right to continue with part of the Work does not relieve or discharge the Design-Builder from any obligations under this Agreement, except the obligation to perform the part of the Work removed from the Design-Builder.

53.6 The rights, powers and remedies conferred on the Owner under this Agreement are not intended to be exclusive but are cumulative, are in addition to, do not limit and are not in substitution for any other right, power and remedy existing under this Agreement, under any other agreement, at law or in equity. The exercise by the Owner of any right, power or remedy does not preclude the simultaneous or later exercise by the Owner of any other right, power or remedy.

54. TERMINATION BY THE DESIGN-BUILDER

54.1 The Design-Builder may by giving written notice to the Owner declare the Owner in default of this Agreement for any of the following reasons:

- (a) the Owner has failed to pay the Design-Builder within 45 days of the date that any payment becomes due to the Design-Builder in accordance with the terms of this Agreement, unless the Owner is bona fide disputing liability to make such payment and has provided notice to the Design-Builder of the basis for its dispute before the time provided in Section 40.10 for payment of invoices;
- (b) the Owner has failed to substantially supply the Site to the Design-Builder, subject to any property availability restrictions identified in this Agreement, within 180 days following the Site Occupation Date; or

substantially all of the Work is stopped by an order of any court or public authority having jurisdiction (providing that such order was not issued as the result of any act or fault of the Design-Builder or a Subcontractor) for a period of 90 days.

54.2 If a default referred to in Section 54.1 occurs, the Owner will remedy the default within a 21 day rectification period after the notice given under Section 54.1 or within such extension thereof established by the Design-Builder.

54.3 If the Owner fails to remedy the default within the rectification period described in Section 54.2 or any extension thereof established in accordance with that Section, the Design-Builder may:

- (a) waive the default;

- (b) further extend the rectification period;
- (c) suspend the Work; or
- (d) terminate this Agreement.

54.4 If the Design-Builder terminates this Agreement in accordance with Section 54.3(d), the Design-Builder is entitled to be paid:

- (a) in accordance with the terms of this Agreement for all Work satisfactorily performed to the date of termination; and
- (b) expenses of the Design-Builder that are directly related to the termination and reasonable in the circumstances including the Design-Builder's obligations to other parties.

PART H – REPRESENTATIONS AND WARRANTIES

55. REPRESENTATIONS AND WARRANTIES

55.1 The Design-Builder represents and warrants to the Owner:

- (a) as of the Effective Date that:
 - (i) all necessary proceedings have been taken to authorize the Design-Builder to enter into this Agreement and to execute and deliver this Agreement;
 - (ii) this Agreement has been properly executed by an authorized signatory of the Design-Builder and is enforceable against the Design-Builder in accordance with its terms;
 - (iii) the Design-Builder has had sufficient time, opportunity and resources to investigate and has investigated and satisfied itself of every condition and risk relating to, affecting or that may affect the Project and the Work, or either of them, including the Site conditions, and the labour, equipment, material and other resources that may be necessary for the performance of the Work in a manner that will meet or exceed all requirements of this Agreement;
 - (iv) the Design-Builder's investigations and assessments described in Section 55.1(a)(iii), including of the Site conditions (such conditions including for greater certainty geotechnical conditions, subsurface conditions, bearing pressure, settlement characteristics and nature and consistency of soil), and any conclusions reached in such investigations and assessments, including any conclusions as to the effect, if any, on the Design, Construction, Substantial Completion Date and Contract Price, (or any of them), except for objective geotechnical information that can be relied upon for accuracy but not interpretation, sufficiency or relevance, are based on the Design-Builder's own experience, examination, knowledge, information, interpretation, assessment, analysis and judgment and not upon any statement, representation or information, whether oral or written, made, produced or provided by, through or on behalf of the Owner or its advisors;
 - (v) subject to Section 28.1 in respect of the accuracy of objective geotechnical borehole logs identified in Section 28.1(c), the Design-Builder acknowledges that the investigations made by the Owner of the conditions of the Site, including subsurface conditions, are of a preliminary nature and are made for the purpose

of study and preliminary design for the sole benefit of the Owner only except for objective geotechnical borehole logs that can be relied upon by the Design-Builder for accuracy but not interpretation, sufficiency or relevance;

- (vi) the Design-Builder has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
 - (vii) there is no bona fide proceeding pending or threatened against the Design-Builder, which would, if successful, materially adversely affect the ability of the Design-Builder to fulfill its obligations under this Agreement; and
 - (viii) the Design-Builder acknowledges that it has the responsibility for informing itself of all aspects of the Project and all information necessary to perform the Work; and
- (b) as of the Effective Date (to the extent applicable as of the Effective Date) and at all times throughout the Term that:
- (i) the Design-Builder has filed all tax, corporate information and other returns required to be filed by all applicable Laws, has complied with all workers' compensation legislation and other similar legislation to which it is subject, and has paid all taxes, fees and assessments due by the Design-Builder under those laws as of the Effective Date, except for Lien Holdback monies properly retained, payments deferred by agreement and accounts withheld by reason of legitimate dispute;
 - (ii) the Design-Builder holds all permits, licences, consents and authorities issued by any level of government, or any agency of any level of government, that are required by all applicable Laws to perform the Work;
 - (iii) the Design-Builder has paid, as they became due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it in respect of the Work and fulfillment of its obligations under this Agreement;
 - (iv) the Design-Builder is not in breach of any Law that is material to performance of the Design-Builder's obligations under this Agreement;
 - (v) the Key Individuals or any substitute with equivalent qualifications proposed by the Design-Builder who have first been expressly accepted in writing by the Owner will be available and fully involved in the performance of the Work; and
 - (vi) the Design-Builder is registered for the purposes of the GST.

55.2 The Owner represents and warrants to the Design-Builder as of the Effective Date that:

- (a) it has been properly constituted pursuant to applicable legislation;
- (b) it has been properly authorized to fulfill the obligations of the Owner under this Agreement; and
- (c) it has the power, capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement.

PART I – PROTECTION AND INDEMNITY

56. PROTECTION OF WORK AND PROPERTY

- 56.1 The Design-Builder will protect the Work, the Site and property adjacent to the Site from damage that may arise as the result of the Design-Builder's operations under this Agreement, and will be responsible for such damage, except damage that occurs as the result of actions of the Owner, its agents, employees or Other Contractors.
- 56.2 Should any damage occur to the Work, the Site and property adjacent to the Site for which the Design-Builder is responsible as provided in Section 56.1, the Design-Builder will make good such damage at its own expense or pay all costs incurred by the Owner or others in making good such damage.
- 56.3 Should any damage occur to the Work, the Site and property adjacent to the Site for which the Design-Builder is not responsible as provided in Section 56.1, the Design-Builder will at the Owner's direction and expense make good such damage. The Contract Price and Contract Time will be adjusted in accordance with Section 48 and Section 49.

57. EXCLUSIONS OF LIABILITY

- 57.1 Neither the Design-Builder nor the Owner will be liable to the other for any consequential or indirect damages in connection with this Agreement, whether based in contract, tort (including negligence), strict liability or otherwise and including loss of use, loss of revenues or profits and loss of opportunity. This Section 57.1 will not limit any liability the Design-Builder may have under this Agreement to pay liquidated damages.
- 57.2 Subject to Section 57.3 the maximum amount of the total aggregate liability of the Design-Builder to the Owner in connection with this Agreement, whether based in contract, tort (including negligence), strict liability or otherwise, is:
- (a) in respect of a loss by the Indemnified Parties for which insurance is to be provided by the Owner under Section 1 or Section 3 of Schedule 3 (Insurance Conditions), the applicable limit or sub-limit of the Wrap-up Liability coverage or the Course of Construction coverage, whichever is applicable to the loss, with such limit or sub-limit calculated without reduction for the amount of any deductible; or
 - (b) in respect of any liability other than a loss referred to in Section 57.2(a) above, 50% of the Contract Price.

If this Agreement is terminated, the reference in this Section 57.2 to the "Contract Price" will be deemed only for purposes of this Section 57.2 to be the amount to which the Design-Builder would have been entitled if the Design-Builder had properly performed and completed the Work and this Agreement had not been terminated.

- 57.3 Section 57.2 will not limit the Design-Builder's liability in connection with:
- (a) fraud, gross negligence or wilful, fraudulent or criminal misconduct;
 - (b) bodily injury, sickness, disease or death;
 - (c) liability to third parties in respect of tangible personal or real property;
 - (d) breach by the Design-Builder of its obligations of confidentiality under this Agreement; and

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

57.4 Nothing in this Section 57 will be construed to limit the liability of an insurer under the insurance required to be maintained under this Agreement.

58. INDEMNIFICATION

58.1 The Design-Builder will indemnify and save harmless the Owner and BC Housing and their respective officers, employees, representatives, consultants and agents including the Owner's Representative (collectively the "Indemnified Parties") from and against any and all losses, claims, damages, actions, causes of action, costs and expenses (including actual legal and other professional fees and disbursements) that any of the Indemnified Parties may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Design-Builder or of any representative, agent, employee, officer, director, consultant of the Design-Builder or of any Subcontractor, excepting only liability to the extent arising out of the independent acts of the Indemnified Parties.

58.2 The obligations of the Design-Builder under Section 58 will not be affected by completion or termination of this Agreement, whether for default or otherwise, or suspension of the Work or any withdrawal of services or labour from the Project.

58.3 Neither the requirement of the Design-Builder to purchase and maintain insurance as described in the Insurance Conditions nor the acceptance of evidence of such insurance by the Owner will, in any manner, limit or qualify the right of the Owner to make a claim and recover insurance proceeds under the insurance policies described in the Insurance Conditions or the liability and obligations otherwise assumed by the Design-Builder under this Agreement.

59. DESIGN-BUILDER'S DISCHARGE OF LIABILITY

59.1 The Design-Builder will discharge all liabilities incurred by it, including for labour, equipment, materials or services used or reasonably required for use, in the performance of this Agreement, on or before the date each becomes due. In the case of bona fide disputed payments, the Design-Builder will discharge such liabilities when legally obliged to do so.

59.2 The Design-Builder will include as a condition of every Subcontract that the Subcontractor discharge all liabilities incurred by it, including for labour, equipment, materials, supplies or services used or reasonably required for use, in the performance of the Subcontract, on or before the date upon which each becomes due. In the case of bona fide disputed payments, the Design-Builder will discharge such liabilities when legally obliged to do so.

59.3 The Design-Builder will furnish the Owner with satisfactory evidence that its liabilities and those of Subcontractors have been discharged, such satisfactory evidence to be a statutory declaration in the form of CCDC 9A sworn by a knowledgeable officer or senior management employee of the Design-Builder or Subcontractor, as the case may be, or such other evidence as the Owner may require.

59.4 With the exception of any claim of builder's lien, builder's liens or certificates of pending litigation that arise due to the improper non-payment by the Owner, the Design-Builder will not directly or indirectly create, incur, assume or allow to be created by any of its Subcontractors or workers any lien, charge or encumbrance on the Site, Project or any part thereof or interest therein. The Design-Builder will immediately notify the Owner of any lien, charge or encumbrance asserted upon the Site, Project or any part thereof.

PART J - SECURITY, RECORDS, REPORTS AND AUDIT

60. BONDS

- 60.1 Before commencing the Work, the Design-Builder will purchase and deliver to the Owner an executed performance bond and an executed labour and materials payment bond (the "Bonds"). The form of the Bonds will be in accordance with the latest edition of the CCDC approved bond form or in substantially equivalent form acceptable to the Owner.
- 60.2 Each Bond under Section 60.1 will be in the amount of 50% of the Contract Price and will be issued by a surety licensed to transact the business of a surety in British Columbia and acceptable to the Owner, acting reasonably.
- 60.3 Upon entering into a Subcontract with a Subcontractor, the Design-Builder will advise the Subcontractor that a labour and materials payment Bond is in effect and will supply a copy of that Bond to the Subcontractor on request.
- 60.4 The Design-Builder will pay for and maintain the Bonds in force during the Term.
- 60.5 If the surety notifies either party that the Bonds are or are going to be terminated or cancelled for any reason whatsoever, the Design-Builder will obtain and provide the Owner with valid bonds effective from the date of termination or cancellation of the original bonds that comply with the bonding requirements of this Agreement.
- 60.6 The Design-Builder will, if required by the surety, obtain the written consent of the surety to any Change and will upon request by the Owner provide confirmation from the surety of such consent or confirmation from the surety that such consent is not required.
- 60.7 For greater certainty, the amount of the Bonds and any claim under the Bonds will not limit the Owner from seeking additional claims, damages, or remedies the Owner may be entitled to by reason of the Design-Builder's failure to successfully complete the Agreement in accordance with its terms and conditions.

61. INSURANCE

- 61.1 The Owner and the Design-Builder will obtain and maintain during the Term the insurance specified for each of them under the Insurance Conditions, and will otherwise comply with the Insurance Conditions.
- 61.2 Before beginning the Work, the Design-Builder will deliver to the Owner certified copies of all insurance coverage obtained by the Design-Builder in accordance with the Insurance Conditions, or such other proof of that insurance as is satisfactory to the Owner, acting reasonably.

62. RECORDS AND AUDIT

- 62.1 The Design-Builder will, in connection with this Agreement retain for a minimum of 6 years after the expiry of the Warranty Period all records, reports, and other documentation required under this Agreement and the following records, reports and other documentation relating to the Project whether or not required under other provisions of this Agreement:
- (a) all documents relating to permits;
 - (b) all notices, reports, results and certificates relating to completion of the Design and Construction and completion of all commissioning activities;

- (c) all records relating to any inspections of the Facility conducted under applicable Laws or by or of any governmental authority;
- (d) all orders or other requirements issued to the Design-Builder by any governmental authority in connection with the Work; and
- (e) all documents relating to applications for payment, Changes or delay or other claims by the Design-Builder.

The Design-Builder will permit the Owner and its consultants and representatives to inspect and copy any or all such records, reports and other documentation.

- 62.2 Without limiting the other provisions of this Agreement, the Design-Builder will provide to the Owner and its consultants and representatives all records, reports and other documentation reasonably required by the Owner to support any applications for payment, Changes or delay or other claims by the Design-Builder.
- 62.3 The Owner and its consultants and representatives may on request, and acting reasonably, audit all books and records of the Design-Builder that relate to any applications for payment, Changes or delay or Disputes or other claims by the Design-Builder.
- 62.4 The Design-Builder will fully cooperate with the Owner to conduct an audit pursuant to this Section 62.

PART K - DISPUTE RESOLUTION

63. DISPUTE RESOLUTION

- 63.1 All Disputes will be resolved in accordance with the Dispute resolution process set out in this Section 63.
- 63.2 The Dispute resolution process set out in this Section 63 may be commenced by either party by giving notice to the other party briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought.
- 63.3 Within 7 days of a notice under Section 63.2, the Design-Builder's Representative and the Owner's Representative will:
- (a) make bona fide efforts to resolve any Dispute arising between them by amicable negotiations; and
 - (b) provide frank, candid and timely disclosure of all relevant facts, information and documents, including full written particulars of the nature, entitlement and magnitude of any Dispute including the relevant provisions of this Agreement.
- 63.4 If the Owner's Representative and the Design-Builder's Representative fail to resolve the Dispute within 10 days after receipt of the notice pursuant to Section 63.3, the parties will refer the Dispute and all information to a nominated senior officer of the Owner and a nominated senior officer of the Design-Builder for resolution.
- 63.5 If the nominated senior officer of the Owner and the nominated senior officer of the Design-Builder fail to resolve the Dispute within 10 days after the Dispute has been referred to them, unless otherwise agreed in writing by the parties, either party may refer the Dispute to the Owner's Consultant by notice in writing to both the Owner's Consultant and to the other party. The Owner will require the Owner's Consultant to give a decision in writing and within a

- reasonable period of time. Both parties reserve their rights to dispute the decision of the Owner's Consultant.
- 63.6 Where either or both parties dispute the Owner's Consultant's decision made pursuant to Section 63.5, the parties will abide by the Owner's Consultant's decision until such time as the Dispute is finally resolved under the other provisions of this Section 63.
- 63.7 If either party disputes the Owner's Consultant's decision made pursuant to Section 63.5, or if the Owner's Consultant's decision is not made within a reasonable period of time, either party may elect to give notice of its intention to submit the Dispute to binding arbitration. If within 10 days of such notice, the other party does not give a notice of objection to arbitration, the Dispute will be resolved by arbitration. The Dispute will be referred to a single arbitrator and finally resolved by binding arbitration under the rules of the British Columbia International Commercial Arbitration Centre. The arbitrator will be chosen by mutual agreement between the Design-Builder and the Owner. If an arbitrator has not been appointed within 14 days of the date that the Dispute has been referred to an arbitrator, the arbitrator will be appointed by the British Columbia International Commercial Arbitration Centre.
- 63.8 Prior to receiving a notice of intention to submit a Dispute to binding arbitration or after giving a notice of objection to arbitration in accordance with Section 63.7 a party may commence proceedings in respect of the Dispute in the courts of British Columbia and serve the other party as required in respect of such proceedings.
- 63.9 Any of the times specified in this Section 63 may be varied by mutual agreement between the Design-Builder's Representative and the Owner's Representative.
- 63.10 Pursuit of the resolution of a Dispute under any part of this Section 63 does not relieve either party of its responsibility to ensure timely performance of its obligations under this Agreement. In relation to all Disputes, whether or not a notice under Section 63.2 has been given, the Design-Builder will diligently proceed with the Work and closely track all costs and impacts associated with the Dispute and may reserve its rights concerning the Dispute.

PART L - GENERAL PROVISIONS

64. LAWS, NOTICE, PERMITS AND FEES

- 64.1 The Design-Builder will perform the Work in accordance with all applicable Laws and Standards and will comply with all Laws and Standards that may affect or relate to the Work.
- 64.2 The Design-Builder will apply for, pay for and obtain the building permit, the occupancy permit and all other permits, licences and approvals required for the performance of the Work. When requested to do so by the Design-Builder, the Owner may at its discretion provide reasonable assistance to the Design-Builder in obtaining permits, licences, and approval required for the performance of the Work but, in no circumstance will the Owner be required to incur any costs or make any payments pursuant to this Section.
- 64.3 All applicable Laws in force in British Columbia, as amended from time to time, govern the Work.
- 64.4 Except as otherwise provided in this Agreement, if after the Effective Date changes are made to the applicable Laws and Standards, either party will be entitled to make a claim an adjustment in the Contract Price or the Contract Time as a Change as provided in Section 47.

65. INTELLECTUAL PROPERTY FEES

65.1 The Design-Builder will obtain and pay for all intellectual property rights (including of any patent, copyright, industrial design, trademark or trade secret) all royalties and licence fees required for the performance of the Work and will, without limiting Section 58, indemnify and hold the Owner harmless from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Design-Builder's performance of the Work under this Agreement that are attributable to infringement or an alleged infringement of any intellectual property right by the Design-Builder or its Subcontractors or anyone for whose acts the Design-Builder may be liable.

66. CONFIDENTIALITY AND COMMUNICATIONS

66.1 Subject to Section 66.2, each party will hold in confidence any Confidential Information received from the other party, except that this Section 66 will not restrict:

- (a) the Design-Builder from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement and provided further that the Design-Builder may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement, provide to a Subcontractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable the Design-Builder to perform (or to cause to be performed) its obligations under this Agreement; and
- (b) the Owner from disclosing or granting access to such information to any provincial ministry, Partnerships British Columbia Inc., BC Housing and any other governmental authority which require the information in relation to the Project;

66.2 Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to:

- (a) Confidential Information which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
- (b) Confidential Information which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
- (c) Confidential Information to the extent any person is required to disclose such Confidential Information by Law, including a disclosure required under FIPPA;
- (d) Confidential Information to the extent consistent with any Owner's policy concerning the Owner's Confidential Information, the details of which have been provided to the Design-Builder in writing prior to the disclosure; or
- (e) the material referred to in Section 18.5 and any Confidential Information that the Owner is entitled to receive from the Design-Builder pursuant to this Agreement.

66.3 Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 66.1 and that the other party will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 66.1 subject, in the case of a claim for any such remedy against the Owner, to the provisions of the *Crown Proceeding Act* (British Columbia).

- 66.4 Unless required by any Law, neither party will 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, without the consent of the other party (which will not be unreasonably withheld or delayed).
- 66.5 Except to the extent required for compliance with any applicable securities laws, the Design-Builder will not make any public announcement relating to the Project or this Agreement without the prior written consent of the Owner. The Design-Builder, with the prior written consent of the Owner, may include the Project in its promotional materials.
- 66.6 The Design-Builder acknowledges that the Owner may, in its discretion and without consultation with the Design-Builder, make any public announcement relating to the Project.
- 66.7 The parties will comply with Schedule 4 – Communication Roles.

67. NOTICE

- 67.1 Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set out below:

- (a) if to the Owner:

PO Box 9412 Stn Prov Gov

Victoria BC V8X 4S8

Attention: Mark Bullen, Project Director

Email: mark@capexprojects.com

- (b) if to the Design-Builder:

#310 – 13911 Wireless Way, Richmond BC, V6V 3B9

Attention: Torsten Schulz

Facsimile: 604-241-5301

Email: tschulz@pcl.com

or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set out above.

- 67.2 Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

- (b) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon the sender receiving confirmation of the transmission, and if not transmitted during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and
- (c) if sent by electronic transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day, provided that:
 - (i) the receiving party has, by electronic transmission, by hand delivery or by facsimile transmission, acknowledged to the notifying party that it has received such notice; or
 - (ii) within 24 hours after sending the notice, the notifying party has also sent a copy of such notice to the receiving party by hand delivery or facsimile transmission.

67.3 Delivery by mail will not be considered timely notice under this Agreement.

67.4 In the event of an emergency or urgent matter, in addition to the notice required by this Section 67, a verbal notice will be given as soon as the party giving the notice becomes aware of any material event or circumstance that gives rise to the requirement for a written notice being given.

68. LEGAL RELATIONSHIP

68.1 The Design-Builder is an independent contractor and not the servant, employee, partner or agent of the Owner.

68.2 The Design-Builder will not commit the Owner to the payment of any money to any person.

68.3 No partnership, joint venture or agency involving the Owner is created by this Agreement or under this Agreement.

68.4 All personnel engaged by the Design-Builder to design and construct the Project are at all times the employees or Subcontractors of the Design-Builder and not of the Owner. The Design-Builder is solely responsible for all matters arising out of the relationship of employer and employee.

69. ASSIGNMENT

69.1 The Design-Builder will not, without the prior written consent of the Owner, assign, either directly or indirectly, any right or obligation of the Design-Builder under this Agreement.

69.2 The Owner may, upon notice to the Design-Builder, assign any or all of its rights or obligations under this Agreement to any other agency or organization that will assume responsibility for the operation of the Facility. Subject to the foregoing and subject to the right of assignment of the licence referred to in Section 18.5, the Owner will not, without the prior written consent of the Design-Builder, assign, either directly or indirectly, any right or obligation of the Owner under this Agreement.

70. INTEREST

70.1 If payment by either party of any amount payable under this Agreement is not made when due, interest will be payable on such amount at 2% per annum over the prime rate, calculated from the

date due under this Agreement until paid, compounded monthly. The party to whom payment is owed and overdue will notify the other party at least monthly of the overdue amount and the accrued interest on that amount. The prime rate is the annual rate of interest announced by the Royal Bank of Canada (or its successor), or any other Canadian chartered bank agreed to by the parties, as its "prime" rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada.

71. WAIVER

- 71.1 No waiver by either party of a right of that party or any breach by the other party in the performance of any of its obligations under this Agreement is effective unless it is in writing.
- 71.2 No waiver of any right or obligation is a waiver of any other right or obligation under this Agreement.
- 71.3 Failure or delay to complain of an act or failure of the other party or to declare the other party in default, irrespective of how long the failure or delay continues, does not constitute a waiver by the party of any of its rights against the other party.
- 71.4 The duties and obligations imposed by this Agreement and the rights and remedies available hereunder will be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by Law.

72. ASSUMPTION OF RISK

- 72.1 Except to the extent expressly allocated to the Owner or otherwise provided for under this Agreement, all risks, costs and expenses in relation to the performance by the Design-Builder of its obligations under this Agreement are allocated to, and accepted by, the Design-Builder as its entire and exclusive responsibility.

73. GENERAL DUTY TO MITIGATE

- 73.1 In all cases where the Design-Builder is entitled to receive from the Owner any additional compensation or any costs, damages or extensions of time, the Design-Builder will use all reasonable efforts to mitigate such amount required to be paid by the Owner to the Design-Builder under this Agreement, or the length of the extension of time. Upon request from the Owner, the Design-Builder will promptly submit a detailed description, supported by all such documentation as the Owner may reasonably require, of the measures and steps taken by the Design-Builder to mitigate and meet its obligations under this Section 73.

74. OTHER PROVISIONS

- 74.1 The exclusions, waivers and limitations of liability, representations and warranties and indemnities in this Agreement, the provisions of Sections 62, 63, 65, 66 and rights accrued prior to completion or termination of this Agreement will survive the completion or termination of this Agreement.
- 74.2 This Agreement constitutes the entire agreement between the parties, expressly superseding all prior agreements and communications (both oral and written) between any of the parties hereto with respect to all matters contained herein or therein, and except as stated herein or the instruments and documents to be executed and delivered pursuant hereto, contains all the representations and warranties of the respective parties.

- 74.3 No waiver of any provision of this Agreement and no consent required pursuant to the terms of this Agreement is binding or effective unless it is in writing and signed by the party providing such waiver or consent.
- 74.4 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.
- 74.5 This Agreement enures to the benefit of and binds the Owner, its successors and its assigns and the Design-Builder and its successors and permitted assigns.
- 74.6 The parties must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 74.7 The Design-Builder and the Owner will take all reasonable and necessary steps to minimize and avoid all costs and impacts arising out of the performance of the Work and this Agreement.
- 74.8 Neither the Owner nor the Design-Builder will take advantage of any apparent discrepancy, ambiguity, error or omission in this Agreement and will notify the other party forthwith following the detection of anything it suspects may be an ambiguity, discrepancy, error or omission.
- 74.9 Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 74.10 This Agreement may only be amended by an agreement of the parties in writing. No such amendments will be valid unless executed by the Owner and the Design-Builder.
- 74.11 This Agreement will be deemed to be made pursuant to the Laws of the Province of British Columbia and the Laws of Canada applicable therein and will be governed by and construed in accordance with such Laws.
- 74.12 For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of British Columbia and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.
- 74.13 Where the Design-Builder is a joint venture, partnership or consortium, each member agrees to be jointly and severally liable for the obligations of the Design-Builder.
- 74.14 Time is of the essence of this Agreement.
- 74.15 This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it will not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- 74.16 A party may deliver an executed copy of this Agreement by facsimile or other electronic means but that party will immediately deliver to the other parties an originally executed copy of this Agreement.

[Execution Page Follows]

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

**HER MAJESTY THE QUEEN IN RIGHT OF
BRITISH COLUMBIA, AS REPRESENTED
BY THE MINISTRY OF TECHNOLOGY,
INNOVATION AND CITIZENS' SERVICES**

Per:



Authorized Signatory

**PCL CONSTRUCTORS WESTCOAST
INC.**

Per:



Authorized Signatory

Per:



Authorized Signatory