

APPENDIX A - CONSTRUCTION MANAGEMENT AGREEMENT

This Agreement effective from the ____ day of _____, 2008

BETWEEN:

[the "Owner"]

AND:

[the "Manager"]

WHEREAS:

- A. The Owner has retained the Manager to provide Construction Management Services as described in the Request for Proposal and this Agreement, for the Owner's project known as the [Name of Project];
- B. The Manager has agreed to provide its Construction Management Services to the Owner; and
- C. The Owner and the Manager wish to set out the terms upon which the Manager delivers such services to the Owner.
- D. The Owner is the person or entity identified as such in the Agreement. The term Owner means the Owner or the Owner's authorized agent or representative as designated to the Manager in writing but does not include the Consultant.

NOW THEREFORE this Agreement witnesses that, in consideration of the covenants and agreements contained in this Agreement, the Owner and the Manager agree as follows:

1. General

- 1.01 The Owner engages the Manager to deliver to the Owner, Construction Management Services from the date of this Agreement, to completion of subtrade tendering, on the terms and conditions contained in this Agreement and subject to earlier termination in accordance with Article 9.
- 1.02 The Manager will deliver project services as more particularly described in the Request for Proposal and Article 2 of this Agreement, and such other services as may be listed in "Schedule A - Additional Services" attached to this Agreement ("Schedule A") and any other services reasonably related to those set out in Schedule A and agreed to by the Owner and the Manager (the "Project Services").
- 1.03 The Project Services will be delivered to the highest industry standard by the Manager or permitted subcontractor of the Manager as the Manager and the Owner may agree.
- 1.04 The Manager will report to the Owner's Contract Administrator or designate, regarding the Project Services as and when requested.

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1.05 The Manager will provide office space and amenities adequate to deliver the Project Services.

2. Construction Management Services

2.01 Provide such services for a maximum period of [number, (___)] months, pursuant to the Construction Management Agreement provided by the Owner.

2.02 Provide a designated project manager responsible for the coordination of construction methods, schedule, and budget issues and sufficient qualified support personnel to manage the preconstruction and trade tendering work in a competent and professional manner.

Provide a designated construction cost estimator to conduct regular review of the construction cost and analysis of the cost implications for individual elements of the Project.

2.03 Demonstrate an understanding of the complexities of this specific project. Identify specific items such as sourcing, administration and direction of experienced specialty trades, deconstruction, removal, and like works. Impart such understandings, working knowledge and experience to the project as a condition of appointment as the Manager.

2.04 Produce a detailed trade by trade project budget within three weeks of appointment. The Manager will work with the Owner and consultants and BC Housing to align the budget with the project cost plan and to determine the scope of work and anticipated values of the trade packages for tendering.

2.05 Confirm the proposed construction schedule provided with the proposal to a full construction schedule in a format acceptable to the Owner. Identify milestone dates, adjust, amend and refine the schedule as more specific information becomes available from the trade bids. Incorporate the pre-construction and trade bidding activities, critical trade and material deliveries into the schedule.

2.06 Conduct, at a minimum, weekly pre-construction co-ordination meetings with the project consultants and other parties as required, to co-ordinate design and construction aspects of the project. Keep minutes of all meetings, and distribute to all relevant parties, noting "action by".

2.07 Provide the Owner and consultants with advice and direction on construction related matters, construction planning, construction methodology, materials and labour availability, subtrade expertise and liaison and any final trade detailing.

2.08 Set up, co-ordinate and issue the individual subtrade bid documents for all construction activities, wherein the bidding will:

- be implemented and defined by the Manager as to physical scope of work, with an "Instructions to Bidders and Bid Form" for each trade, in a format acceptable to and be pre approved by the Owner,
- be called by the Manager, to close at the Manager's office and at the Manager's expense,

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- be opened in private or in public as per the policy of the Manager and the Owner or its agents
 - have the participation of the Owner or its agents, in the trade tendering process; input to the bid package calls, attendance at bid openings, review of bids, budget comparisons and contracting of the trades,
 - be reviewed by the Manager, have a full analysis of the bids received, a written report with recommendations, budget review and comparison and meetings with the consultants as required,
 - suggest and implement alternates, amendments and bid recalls as may be necessary to have all trades remain within budget, on schedule and to meet all other project criteria,
 - be redefined and recalled if recommended by the Owner or its agents, the consultants or the Manager,
 - carry Cash Allowances as deemed necessary and at the direction of the Owner or the consultants.
- 2.09 Follow a purchasing policy for goods and services, which allows direct award of bids up to \$10,000.00, requires three written quotes for values of \$10,001.00 to \$50,000.00, requires an invitational bid call (minimum three sealed bids) for values of \$50,001.00 to \$100,000.00, and requires a public bid call for values of \$100,001.00 and over, or as agreed to with the Owner. Upon prior notification, the Manager may elect to bid on specific portions of the Project and in such cases, those specific subtrade bids will be issued and analyzed by the Owner or their representative.
- 2.10 Set up only of the project reporting and managing systems, data systems, cost control, accounting, purchasing, safety, first aid, ready for the construction work.
- 2.11 Anticipate that the Manager will have the first opportunity to negotiate with the Owner to become the General Contractor for the project. The Construction Management Agreement will be concluded and the General Contractor will enter into a Stipulated Price Contract, CCDC-2, 1994, as amended by BC Housing's supplementary general conditions. The Construction Management Services provided will form a stand alone agreement, separate from the other fixed cost prices.
- 2.12 If for any reason the Owner and the Manager cannot come to an agreement for the Stipulated Price Contract, including without limitation, the reason that the settlement of outstanding issues is not advancing quickly enough in the sole opinion of BC Housing, then the Manager will be terminated and be paid in full for Construction Management Services provided, pursuant to the Agreement. Subsequently, any other offers from the Manager such as the Fixed Cost for General Conditions and Overheads and the Fixed Fee, the Schedule and the like requested herein, will then become null and void.

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3. Compensation for Project Services

- 3.01 In consideration for the Project Services, the Owner will pay to the Manager the Lump Sum of \$_____ (the "Project Payment"), plus GST.
- 3.02 The Project Payment will compensate the Manager for all of the Project Services, which sum will be invoiced by the Manager, on the last day of each month and will be paid by the Owner within 30 days of the date of receipt of the invoice. Invoices shall be based on services provided for the invoice period.
- 3.03 The Manager is responsible for all costs of carrying on its business and expenses incurred in delivering the Project Services, including, but not limited to the costs for all travel time and expenses, all telephone, cell phone and fax charges, email, computer, all courier and deliveries and all document printing and copying.
- 3.04 Should the Owner request and approve in writing any additional Project Services, the Manager will be reimbursed for such services at an agreed lump sum cost or at the actual cost to the Manager plus a 10% markup for overhead and profit. Work and payment related to additional services shall proceed only with the Owner's authorization in the form of written approval for a change to the Agreement.

4. Relationship between the Owner and the Manager

- 4.01 The Manager and permitted subcontractors will not act or purport to act as the agent of the Owner and will not enter or purport to enter into any agreement on behalf of the Owner or otherwise bind or purport to bind the Owner, without express permission of the Owner.
- 4.02 In delivery of the Project Services, the Manager will at all times act in the Manager's own capacity and right.
- 4.03 No employee of the Manager is an employee of the Owner or entitled to receive from the Owner any benefits whatsoever. The Manager agrees that its employees are not entitled the rights and benefits afforded to the Owner's employees, including, but not limited to, participation in any of the Owner's group insurance or pension plans, vacation pay, overtime pay, termination pay or severance pay.
- 4.04 The Owner will not pay for or maintain any employee benefits including, but not limited to, workers compensation, Canada Pension Plan, employment insurance and other similar levies or to make any withholdings or remittances for income tax in respect of any amounts payable by the Owner to the Manager or by the Manager to any person employed by it pursuant to this Agreement or otherwise. The Manager is solely responsible for making all such contributions, premium payments and income tax remittances in accordance with any applicable statutory requirements. The Manager acknowledges that the Owner will rely on the Manager's covenants in determining its obligations under the *Income Tax Act* (Canada) and Regulations.

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5. Laws

- 5.01 The Manager will comply with all applicable laws, codes and regulations in delivery of the Project Services.
- 5.02 The Manager will obtain all necessary licenses and permits to comply with applicable laws, codes and regulations in connection with delivery of the Project Services. The Manager will provide the Owner with evidence of its compliance with all laws and requirements as and when requested by the Owner. The Manager will, upon execution of this Agreement, provide to the Owner a Workers' Compensation Board of British Columbia clearance letter confirming the Manager's registration as active and in good standing.

6. Confidential and Proprietary Information

- 6.01 The Manager acknowledges that in delivering the Project Services, the Manager and permitted subcontractors will acquire information about certain matters which are confidential. Such information is the exclusive property of the Owner and the Manager undertakes and agrees not to disclose that information to any third party, either during or after the term of this Agreement.
- 6.02 All drawings, audio-visual materials, information, plans, models, designs, specifications, reports and other documents or products, in whatever media or form, produced, received or acquired by the Manager in the course of delivering the Project Services (the "Material") will be the sole property of the Owner and the Owner will have the right to use all of the Material for its benefit in any way it sees fit.
- 6.03 All of the Material will be delivered promptly by the Manager to the Owner concurrently with the termination of this Agreement or any Material in whole or in part as may be requested by the Owner during the term of this Agreement.
- 6.04 The Manager hereby transfers title in and to all of the Material and will assign to the Owner sole copyright in the Material. The Manager agrees that title to the Material is to be considered to have been transferred and any copyright in the Material is considered to have been assigned by the Manager to the Owner upon creation of the Material.
- 6.05 The Manager and permitted subcontractors will not infringe any patent or copyright or any other proprietary or industrial or intellectual property rights.

7. Indemnity

- 7.01 The Manager will indemnify and save harmless the Owner and the Consultant and their employees and agents, from and against any and all losses claims, damages, actions, causes of action, costs and expenses that the Owner 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 Manager or of any agent, employee, officer, director or subcontractor of the Manager pursuant to this Agreement excepting always liability arising out of, the independent acts of the Owner.

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8. Insurance

8.01 The Manager will pay for and maintain appropriate insurance with respect to the delivery of the Project Services, including, but not limited to, auto liability and general liability insurance each in an amount not less than \$2,000,000, by an agent or insurer satisfactory to the Owner. Upon execution of this Agreement, the Manager will deliver to the Owner the certificates indicating the insurance is in full force and effect for the term of the Agreement and will not be cancelled or change the terms of insurance without written approval by the Owner.

For work carried out during the preconstruction phase the manager shall ensure that contractors have construction and general liability insurance in a form acceptable to the Owner.

9. Termination

9.01 The Owner or the Manager may terminate this Agreement during its term upon 14 calendar days' written notice to the other party.

9.02 Either the Owner or the Manager may terminate this Agreement at any time without notice to the other party in the event of a breach of this Agreement by the other party.

10. Provisions which Survive the Agreement

10.01 Notwithstanding the termination of this Agreement for any reason, the provisions of Articles 6 and 7 of this Agreement and any other provision of this Agreement necessary to give effect to those Articles, will continue in full force and effect after the term of this Agreement and following any termination within its term.

11. Assignment

11.01 This Agreement may not be assigned by the Manager. The Manager may not hire or assign anyone other than the Manager to deliver any part of the Project Services without the consent of the Owner.

12. Entire Agreement

12.01 This Agreement constitutes the entire Agreement between the parties and cancels and supercedes any prior understanding and agreements between the parties. There are no representations, warranties, forms, conditions, undertakings, collateral agreements, express or implied or statutory, between the parties other than expressly set out in this Agreement.

13. Amendments and Waivers

13.01 No amendment to this Agreement will be valid or binding unless in writing and duly executed by both parties.

13.02 No waiver of any term or provision of this Agreement will be effective or binding unless made in writing and signed by both parties purporting to give the waiver and, unless otherwise provided in the written waiver, will be limited to this specific breach of contract waived.

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14. Severability

14.01 If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part and the remaining part of such provision and all other provisions of this Agreement will continue in full force and effect.

15. Governing Law

15.01 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

16. Notices

16.01 Any notice required to be given under this Agreement will be sufficiently given if personally delivered or sent by fax to the addresses set out above. Notice will be deemed to be delivered on the date it is delivered, if personally delivered, or on the date of receipt of the fax or confirmation if sent by fax.

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IN WITNESS WHEREOF the Owner has executed this Agreement the _____
day of _____, 2008.

BC HOUSING

By: _____
Authorized Signatory

By: _____
Authorized Signatory

IN WITNESS WHEREOF the Manager has executed this Agreement the _____
day of _____, 2008.

Corporate firms shall affix
their seal.

By: _____
Authorized Signatory

By: _____
Authorized Signatory

Witness of Manager's Signature

Address of Witness

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SCHEDULE A: ADDITIONAL SERVICES