



APPENDIX E - CONSTRUCTION MANAGEMENT AGREEMENT

This Agreement effective from the ____ day of _____, 2010

BETWEEN:

[the "Owner"]

AND:

[the "Construction Manager"]

WHEREAS:

- A. The Owner has retained the Construction Manager to provide Construction Management Services as described in the Request for Proposal and in this Agreement, for the Owner's project known as the [Name of Project];
- B. The Construction Manager has agreed to provide its Construction Management Services to the Owner; and
- C. The Owner and the Construction Manager wish to set out the terms upon which the Construction Manager delivers such services to the Owner.
- D. The Owner has engaged [Name of Architect] as project architect [the "Consultant", which term includes any other project architect engaged by the Owner from time to time], and has engaged and will engage other design consultants either directly or through the Consultant ["Sub-consultants"];
- E. The Owner has received a funding commitment for the Construction Management Services from British Columbia Housing Management Commission ["BC Housing"], and BC Housing has engaged [name] as its quantity surveyor for the Project [the "Quantity Surveyor", which term includes any other quantity surveyor engaged by BC Housing from time to time].

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

1. General

- 1.1 The Owner engages the Construction Manager to deliver to the Owner, Construction Management Services from the date of this Agreement, to completion of sub-trade tendering, on the terms and conditions contained in this Agreement. This agreement is subject to earlier termination in accordance with Article 9.
- 1.2 The Construction Manager will deliver Construction Management Services as more particularly described in Article 2 of this Agreement; in the BC Housing Request for Qualifications [RFQ No.] attached to this Agreement as "Schedule A – Request for Proposal", and such other services as may be listed in "Schedule B – Additional Services" attached to this Agreement and any other services reasonably related to those set out in Schedule A and

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Schedule B and agreed to by the Owner and the Construction Manager (the "Construction Management Services").

- 1.3 The Construction Management Services will be delivered to the highest industry standard by the Construction Manager or permitted subcontractor of the Construction Manager as the Construction Manager and the Owner may agree.
- 1.4 The Construction Manager will report to the Owner or a person designated by the Owner, regarding the Construction Management Services as and when requested.
- 1.5 The Construction Manager will provide office space and amenities adequate to deliver the Construction Management Services.
- 1.6 Any communication required to be made by or to the Owner under this Agreement may be made by or to the Owner's authorized agent or representative as designated to the Construction Manager by the Owner in writing from time to time, but in no even by or to the Consultant, Sub-consultants, BC Housing or the Quantity Surveyor.
- 1.7 The Construction Manager will have the first opportunity to negotiate with the Owner to become the general contractor for the Project by entering into a construction contract for the Project in the form of CCDC-2, 2008, as amended by BC Housing's supplementary general conditions substantially in the form attached as "Schedule D – Supplementary General Conditions" ("Stipulated Price Contract"), but the Owner will be under no obligation to enter into a Stipulated Price Contract with the Construction Manager in any event.

2. Construction Management Services

- 2.1 The term "Construction Management Services" shall include all pre-construction duties, tasks, responsibilities and obligations described in Articles 1.2 and 2 in this Agreement.

The Construction Manager will:

- 2.2 Provide Construction Management Services beginning on the effective date of this agreement and concluding with the completion of Project. The duration of this agreement is expected to be for a period of [number __] months at which time the Construction Management Services are expected to be completed. The Owner and the Construction Manger acknowledge that the Services may take longer to complete. This acknowledgement also recognizes that the fees contained in the construction Managers proposal will not change as a result of a change in duration
- 2.3 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.

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- 2.4 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. The construction cost estimator will work cooperatively and exchange information with the Quantity Surveyor as requested and will also provide advice to the Owner and the Consultant on the construction market conditions
- 2.5 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 Construction Manager.
- 2.6 Provide advice on project constructability, site use, materials, system and equipment and also provide recommendations on construction feasibility and alternative designs.
- 2.7 Produce a detailed trade by trade project budget in accordance with the required BC Housing format attached to this Agreement as “Schedule C – Project Budget Format” within three weeks of appointment. The Construction Manager will work with the Owner, the Consultant, BC Housing and other parties designated by the Owner to align the budget with the cost plan for the Project and to determine the scope of work and anticipated values of the trade packages for tendering.
- 2.8 Prepare additional cost estimates at the various project stages, Class C estimate at Schematic Design stage, Class B estimate at Design Development and 50% Working Drawings, and Class A estimate at the end of the construction document stage.
- 2.9 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.
- 2.10 Assist the Owner and Design team in liaison and co-ordination among government authorities, utility companies, and other authorities having jurisdiction over the project.
- 2.11 Complete Value Analysis as required using creative and analytical techniques to identify alternative ways to achieve project goals.
- 2.12 Conduct at a minimum, monthly 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”.

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- 2.13 Provide the Owner and consultants with advice and direction on construction related matters, construction planning, construction methodology, materials and labour availability, sub-trade expertise and liaison and any final trade detailing.
- 2.14 Set up, co-ordinate and issue the individual sub-trade bid documents for all construction activities, wherein the bidding:
- be implemented and defined by the Construction Manager as to physical scope of work, with an “Instructions to Bidders and Bid Form” for each trade, in a format acceptable to and pre approved by the Owner and BC Housing;
 - be called by the Construction Manager, to close at the Construction Manager’s office and at the Construction Manager’s expense;
 - be opened in private or in public as per Article 2.10 of this agreement;
 - allow for 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 Construction 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 Consultant or Sub-consultants, or the Construction Manager;
 - carry cash allowances as deemed necessary and at the direction of the Owner or the Consultant.
- 2.15 Participate in a post tender evaluation with the project Quantity Surveyor if requested.
- 2.16 Review the drawings and specifications and at the end of the Design Development Phase and Working Drawings phases and make recommendations to the owner and the consultant as to the constructability and coordination.
- 2.16 Follow a purchasing policy for goods and services, which
- allows direct award of bids up to \$24,999.00;
 - requires three written quotes for values over \$25,000.00 to and including \$99,999.00;
 - requires a public formal competitive process as determined by the Owner for values over \$100,000.00 and up.

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Upon prior notification, the Construction Manager may elect to bid on specific portions of the Project and in such cases, those specific sub-trade bids will be issued and analyzed by the Owner or their Consultant.

- 2.17 Set up the project reporting and management systems, data systems, cost control accounting, purchasing, safety, first aid, ready for the construction work in a form acceptable to the Owner.
- 2.18 Provide to the Owner a proposed cost for general conditions and overheads and a fee to manage the general contract as well as a complete schedule of sub trade tenders required to complete the Project in a form to be prescribed by the Owner.

3. Compensation for Construction Management Services

- 3.1 In consideration for the Construction Management Services, the Owner will pay to the Construction Manager the Fee of \$ _____, plus HST (the "Fee").
- 3.2 The Fee will compensate the Construction Manager for all of the Construction Management Services.
- 3.3 The Fee will be invoiced by the Construction Manager after completion of the following project milestones:

15%	Schematic Price, Schedule Reports	Class C
15%	Design Development, Schedule	Class B
20%	50% Working Drawing Price Schedule	Class B
25%	95% Working Drawing Price Schedule	Class A
25%	Submission of Full Tender Price	

Invoices will be paid by the Owner within 30 days of the date of receipt of the invoice.

- 3.4 The Construction Manager is responsible for all costs of carrying on its business and expenses incurred in delivering the Construction Management 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. This specifically excludes drawings and specifications for sub trade tenders.
- 3.5 Should the Owner request and approve in writing any additional Construction Management Services, the Construction Manager will be reimbursed for such services at an agreed lump sum cost or in the absence of agreement on such lump sum, at the actual cost to the Construction Manager plus a 10% mark-up 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 Construction Manager

- 4.1 The Construction 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.
- 4.2 In delivery of the Construction Management Services, the Construction Manager will at all times, act in the Construction Manager's own capacity and right.
- 4.3 No employee of the Construction Manager is an employee of the Owner or entitled to receive from the Owner any benefits whatsoever. The Construction 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.
- 4.4 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 Construction Manager or by the Construction Manager to any person employed by it pursuant to this Agreement or otherwise. The Construction Manager is solely responsible for making all such contributions, premium payments and income tax remittances in accordance with any applicable statutory requirements. The Construction Manager acknowledges that the Owner will rely on the Construction Manager's covenants in determining its obligations under the *Income Tax Act* (Canada) and Regulations.

5. Laws

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

6. Confidential and Proprietary Information

- 6.1 The Construction Manager acknowledges that in delivering the Construction Management Services, the Construction Manager, its employees and subcontractors will acquire, both before and after the date of this Agreement, Confidential Information (as defined in section 6.2). The Confidential Information is the exclusive property of the Owner, and the Construction Manager undertakes and agrees not to disclose it to any party, either during or after the term of this Agreement, except as required in the discharge of its

duties under this Agreement or as authorized in writing by the Owner. Despite the generality of the definition in this section, Confidential Information does not include:

- 6.2 “Confidential Information” means tangible, intangible, oral or written information concerning the business and affairs of the Owner and the Project acquired from or through the Owner, the Consultant, BC Housing, the Quantity Surveyor or agents or employees of any of them, but excludes the following:
- information that is or becomes generally available to the public other than as a result of disclosure by the Construction Manager and its subcontractors or employees;
 - information that is or becomes available to the Construction Manager on a non-confidential basis from a source other than the Owner, the Consultant, BC Housing or the Quantity Surveyor;
 - information that was independently developed by the Construction Manager prior to the date of this Agreement’
- 6.3 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 Construction Manager in the course of delivering the Construction Management 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.
- 6.4 All of the Material will be delivered promptly by the Construction 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.
- 6.5 The Construction Manager hereby transfers title in and to all of the Material and will assign to the Owner sole copyright in the Material. The Construction 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 Construction Manager to the Owner upon creation of the Material.
- 6.6 The Construction Manager and permitted subcontractors will not infringe any patent or copyright or any other proprietary or industrial or intellectual property rights.
- 7. Indemnity**
- 7.1 The Construction 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 Construction Manager or of any agent,

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employee, officer, director or subcontractor of the Construction Manager pursuant to this Agreement excepting always liability arising out of, the independent acts of the Owner.

8. Insurance

- 8.1 The Construction Manager will pay for and maintain appropriate insurance with respect to the delivery of the Construction Management 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 Construction 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 Construction Manager shall ensure that contractors have construction and general liability insurance in a form acceptable to the Owner.

9. Termination

- 9.1 The Owner or the Construction Manager may terminate this Agreement during its term upon 14 calendar days' written notice to the other party.
- 9.2 Either the Owner or the Construction 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.
- 9.3 If this Agreement is terminated under section 9.1 or section 9.2, the Construction Manager will be entitled to payment of the Fee pro-rated to the date of termination, and the parties will have no further obligations to each other under this Agreement except as set out in Article 10.

10. Provisions which Survive the Agreement

- 10.1 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

- 11.1 This Agreement may not be assigned by the Construction Manager. The Construction Manager may not, without the consent of the Owner, hire or assign anyone other than the Construction Manager and its principals and employees, to deliver any part of the Construction Management Services.

12. Entire Agreement

- 12.1 This Agreement constitutes the entire Agreement between the parties and cancels and supersedes 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.

12.2 The Agreement does not commit the Owner to enter any subsequent agreement with the Construction Manager.

13. Amendments and Waivers

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

13.2 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.

14. Severability

14.1 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

15.1 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

16.1 Any notice required to be given under this Agreement will be in writing and will be considered to have been given if delivered by registered mail or courier, with either form of delivery requiring a signature upon receipt of delivery, within (5) five business days.



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IN WITNESS WHEREOF the Owner has executed this Agreement the _____
day of _____, 2009.

BC HOUSING

By: _____
Authorized Signatory

By: _____
Authorized Signatory

IN WITNESS WHEREOF the Construction Manager has executed this Agreement
the _____ day of _____, 2009.

**Corporate firms shall affix
their seal**

By: _____
Authorized Signatory

By: _____
Authorized Signatory

Witness of Construction Manager's Signature

Address of Witness



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SCHEDULE A: REQUEST FOR PROPOSAL

SCHEDULE B: ADDITIONAL SERVICES

SCHEDULE C: PROJECT BUDGET FORMAT

SCHEDULE D: SUPPLEMENTARY GENERAL CONDITIONS

DRAFT