The Agreement is hereby amended as follows:

ARTICLES OF AGREEMENT

1. ARTICLE A-1 THE SERVICES AND THE WORK

Add the following:

“1.4 Upon completion of the Construction Procurement Phase (as set out in Schedule A1 to the Agreement), the Owner and the Construction Manager will agree to the Contract Price amounts (as required under Article A-8 Contract Price) and confirm the mutually agreed to date by which the Construction Manager shall attain Substantial Performance of the Work (as required under section 1.5 of Article A-1). The mutually agreed to Contract Price and the date by which the Construction Manager must attain Substantial Performance of the Work shall be set out in the form of an amendment to the Agreement, executed by the Owner and the Construction Manager, and be effective under the Agreement on the day that it is so executed.

1.5 The Construction Manager shall subject to adjustment in Contract Time as provided for in the Contract Documents, attain Substantial Performance of the Work, by the ______ day of ____________________ in the year ________.

1.6 The Owner supports the provision of opportunities for work experience and training in the construction industry for entry level workers to trade apprentices. This includes recruitment from programs intended to grow skilled trades such as the Skilled Trades Employment Program (STEP) and registration in programs committing employers to supply a safe and productive work environment such as the Builders Code.

The Construction Manager’s work force is required, where such programs exist, to include individuals placed through agencies such as Bladerunners, Tradeworks and Embers that provide ongoing training and support to persons with barriers to employment. Individual placed through these programs will be considered employees of the Construction Manager or Subcontractor. If no applicable program(s) exist within the geographic area of the Work the Construction Manager may seek a waiver from the Owner.

The Owner, at its discretion, may require the Construction Manager or Subcontractor to provide sufficient evidence of the involvement of these employees in the Work.
1.7 The Owner is committed to reducing waste in all aspects of business. As such, construction and demolition (C&D) waste management targets have been set out in the BC Housing livegreen plan and BC Housing’s Design Guidelines and Construction Standards, and shall be tracked and reported. The minimum targets for C&D waste diversion from landfill in the Lower Mainland and on Vancouver Island projects is 80%, and 60% for projects elsewhere in the province. The Construction Manager shall submit the Waste Management Plan before signing the construction contract and is responsible for tracking waste diversion rates throughout the construction project and submission of the completed Waste Management Reporting Form. Refer to BC Housing’s Design Guidelines and Construction Standards.

1.8 The Construction Manager shall 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.

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. ARTICLE A-4 CONTRACT DOCUMENTS

4.1 Delete “Appendix – Stipulated Price Option” from list and Add in spaces provided:

- “The BC Housing Supplementary General Conditions to the CCDC 5B-2010 Construction Management Contract, Stipulated Price Option” replacing Appendix – Stipulated Price Option;

- The Amendment to the Agreement, in the form attached as Attachment 1 to the Agreement, to be completed following the completion of the Construction Procurement Phase.”

3. ARTICLE A-5 CONSTRUCTION MANAGER’S FEE

Delete this Article and replace with the following:

“5.1 Construction Manager’s Fee for the Services

1. The Construction Manager’s Fee for the Services shall be for Preconstruction Services only as defined in Schedule A1 to the Agreement.

2. The Construction Manager’s Fee for the Services shall be for the fixed amount of $_______________________________. It shall include all expenses of the Construction Manager related to the performance of the services noted in Schedule A1 to the Agreement.

3. Payments for the Construction Manager’s Fee for the Services (Pre-construction) shall be made after completion of the following milestones as set out in Schedule A1 to the Agreement:
   - Design Development Phase (15%)
5.2 **Construction Manager’s Fee for the Work**

1. The *Construction Manager’s Fee for the Work* (for the Construction and Post Construction stages) shall be a percentage fee of __________(___%) of the Cost of Work. This fee shall form part of the *Contract Price.*

4. **ARTICLE A-6 REIMBURSABLE EXPENSES FOR THE SERVICES**

Delete this Article in its entirety.

5. **ARTICLE A-7 COST OF THE WORK**

Delete this Article and replace with the following:

“7.1 The cost of performing the work shall include:

.1 salaries, wages and benefits paid to personnel in the direct employ of the *Construction Manager* under a salary or wage schedule agreed upon by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Construction Manager*, for personnel

(1) stationed at the *Place of the Work*, in whatever capacity employed;

(2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;

(3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings and coordination drawings; or

(4) engaged in the processing of changes in the *Work*.

.2 all *Products* including cost of transportation thereof;

.3 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Construction Manager*;

.4 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Construction Manager* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof; the actual costs of the tools and *Construction Equipment* provided by the *Construction Manager* are limited to costs that are properly payable by the *Owner* based on time used in the performance of *Services* and *Work*, and *Owner* approved market rates prevailing at the *Place of the Work*.

.5 the *Construction Manager’s* field office;
.6 deposits lost provided that they are not caused by negligent acts or omissions of the Construction Manager and the Services are performed in accordance with this Contract;

.7 the amount of all subcontracts;

.8 quality assurance such as independent inspection and testing services;

.9 charges levied by authorities having jurisdiction at the Place of the Work;

.10 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the Construction Manager’s obligations to indemnify the Owner as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;

.11 premiums for all contract securities and insurance that the Construction Manager is required, by the Contract Documents, to purchase and maintain;

.12 taxes, other than Value Added Taxes, and duties relating to the Work for which the Construction Manager is liable;

.13 charges for long distance communications, courier services, expressage, printing, and reproduction incurred in relation to the performance of the Work;

.14 removal and disposal of waste products and debris;

.15 the cost of safety measures and requirements;

.16 other costs incurred in the performance of the Work as listed below:"

6. ARTICLE A-8 OPTIONS

Delete this Article, including its title, and replace with the following:

“ARTICLE A-8 CONTRACT PRICE

8.1 The Contract Price shall be mutually agreed to and determined following the completion of the Construction Procurement Phase (as set out in Schedule A1 to the Agreement) by way of amendment to the Agreement, using Attachment 1 – Form Of Amendment To Convert To A Stipulated Price Contract attached hereto, and shall be subject to subsequent adjustments as provided in the Contract Documents.”

7. ARTICLE A-9 PAYMENT

9.1 Delete and replace with the following:

“9.1 Where required, payments shall be subject to the Builders’ Lien Act. The Owner shall pay the Construction Manager:

.1 payments on account of the Contract Price when due in the amount certified by the Consultant together with such Value Added Taxes as may be applicable to such payments,
.2 upon Substantial Performance of the Work, the unpaid balance of the holdback amount when due together with such Value Added Taxes as may be applicable to such payment, and

.3 upon the issuance of the final certificate for payment, the unpaid balance of the Construction Manager's Fee for the Services and the Contract Price when due together with such Value Added Taxes as may be applicable to such payment."

9.2 Delete.

8. Add the following:

“ARTICLE A-13 TIME OF THE ESSENCE

13.1 All time limits stated in this Contract are of the essence of the Contract.”

SCHEDULES TO THE AGREEMENT

9. SCHEDULE A2 TO THE AGREEMENT

Delete this Schedule in its entirety.

10. SCHEDULE B TO THE AGREEMENT

Delete this Schedule in its entirety.

DEFINITIONS

11. Definition 5 – CHANGE DIRECTIVE

Delete and replace with the following:

“5. Change Directive

A Change Directive is a written instruction prepared by the Consultant and signed by the Owner directing the Construction Manager to proceed with a change in the Work within the general scope of this Contract prior to the Owner and the Construction Manager agreeing upon adjustments in the Contract Price and the Contract Time.”

12. Definition 6 – CHANGE ORDER

Delete and replace with the following:

“6. Change Order

A Change Order is a written amendment to this Contract prepared by the Consultant and signed by the Owner and the Construction Manager stating their agreement upon:
- a change in the Services;
- a change in the Work;
- the method of adjustment or the amount of the adjustment in the Contract Price, if any; and
– the extent of the adjustment in the Contract Time, if any.
For greater certainty, a written amendment to the Agreement pursuant to section 1.4 of Article A-1 shall not constitute a Change Order.”
13. **Definition 31—SUBSTANTIAL PERFORMANCE OF THE WORK**

Delete the definition of *Substantial Performance of the Work* and replace with the following:

> **31 Substantial Performance of the Work**
> Substantial Performance of the Work shall have been reached when:
> .1 the Work is ready for use or is being used for the purpose intended and is so certified by the Consultant; and
> .2 a Certificate of Completion has been issued for the Work as a whole.”

14. **Definition 32 – SUPPLEMENTAL INSTRUCTION**

Delete and replace with the following:

> **32 Supplemental Instruction**
> A Supplemental Instruction is an instruction, not involving adjustment in the Contract Price or Contract Time, in the form of Specifications, Drawings, schedules, samples, models or written instructions, consistent with the intent of the Contract Documents. It is to be issued by the Consultant to supplement the Contract Documents, as required for the performance of the Work.”

15. **New Definition 38 – CONTRACT PRICE**

> **38 Contract Price**
> The Contract Price, which excludes Value Added Taxes, is the sum of the Construction Manager’s Fee for the Work and the Cost of the Work, and is the amount to be agreed to and determined at the completion of the Construction Procurement Phase, as set out in Article A-8 Contract Price of the Agreement.”

16. **New Definition 39 – BC HOUSING**

> **39 BC Housing**
> BC Housing means the British Columbia Housing Management Commission and its authorized agents or representatives.”

17. **New Definition 40 – BUILDERS’ LIEN ACT**

> **40 Builders’ Lien Act**
> Builders’ Lien Act means the Builders’ Lien Act, S.B.C. 1997, c.45, as amended, and all regulations thereto, and any successor legislation in the Province of British Columbia in relation to builders liens.”

18. **New Definition 41 – Certificate of Completion**

> **41 A Certificate of Completion**
> A Certificate of Completion is a certificate of completion as defined in the Builders Lien Act issued by the Consultant.”

**GENERAL CONDITIONS**

PART 1 GENERAL PROVISIONS
19. GC 1.1 CONTRACT DOCUMENTS

1.1.2.1 Add at the end:

“or Services.”

1.1.2.2 Add at the end:

“or Services.”

1.1.6.1 Delete and Replace with the following:

“.1 the order of priority of documents, from highest to lowest, shall be:
- Supplementary Conditions (if any),
- the Agreement between the Owner and the Construction Manager (including the Schedules to the Agreement),
- the Definitions,
- the General Conditions,
- the Construction Documents
  • Division 1 of the Specifications,
  • technical Specifications,
  • material and finishing schedules,
  • the Drawings.”

Add:

“1.1.6.6 subject to the above, if any specifications or drawings conflict with any other specifications or drawings, the more stringent shall govern.”

1.1.7 Delete “sufficient” and replace with “the agreed to”

20. GC 1.4 ASSIGNMENT

Add:

“1.4.2 Notwithstanding paragraph 1.4.1, the Owner may assign its interest in the Contract and any of its rights available at law to B.C. Housing at any time without the consent of the Construction Manager.”

PART 2 ADMINISTRATION OF THE CONTRACT

21. GC 2.1 OWNER’S RESPONSIBILITIES

2.1.1.3 Delete first sentence and replace with the following:

“furnish promptly to the Construction Manager all relevant information regarding the Place of the Work that is within the Owner’s custody or control, including surveys as to the physical characteristics of the site, soils reports, subsurface investigations, environmental reports, site encumbrances, utility locations, and legal description.”
22. **GC 2.2 AUTHORITY OF THE CONSULTANT**

2.2.2 Delete and replace with the following:

“The duties, responsibilities and limitations of authority of the Consultant as set forth in the Contract Documents may be modified or extended only with the written consent of the Owner following consultation with the Consultant.”

23. **GC 2.3 CONSULTANT’S RESPONSIBILITIES**

2.3.5 Delete and replace with the following:

“Based on the Consultant’s observations and evaluation of the Construction Manager’s applications for payment for the Work performed, the Consultant will determine the amounts owing to the Construction Manager for the Contract Price and will issue certificates for payment as provided in Article A-9 of the Agreement – PAYMENT, GC 5.4 – PROGRESS PAYMENT FOR THE WORK and GC 5.8 – FINAL PAYMENT FOR THE WORK.”

2.3.11 Delete and replace with the following:

“With respect to claims for a change in the Contract Price, the Consultant will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE”

2.3.13 Add at the end:

“The Consultant will deliver a copy of any Supplemental Instructions to the Owner at the same time as they are delivered to the Construction Manager and such Supplemental Instructions will not be effective until confirmed by the Owner if they are:

.1 Inconsistent with items in the Contract Documents; or
.2 Material or substantial.”

24. **GC 2.4 REVIEW AND INSPECTION OF THE WORK**

2.4.5. Delete and replace with the following:

“The Consultant may order any portion or portions of the Work to be examined to confirm that such work is in accordance with the requirements of the Contract Documents. If the work is not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct the work and pay the cost of examination and correction at the Construction Manager’s expense. The Owner acting reasonably may require the Consultant to order an examination of any portion or portions of the Work. If the Consultant makes such an order and the work is in accordance with the requirements of the Contract Documents, the Owner shall pay the cost of examination and restoration.”

Add:

“2.4.6 The Construction Manager shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the Contract Documents to be performed by the Construction Manager or is designated by the laws or ordinances applicable to the Place of the Work.”
2.4.7 The Construction Manager shall pay the cost of samples required for any test or inspection to be performed by the Consultant or the Owner if such test or inspection is designated in the Contract Documents.”

25. **GC 2.5 DEFECTIVE WORK**

2.5. Delete and replace with the following:

“The Construction Manager shall promptly correct defective work that has been rejected by the Consultant as failing to conform to the Contract Documents whether or not the defective work has been incorporated in the Work and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Construction Manager. The correction of defective work shall be at the Construction Manager’s expense.”

2.5.2 Delete and replace with the following:

“The Construction Manager shall make good promptly other contractors’ work destroyed or damaged by such removals or replacements. The correction of destroyed or damaged work shall be at the Construction Manager’s expense.”

**PART 3 PERFORMANCE OF THE SERVICES AND EXECUTION OF THE WORK**

26. **GC 3.1 CONTROL OF THE WORK**

Add:

“3.1.3 The Construction Manager warrants and represents that it possesses and will apply all the skill, expertise and experience normally required in the performance of the Work and Services, and will ensure that the Work is performed in a good, proper and workmanlike manner. If, in the opinion of the Consultant or the Owner, the Construction Manager makes use of methods or appliances which will not permit the proper execution of the Work or employs inefficient or insufficient labour which will not permit the proper execution of the Work within the Contract Time, the Consultant or the Owner may notify the Construction Manager to improve its construction methods whereupon the Construction Manager will comply without delay with such notification and will not be entitled to claim additional compensation or extension of the Contract Time as a result of such improvement in construction methods. If the Construction Manager refuses or neglects to comply with such notification within 5 Working Days of receipt of the notification such refusal or neglect will be deemed to be a default by the Construction Manager with respect to its contractual obligations under the Contract. If the Owner approves or suggests any construction means, methods, techniques, sequences or procedures, it will be considered to mean only that no objection is taken thereto by the Owner and the adoption thereof, in whole or part, by the Construction Manager shall be at the full risk and responsibility of the Construction Manager.”

27. **GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

3.2.2.2 Delete.
Add:

“3.2.3.4: take all reasonable precautions to avoid labour disputes or other disputes on the Project arising from the work of other contractors; and

3.2.3.5 as it applies to applicable health and construction safety legislation at the Place of the Work the Construction Manager shall be solely responsible for construction safety at the Place of the Work in accordance with GC 9.4 CONSTRUCTION SAFETY.”

Add:

“3.2.7 If the Construction Manager has caused damage to the work of another contractor on the Project, the Construction Manager agrees to settle the matter with the other contractor by negotiation or arbitration. If the other contractor makes a claim against the Owner on account of damage alleged to have been so sustained, the Owner shall notify the Construction Manager and may require the Construction Manager to defend the action at the Construction Manager’s expense. The Construction Manager shall satisfy a final order or judgment against the Owner and pay the costs incurred by the Owner arising from such action. Paragraph 12.1.6.2 of GC 12.1 INDEMNIFICATION shall apply.”

29. GC 3.7 SUBCONTRACTORS AND SUPPLIERS

3.7.1.3 Delete and replace with the following:

“be as fully responsible to the Owner for acts and omissions of Subcontractors, Suppliers and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Construction Manager.”

3.7.2 Delete and replace with the following:

“The Construction Manager shall, before entering into contracts or written agreements with Subcontractors and Suppliers, submit to the Owner all bids received for the various parts of the Work to be subcontracted and obtain the Owner’s acceptance of the Subcontractors and Suppliers selected. Subject to 3.7.3, the Construction Manager agrees to employ only those Subcontractors proposed in writing, including the Construction Manager’s own force, if any, and accepted by the Owner with the acceptance of the tender or on entering into this Contract. The Construction Manager shall not change any Subcontractor without cause and without the written consent of the Owner, which consent will not be unreasonably withheld.”

30. GC 3.8 LABOUR AND PRODUCTS

3.8.2 Add “ and the Owner” after “Consultant”.

Add:

“3.8.3 The Construction Manager shall provide and pay for labour, Products, tools, Construction Equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the Work in accordance with the Contract.”
31. GC 3.11 USE OF THE WORK

Add:

“3.11.3 The Construction Manager shall not use any service, plant or equipment installed as part of the Work without first receiving the written approval of the Consultant and the Owner. On receipt of such approval, the Construction Manager shall be subject to any conditions set out as part of such approval and shall be responsible for all costs including damage and compensation for wear.”

32. New GC 3.14 – SERVICES

Add new General Condition as follows:

“GC 3.14 SERVICES
3.14.1 The Construction Manager shall:
   .1 chair and minute regular Project meetings with the Owner and the Consultant,
   .2 prepare and update the cash flow forecasts in accordance with the Project budget that are specified in the Contract or otherwise agreed with the Owner;
   .3 provide reasonable assistance and information to permit recovery of all tax rebates where applicable, and
   .4 assist the Owner in conducting post-construction occupancy review.”

PART 4 ALLOWANCE

33. GC 4.1 CASH ALLOWANCES

4.1.1 Delete and replace with the following:

“The Contract Price, and not the cash allowances, includes the Construction Manager’s overhead and profit in connection with such cash allowances.”

4.1.2 Delete “Price of the Work” and replace with “Contract Price”

4.1.4 Delete first sentence and replace with the following:

“Where costs under any cash allowance exceed the amount of the allowance, the Construction Manager shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the Contract Documents.”

4.1.5 Delete and replace with the following:

“The Contract Price shall be adjusted by Change Order to provide for any difference between each cash allowance and its actual cost.”

4.1.6 Delete and replace with the following:

“The value of the Work performed under a cash allowance is eligible to be included in progress payments.”

PART 5 PAYMENT
34. **GC 5.1  FINANCING INFORMATION REQUIRED OF THE OWNER**

5.1.1 Delete.

35. **GC 5.2  ACCOUNTING AND AUDIT**

5.2.1 Delete and replace with the following:

“The Construction Manager shall keep full and detailed accounts and records necessary for the documentation of and the cost of performing the work attributable to the Change Directive.”

5.2.2 Delete and replace with the following:

“From commencement of the Work until seven (7) years after the application for final payment, the Owner shall, for inspection and audit purposes, be afforded access at the Construction Manager’s premises, to all of the Construction Manager’s books, records, correspondence, instructions, drawings, receipts, vouchers, Subcontractor, and Supplier invoices, and memorandum relating to the cost of performing the work attributable to the Change Directive. The Construction Manager shall preserve all such records for this purpose.”

36. **GC 5.4  PROGRESS PAYMENT FOR THE WORK**

5.4.3 Delete and replace with the following:

“The amount claimed shall be for the value, proportionate to the amount of the Contract Price, of Work performed as of the last day of the payment period. No claim will be made by the Construction Manager, and no payment will be made by the Owner, for Products fabricated for the Project but stored off-site, or for Products delivered to the Place of the Work but not incorporated into the Project unless agreed to in writing by the Owner.”

5.4.4 Delete and replace with the following:

“The Construction Manager shall submit to the Consultant, at least 15 calendar days before the first application for payment after exercising the stipulated price option, a schedule of values for the parts of the Work, aggregating the total amount of the Contract Price, so as to facilitate evaluation of applications for payment. The schedule of values shall be prepared in such a manner that each major item of work and each subcontracted item of work is shown as a separate line item and, in the case of each subcontract, shall accurately represent the subcontract price, and the Consultant and the Owner shall be entitled to rely on same. Separate amounts shall be shown for initial start up, continuing expenses and Project closeout. A schedule stating the anticipated monthly progress payments shall be submitted with the items of cost.”

5.4.5 Delete and replace with the following:

“The schedule of values shall be made out in such form and supported by such evidence as the Consultant may reasonably direct and when accepted by the Consultant, shall be used as the basis for applications for payment, unless it is found to be in error.”
5.4.6  Delete.

5.4.7  Delete and replace with the following:

“No certificate for payment will be issued for any of the Work and no payment shall be approved, authorized or made unless the Construction Manager has provided all documents as required to be provided at that time under this Contract. No later than 10 calendar days after the receipt of a complete application for payment from the Construction Manager submitted in accordance with GC5.4 PROGRESS PAYMENT FOR THE WORK, the Consultant will issue to the Owner a certificate for payment in the amount applied for or in such other amount as the Consultant determines to be properly due, provided that if the Consultant amends the application, the Consultant will promptly notify the Construction Manager in writing giving reasons for the amendment.”

Add:

“5.4.8  The Construction Manager shall include a statement based on the schedule of values with each application for payment.

5.4.9  Subject to the Owner receiving the written approval of B.C. Housing, the Owner shall make payment of 90% of the amount as determined by the Consultant to be due to the Construction Manager on account in accordance with the provisions of Article A-9 PAYMENT no later than 20 calendar days after the certificate for payment has been issued, provided that the Owner, at its sole and absolute discretion, may retain out of such payment the amount of any outstanding liens or claims or any other indebtedness which may have been incurred by the Construction Manager in performing the Work and for which the Owner may in any way be held responsible. “Other indebtedness” means only such debts incurred by the Construction Manager to persons in privity of contract with the Construction Manager, debts arising out of statutory requirements and, in the case of the Construction Manager’s workers, any debts arising out of collective bargaining agreements, legislation applying to workers compensation, employment insurance and minimum wage standards where applicable. Upon request by the Owner, the Construction Manager shall forthwith provide a full accounting as to the disbursement of all monies paid by the Owner to the Construction Manager, including a complete list of all persons to whom monies remain due and the amounts due.

5.4.10  The Construction Manager shall submit one copy of all applications for payment to the Consultant and all applications for payment, except the first, shall be accompanied by a form of statutory declaration approved by the Owner, completed and sworn before a Notary Public or a Commissioner for Oaths for the Province of British Columbia, which statutory declaration must include a statement that all accounts for labour, subcontracts, Products, construction machinery and equipment and other indebtedness which may have been incurred by the Construction Manager in the performance of the Work covered by the immediately preceding progress claim, and for which the Owner might in any way be held responsible, have been paid in full, except holdback monies properly retained.

5.4.11  Before any payment is made by the Owner to the Construction Manager, the Consultant or the Owner may, by written notice, require that the Construction Manager furnish such further detailed information as the Consultant or the Owner may determine is necessary to establish compliance by the Construction Manager with the Contract Documents.
5.4.12 Notwithstanding any application for payment or claim by the Construction Manager, the Owner will not be obligated to pay the Construction Manager an amount greater than that approved by B.C. Housing.

5.4.13 Every application for payment shall identify the Value Added Taxes payable by the Owner to the Construction Manager as a separate entry.”

37. GC 5.5 SUBSTANTIAL PERFORMANCE OF THE WORK

5.5.1 Add at the end:

“The Construction Manager shall submit the following documents with its request for Substantial Performance review by the Consultant. These requirements do not limit the Construction Manager’s Substantial Performance obligations noted elsewhere in the Contract. A deficiency holdback will be retained for the estimated value of correcting or supplying the following items until they are submitted, reviewed, and accepted by the Consultant:

.1 the list of all deficient and incomplete items of work including the estimated value of each item;
.2 complete reports including a balancing report for the mechanical system and certification by all testing, cleaning or inspection authorities or associations as specified in the Contract Documents;
.3 a complete demonstration of all mechanical and electrical systems and electrically-operated devices to the Owner’s operating and maintenance staff and any training required by the specifications, to the Owner’s satisfaction;
.4 all maintenance manuals, operating instructions, maintenance and operating tools, replacement parts or materials and warranties as specified in the Contract Documents;
.5 a complete set of marked up construction drawings and other data in the form specified in the Contract Documents, or as required by the Consultant, for the production of as built drawings to show all significant Changes to the Work made during construction;
.6 a current certification by the Workers Compensation Board that the Construction Manager and all Subcontractors are in good standing;
.7 a statement that all claims and demands for extra work or otherwise, under or in connection with the Contract, have been presented to the Consultant and that the Construction Manager expressly releases the Owner from all claims and demands except those made in writing prior to that date and still unsettled;
.8 a statutory declaration in accordance with Contract;
.9 an updated survey of the Place of the Work prepared by a British Columbia Land Surveyor confirming the exact area of the property and the lot and side yard dimensions, the location of all registered easements or statutory rights of way, and confirming that the position of the buildings, including foundations and overhangs, building heights and finish grades comply with all municipal requirements; and
.10 all keys required for the entire Project.”

5.5.2 Delete and replace with the following:

“Upon receipt of the Construction Manager’s request for issuance of a Certificate of Completion for all or a designated portion of the Work, the Consultant will forthwith review the Work to verify the validity of the request and, no later than 10 working days after the
date of the request, will notify the Construction Manager and the Owner whether the Work, or the designated portion of the Work, is substantially performed by delivery of the applicable Certificate of Completion. With respect to a request from the Construction Manager for a review by the Consultant for issuance of the Certificate of Completion for the Work in its entirety, the Consultant will, in addition to making an inspection and assessment of the Work to verify the validity of the request, establish a list of all deficient and incomplete items of work, including an estimated value for each item, subject to the approval of such value by the Owner. The Owner may, until all of the deficient and incomplete work is rectified and completed to the satisfaction of the Consultant, withhold the following amounts from any payments to the Construction Manager:

.1 the aggregate amount, if any, determined pursuant to this paragraph 5.5.2 multiplied by two; and

.2 the amount, if any, determined pursuant to GC 5.9 WITHHOLDING OF PAYMENT.”

Add:

“5.5.4  The Construction Manager shall be responsible for all additional costs incurred by the Owner for the inspection of the Work prior to the Construction Manager meeting all the requirements set out in paragraph 5.5.1, and such costs shall be deducted from the monies due to the Construction Manager upon Substantial Performance of the Work.

5.5.5  If not submitted at the time of the request for Substantial Performance review then no later than 30 calendar days following issuance of the Certificate for Completion for the Work, the Construction Manager shall provide to the Owner all service contracts, manufacturer’s inspections, certifications, guarantees and warranties and assignments of all guarantees and warranties as specified in the Contract Documents.”

38. GC 5.6  PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

5.6.1  In line 1, delete “the Certificate of Substantial Performance of the Work” and replace with “the Certificate of Completion for the Work”.

Add:

“5.6.1.3  Submit a statement that all claims and demands for extra work or otherwise, under or in connection with the Contract, have been presented to the Consultant and that the Construction Manager expressly releases the Owner from all claims and demands except those made in writing prior to that date and still unsettled.”

5.6.2  Delete and replace with the following:

“The Consultant shall be the payment certifier responsible under the Builders Lien Act for certifying substantial completion of the Work and, if required, the work of a Subcontractor or Supplier, and for issuing a Certificate of Completion. The Construction Manager shall promptly provide the Consultant with all information and documentation requested by the Consultant to assist the Consultant in making its inquiries and determinations for issuing a Certificate of Completion, including without limitation for Subcontractors and Suppliers, and shall indemnify and save the Owner and the Consultant harmless from all liability arising from a failure to issue a Certificate of Completion when required, or from a premature
issuance of a Certificate of Completion for a Subcontractor or Supplier, arising directly or indirectly from a failure to promptly provide complete and accurate information and documentation requested by the Consultant.”

5.6.3 Delete.

5.6.5 Delete.

39. GC 5.7 PROGRESSIVE RELEASE OF HOLDBACK FOR THE WORK

5.7.1 In line 1 and 2, delete “, upon application by the Construction Manager, the Consultant has certified that the work of a Subcontractor or Supplier has been performed prior to Substantial Performance of the Work” and replace with:

“the Consultant has pursuant to paragraph 5.6.2 issued a Certificate of Completion for the work of a Subcontractor or Supplier.”

40. GC 5.8 FINAL PAYMENT

5.8.4 Delete and replace with the following:

“Subject to the provision of paragraph 10.4.1 of GC 10.4 - WORKERS’ COMPENSATION, and any lien legislation applicable to the Place of the Work, the Owner shall, no later than 20 calendar days after the issuance of a final certificate for payment, pay the Construction Manager as provided in Article A-9 of the Agreement - PAYMENT less any monies properly retained by the Owner pursuant to the terms of this Contract and less any other third party monetary claims against the Construction Manager which are enforceable against the Owner.”

PART 6 CHANGES

41. GC 6.1 OWNER’S RIGHT TO MAKE CHANGES

Add:

“6.1.4 Any substitution of Products specified in the Contract Documents must be approved by the Owner in writing prior to such substitution or variation.”

42. GC 6.2 CHANGE ORDER

6.2 Delete and replace with the following:

“6.2.1 When a change in the Work is proposed or required, the Consultant shall provide the Construction Manager with a written description of the proposed change in the Work. The Construction Manager shall promptly present, in a form acceptable to the Consultant, a method of adjustment or an amount of adjustment for the Contract Price and the adjustment in the Contract Time, as applicable, for the proposed change in the Work. The adjustment for the Contract Price shall not exceed the actual cost of the Construction Manager’s work for the change in the Work, plus an allowance for overhead and profit as follows:
.1 For the Construction Manager, for overhead and profit, 15% of the actual cost of the Construction Manager's work;

.2 For the Construction Manager, for overhead and profit, 7.5% of the amount for the Subcontractor's work, being the actual cost of the Subcontractor's work plus the amount determined as set out in subparagraph .3 below;

.3 For the Subcontractor, for overhead and profit, 15% of the actual cost of the Subcontractor's work.”

6.2.2 Delete from line 1 and 2 “Construction Manager’s Fee, the Guaranteed Maximum Price” and replace with “Contract Price”.

6.2.3 Delete and replace with the following:

“If a change in the Work results in a net decrease in the Contract Price, the amount of the credit shall be the net cost, without deduction for overhead and profit. When both additions and deletions covering related work or substitutions are involved in a change in the Work, the allowance for overhead and profit shall be calculated on the basis of the net increase, if any, with respect to that change in the Work.”

Add:

“6.2.4 Where requested by the Consultant, the Construction Manager shall promptly provide itemized labour and material cost and quantity breakdowns, subcontractor costs, and other detailed information required to substantiate the Construction Manager’s claim for a change to the Contract Price or the Contract Time.”

43. GC 6.3 CHANGE DIRECTIVE

6.3.1 Delete and replace with the following:

“If the Owner requires the Construction Manager to proceed with a change in the Work prior to the Owner and the Construction Manager agreeing upon any corresponding adjustment in the Contract Price and the Contract Time, the Owner, through the Consultant, shall issue a Change Directive.”

6.3.5 Delete and replace with the following:

“For the purpose of valuing Change Directives, changes in the Work that are not substitutions or otherwise related to each other shall not be grouped together in the same Change Directive.”

6.3.6 Delete and replace with the following:

“Unless otherwise agreed between the Owner and the Construction Manager, the allowance for overhead and profit shall be calculated as follows:

.1 For Construction Manager, for overhead and profit, 15% of the actual cost of the Construction Manager's work;
.2 For Construction Manager, for overhead and profit, 7.5% of the amount for Subcontractor’s work, being the actual cost of the Subcontractor’s work plus the amount determined as set out in .3 below;

.3 For Subcontractor, for overhead and profit, 15% of the actual cost of the Subcontractor's work.”

6.3.7 Delete and replace with the following:

“If the Owner and the Construction Manager do not agree on the proposed adjustment in the Contract Price, the Contract Time, or in the method of determining them, the adjustment shall be referred to the Consultant for a finding.”

6.3.8 Delete and replace with the following:

“When the Owner and the Construction Manager reach agreement on the adjustment to the Contract Price and the Contract Time, this agreement shall be recorded in a Change Order.”

Add:

“6.3.9 Pending determination of the final amount of a Change Directive, the undisputed value of the work performed as the result of a Change Directive is eligible to be included in progress payments.”

44. GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

6.4.2 Delete from line 2 and 3 “Construction Manager’s Fee, the Guaranteed Maximum Price” and replace with “Contract Price”.

6.4.3 Delete from line 2 “Construction Manager’s Fee, the Guaranteed Maximum Price” and replace with “Contract Price”.

Add:

“6.4.5 The Construction Manager warrants that it is familiar with the site comprising the Place of the Work having physically inspected such site and reviewed all reports and tests thereon included within the Contract Documents.”

45. GC 6.5 DELAYS

6.5.1 Delete from second sentence “Construction Manager’s Fee and the Guaranteed Maximum Price” and replace with “Contract Price”.

6.5.2 Delete from second sentence “Construction Manager’s Fee and the Guaranteed Maximum Price” and replace with “Contract Price”.

6.5.3 Delete and replace with the following:

“If the Construction Manager is delayed in the performance of the Work by:
.1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the Construction Manager is a member or to which the Construction Manager is otherwise bound),
.2 fire, unusual delay by common carriers or unavoidable casualties,
.3 abnormally adverse weather conditions, or
.4 any cause beyond the Construction Manager’s control other than one resulting from a default or breach of Contract by the Construction Manager, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Construction Manager. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Construction Manager agrees to a shorter extension. The Construction Manager shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the Owner, Consultant or anyone employed or engaged by them directly or indirectly.”

Add:

“6.5.6 During any delays in the performance of the Work as set out in GC6.5 DELAYS, the Construction Manager shall maintain adequate surveillance of the Work and undertake such maintenance and protection of the Work as may be reasonable to maintain safety and when possible to protect Products already installed in the Work or delivered to the Place of the Work.”

46. GC 6.6 CLAIMS FOR A CHANGE IN CONSTRUCTION MANAGER’S FEE FOR THE SERVICES, THE PRICE OF THE WORK OR THE GUARANTEED MAXIMUM PRICE

Delete title and replace with the following:

“GC 6.6. CLAIMS FOR A CHANGE IN CONTRACT PRICE”

6.6.1 Delete and replace with the following:

“If the Construction Manager intends to make a claim for an increase to the Contract Price, or if the Owner intends to make a claim against the Construction Manager for a credit to the Contract Price, the party that intends to make the claim shall give timely Notice in Writing of intent to claim to the other party with a copy to the Consultant.”

PART 7 DEFAULT NOTICE

47. GC 7.1 OWNER’S RIGHT TO PERFORM THE WORK OR TERMINATE THE CONTRACT

7.1.1 Add the following words in line 1, after “bankrupt,”:

“commits an act of bankruptcy or threatens to commit an act of bankruptcy,”

Add the following before “Work” in line 4: “Services and the”

7.1.2 Add the following after “neglects to” in line 1:

“perform the Services or the”
In line 2 after “and” add “, where the Construction Manager neglects to prosecute the Work,”

7.1.4.2 Add the following before “Work”:

“Services and the”

7.1.5 Delete and replace with the following:

“If the Owner terminates the Construction Manager’s right to continue with the Services and Work as provided in paragraphs 7.1.1 and 7.1.4, the Owner shall be entitled to:

.1 take possession of the Services, Work and Products at the Place of the Work; subject to the rights of third parties, utilize the Construction Equipment at the Place of the Work; finish the Services and Work by whatever method the Owner may consider expedient, but without undue delay or expense, and

.2 withhold further payment to the Construction Manager until a final certificate for payment is issued, and

.3 charge the Construction Manager the amount by which the full cost of finishing the Services and Work as certified by the Consultant, including compensation to the Consultant for the Consultant’s additional services and a reasonable allowance as determined by the Consultant to cover the cost of corrections to work performed by the Construction Manager that may be required under GC 12.3 – WARRANTY, exceeds the unpaid balance of the Contract Price; however, if such cost of finishing the Services and Work is less than the unpaid balance of the Contract Price, the Owner shall pay the Construction Manager the difference, and

.4 on expiry of the warranty period, charge the Construction Manager the amount by which the cost of corrections to the Construction Manager’s work under GC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the Construction Manager the difference.”

7.1.6 Delete.

Add:

“7.1.8 The Owner may terminate this Contract, in whole or part, during its term upon 14 calendar days’ written notice to the Construction Manager.

7.1.9 If the Owner terminates the Construction Manager’s right to continue with the Services and Work in whole or in part or terminates the Contract, the Construction Manager shall, safeguard the Work then completed and the materials and equipment then delivered to the Place of the Work, assign or novate any Subcontractor or Supplier contracts to the Owner or terminate any Subcontractor or Supplier contracts to the extent requested by the Owner during the term of the Contract and do such other extra work as may be ordered by the Consultant for the purpose of leaving the Work in a safe and useful condition.

7.1.10 Except as provided in paragraphs 7.1.5.3 and 7.1.5.4, the Construction Manager shall have no claim or right of action against the Owner for any damages, costs, expenses, loss of
profits or otherwise as a result of the termination by the Owner of the Construction Manager’s right to continue with the Services and Work in whole or in part or the termination by the Owner of the Contract.”

48. GC 7.2 CONSTRUCTION MANAGER’S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT

7.2.3.1 Delete.

7.2.3.2 Delete.

7.2.3.4 Add the following as a new paragraph:

“The foregoing defaults in contractual obligations shall not apply to the withholding of certificates of payment or payment, or both, following receipt of court ordered garnishments of monies owing to the Construction Manager, notice of the Construction Manager’s failure to pay claims against the Construction Manager or the filing of liens against the Project for as long as they remain outstanding.”

7.2.4 In line 2, delete the number “5” and replace with the number “20”.

Add at the end:

“provided that if the default is of the nature set out in paragraph 7.2.3.4 and such default cannot be reasonably corrected within 20 Working Days, the Owner shall no longer be considered to be in default if the Owner:

.1 provides the Construction Manager with a reasonable schedule for correction within 20 Working Days; and

.2 corrects the default in accordance with such schedule.”

PART 8 DISPUTE RESOLUTION

49. GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

Add:

“8.2.9 Unless both parties agree, the Construction Manager shall not stop the Work, or any part of the Work, pending the resolution of any dispute under the Contract between the parties.”

PART 9 PROTECTION OF PERSONS AND PROPERTY

50. GC 9.1 PROTECTION OF WORK AND PROPERTY

9.1.4 Delete and replace with the following:

“Should damage occur to the Work or Owner’s property for which the Construction Manager is not responsible, as provided in paragraph 9.1.1, the Construction Manager shall make good such damage to the Work and, if the Owner so directs, to the Owner’s property. The Contract Price and the Contract Time shall be adjusted as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.”

51. GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS
9.2.1 Add at the end:

“and with respect to any toxic or hazardous substances or materials which may be brought on to the Place of the Work by the Construction Manager or its Subcontractors.”

9.2.5.4 Add at the end:

“and take all necessary steps in accordance with the instructions of the Consultant and all applicable legislation to treat, store or otherwise dispose of the substances or materials.”

9.2.7 Delete and replace with the following:

“If the Owner and Construction Manager agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the Work by the Construction Manager or anyone for whom the Construction Manager is responsible, the Owner shall promptly at the Owner’s own expense:

.1 take all steps as required under paragraph 9.2.4;

.2 reimburse the Construction Manager for the costs of all steps taken pursuant to paragraph 9.2.5; and

.3 extend the Contract Time for such reasonable time as the Consultant may recommend in consultation with the Construction Manager and the expert referred to in paragraph 9.2.6 and reimburse the Construction Manager for reasonable costs incurred as a result of the delay.”

9.2.8.4 Delete and replace with the following:

“The Construction Manager shall indemnify and hold harmless the Owner, the Consultant, their agents and employees, from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which are brought on to the Place of the Work by the Construction Manager or its Subcontractors. This obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in GC 12.1 - INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph.”

52. GC 9.3 ARTIFACTS AND FOSSILS

9.3.3 Delete and replace with the following:

“The Consultant will investigate the impact on the Work of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the Construction Manager’s cost or time to perform the Work, the Consultant, with the Owner’s approval, will issue appropriate instructions for a change in the Work as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.”

53. GC 9.4 CONSTRUCTION SAFETY

9.4.1 Delete the following from line 1:
“subject to paragraph 3.2.2.2 of GC 3.2—CONSTRUCTION BY OWNER OR OTHER CONTRACTORS”

Add:

“9.4.2  The Construction Manager shall be responsible for and ensure the safety not only of the workers, Subcontractors, tradesmen and suppliers and their plant and equipment but also of all other persons who enter the Place of the Work whether during working hours or not and for that purpose shall erect such boardings and signs and shall employ such safety measures as may be necessary to ensure the safety of such persons.

9.4.3  The Construction Manager acknowledges and agrees that the Construction Manager shall be the “prime contractor” for the workplace for the purposes of section 118 of the Workers Compensation Act, as amended from time to time. Without limiting the foregoing, the Construction Manager shall, as the “prime contractor”, comply with, and ensure compliance by Subcontractor and Suppliers with, the Workers Compensation Act of British Columbia and its regulations including the Occupational Health & Safety Regulations, WHIMIS regulation and the transportation of hazardous substances or dangerous goods requirements and obligations and shall pay assessments or compensation required to be paid under applicable legislation. If Construction Manager or any Subcontractor fails to pay any due assessment or compensation, the Owner may make such payment on behalf of Construction Manager or any Subcontractor, but will not be obliged to do so. Construction Manager shall reimburse Owner the amount of such payment on demand. The Owner may set off any amounts paid against money otherwise owed to the Construction Manager.

9.4.4  The Construction Manager shall deliver the Notice of Project required by Section 20.2 of B.C. Regulation 296/97 to the Workers’ Compensation Board of British Columbia, in accordance with the requirements of Section 20.2 of B.C. Regulation 296/97.

9.4.5  The Construction Manager shall be the “prime contractor” with respect to any work performed by the Owner’s own forces or other firms retained by the Owner carried out in the area of the Place of the Work. Without limiting the generality of the foregoing, the Construction Manager is responsible for ensuring that the work undertaken by the Owner’s own forces or other contractors retained by the Owner are coordinated with the Work so as to avoid or minimize any hazardous situations.

9.4.6  The Construction Manager shall immediately inform the Owner if the Owner’s own forces or other contractor firms retained by the Owner attend at the Place of the Work without prior notification to the Construction Manager.

9.4.7  The Workers’ Compensation Board of British Columbia operates under the name WorkSafeBC. References in the Contract to the Workers’ Compensation Board, WCB, compensation board, WorkSafeBC, and other similar terms shall be understood to refer to the Workers’ Compensation Board of British Columbia and WorkSafeBC and its operating bodies.”

54. GC 9.5.3 MOULD

9.5.3  Delete and replace with the following:
“If the Owner and Construction Manager agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the Construction Manager’s operations under the Contract, the Owner shall promptly, at the Owner’s own expense:

.1 take all reasonable and necessary steps to safely remediate or dispose of the mould;

.2 reimburse the Construction Manager for the cost of taking the steps under 9.5.1.2 and making good any damage to the Work as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;

.3 extend the Contract Time for such reasonable time as the Consultant may recommend in consultation with the Construction Manager and the expert referred to in paragraph 9.5.1.3 and reimburse the Construction Manager for reasonable costs incurred as a result of the delay; and

.4 indemnify the Construction Manager as required by GC 12.1 – INDEMNIFICATION.”

PART 10 GOVERNING REGULATIONS

55. GC 10 TAXES AND DUTIES

10.1.1 Delete and replace with the following:

“The Contract Price shall include all taxes and customs duties in effect at the time of the bid closing except for Value Added Taxes payable by the Owner to the Construction Manager as stipulated in Article A-8 of the Agreement – CONTRACT PRICE.”

Add:

“10.1.2 Any increase or decrease in costs to the Construction Manager due to changes in such included taxes and duties after exercising the stipulated price option shall increase or decrease the Contract Price accordingly.

10.1.3 Where documentation may be required for tax refund purposes, the Construction Manager shall be responsible for providing the Owner with such invoices and records as may be necessary to substantiate the amount of tax paid during the performance of the Work for which the Owner may lawfully claim exemption.”

56. GC 10.2 LAWS, NOTICES, PERMITS AND FEES

10.2.3 Delete and replace with the following:

“The Construction Manager shall be responsible for the procurement of permits, licences, inspections and certificates which are necessary for the performance of the Work and customarily obtained by contractors in the jurisdiction of the Place of the Work after the issuance of the building permit. The Contract Price includes the cost of these permits, licences, inspections and certificates, and their procurement.”

Add:
“10.2.7 The Construction Manager shall provide to the Consultant copies of all inspection reports from the various authorities having jurisdiction forthwith as they are received from time to time.”

57. GC 10.3 PATENT FEES

10.3.1 Delete and replace with the following:

“The Construction Manager shall pay the royalties and patent licence fees required for the performance of the Contract. The Construction Manager shall hold the Owner harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Construction Manager’s performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention by the Construction Manager or anyone for whose acts the Construction Manager may be liable.”

10.3.2 Delete.

58. GC 10.4 WORKERS COMPENSATION

10.4.1 In line 3, add “by the Construction Manager and Subcontractors”, after the word “compliance”

Add:

“10.4.3 The Construction Manager shall abide by and comply with all provisions of the Workers’ Compensation Act with respect to the performance of the Work and will make all payments, contributions and other remittances and all reports, returns and statements required of employers under the said Act. The Construction Manager shall ensure full compliance with the said Act by all Subcontractors and other persons employed by the Construction Manager or with whom the Construction Manager may make any contract for the performance of any part of the Work. The Construction Manager agrees to indemnify the Owner against all cost, loss, liability, obligation and lien which may arise as a consequence of any failure by the Construction Manager or any Subcontractor or other person fully to comply with the said Act. The Construction Manager agrees immediately to qualify, and shall require all Subcontractors to qualify, as an employer or employers under the said Act.”

PART 11 INSURANCE – BONDS

59. GC 11.1 Delete and replace with the following:

“The Owner shall obtain, maintain and pay for, through B.C. Housing, the following types of insurance coverage’s described in this 11.1.1 issued by insurance companies licensed to carry on business in British Columbia:

.1 Course of Construction Policy
(1) The policy shall cover “all risks” of direct physical loss or damage to the property described in (2) (a) below, including the perils of earthquake and flood, subject to customary exclusions.

(2) The policy shall:
(a) be written in the joint names of the Owner, the fee simple owner of the Place of the Work, B.C. Housing, the Construction Manager and
Subcontractors, consulting architects, sub consultants, engineers, suppliers who perform work at the Place of the Work.

(b) cover all property forming part of the Project, including goods and materials to be incorporated in the Project while in storage at the Place of the Work or in transit to the Place of the Work and within Canada or the U.S.A., including while on a ferry, railway car or transfer barge in connection with land transportation thereof, but such coverage shall not include coverage for the Construction Manager’s construction machinery and equipment of any description; and

(c) Provide for a limit of coverage not less than the estimated final completed value of the Project, with a sub-limit of $1,000,000 Transit.

(3) Each claim under the foregoing insurance shall be adjusted separately.

(4) Claims under the foregoing insurance shall be subject to a deductible of $10,000 for each and every claim, except for projects with a project value in excess of $10,000,001, in which case the deductible shall be $25,000 and, except for the following peril, which shall be subject to the following higher deductible:

(a) 5% of the value of the Project at the time and place of loss when the loss arises as a consequence of the peril of earthquake shock, with a minimum deductible of $250,000;

(5) In addition, a minimum waiting period of 1 day for each month of the project term, subject to a minimum of 30 calendar days, shall apply to costs and expenses described in the insurance policy as “soft costs”.

(6) The foregoing insurance shall be maintained continuously from commencement of the Work until the occupancy permit is issued by the authority having jurisdiction with respect to the Project.

(7) The foregoing insurance shall contain a waiver of the insurer’s subrogation rights against all insureds and their officers, employees and servants, except where a loss is caused by or results from any error or omission in design or any other professional error or omission.

(8) The foregoing insurance shall provide that, in the event of loss or damage, payment shall be made to B.C. Housing and the Owner on their own behalf and on behalf of any and all insureds.

(9) Exclusions under the foregoing insurance will be as prescribed by the insurer.

(10) The Construction Manager shall, at the Construction Manager’s own expense, comply with all insurance warranties applicable to the foregoing insurance, including watchman, open flame, fence, fire hydrant and hot works operations. The detail of Owner Controlled Insurance Warranties required of this policy is posted on BC Housing website as the following hyperlinks:

http://www.bchousing.org/Partners/Standards_Procurement/Procurement/Contracts

http://www.bchousing.org/contractors/resources

.2 Wrap Up Liability Policy

(1) The wrap up liability policy shall:

(a) be written in the joint names of the Owner, the fee simple owner of the Place of the Work, B.C. Housing, the Construction Manager and subcontractors, consulting engineers, sub consultants or consulting architects and suppliers who perform work at the Place of the Work provided however that such policy shall exclude Suppliers whose only function is to supply materials, machinery or other supplies to the project and who do not carry out any installation, construction, or supervisory work on the
project and shall exclude security protection organizations or persons providing site protection on or at the project.

(b) provide the following coverage’s:
   (i) Premises and Operations Liability;
   (ii) Products and Completed Operations Liability;
   (iii) Blanket Contractual Liability;
   (iv) Cross Liability;
   (v) Elevator and Hoist Liability;
   (vi) Contingent Employer’s Liability;
   (vii) Personal Injury Liability;
   (viii) Shoring, Blasting, Excavating, Underpinning, Demolition, Pile driving and Caisson Work, Work Below Ground Surface, Tunneling and Grading, as applicable;
   (ix) Broad Form Completed Operations;
   (x) Broad Form Property Damage; and
   (xi) Employees as Additional Insureds,

provided however that the insurance does not extend to any activities, work, jobs or undertakings of the insureds other than those directly related to the Work under this Contract; and

(c) Provide for a limit of liability not less than $10,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, subject to a general aggregate limit of $20,000,000 and a limit of liability not less than $10,000,000 annual aggregate for completed operations.

(2) Exclusions under the foregoing insurance will be as prescribed by the insurer.
(3) Each claim under the foregoing insurance shall be adjusted separately.
(4) Claims under the foregoing insurance shall be subject to a deductible of $10,000 for each and every claim, except with respect to hot roofing activities, the deductible shall be $50,000.00.
(5) The foregoing insurance shall be maintained continuously from commencement of the Work until the insured project is completed and accepted by or on behalf of the owner, provided that the Broad Form Completed Operations coverage shall be maintained for 24 months.

11.1.2 The Construction Manager shall be responsible for deductible amounts under all policies described in paragraph 11.1.1 except where such amounts may be excluded from the Construction Manager’s responsibility by the terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY and except for deductibles associated to perils of flood or earthquake insurances.

11.1.3 The Owner shall promptly provide a copy of each insurance policy described in paragraph 11.1.1 to any insured party upon request.

11.1.4 The Owner does not represent that the insurance policies described in paragraph 11.1.1 will be sufficient to protect the Construction Manager against all of its responsibilities under the Contract or as required by law. The Construction Manager shall obtain such additional insurance as it may consider necessary at its own expense. The insurance coverage described in paragraph 11.1.1 shall in no way limit the Construction Manager’s obligations under GC 12.1 INDEMNIFICATION.
11.1.5 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the Construction Manager shall obtain, maintain and pay for the following types of insurance coverage’s issued by insurance companies licensed to carry on business in British Columbia and shall cause all of its Subcontractors to maintain insurance in forms and with limits appropriate to the work conducted by the subcontractors engaged on the Project. If any of the insurance coverage required by the Contract is not provided or lapses for any reason whatsoever, the Construction Manager shall, if requested to do so by the Owner at the Construction Manager’s risk and expense, stop all work on the Project until satisfactory evidence of coverage is produced. The insurance coverage required by this paragraph 11.1.5 shall be in forms and amounts acceptable to the Owner and shall be issued by an insurer licensed to conduct insurance business in British Columbia. The approval of any insurance policy by the Owner shall in no way relieve the Construction Manager of the obligation to provide the insurance referred to in this paragraph 11.1.5:

1.1 Automobile Insurance
(1) This policy shall cover all vehicles owned by the Construction Manager or leased by the Construction Manager and shall provide for third party liability limits not less than $2,000,000.00 inclusive for bodily injury and property damage.

(2) Automobile liability insurance shall cover any motor vehicle, trailer or semi-trailer owned, used or operated by or on behalf of the Construction Manager and obligated by law to carry a licence (other than a special licence issued in respect of any motor vehicle, trailer or semi-trailer, chiefly used or operated off highways) as well as self-propelled equipment unlicensed but required to be insured in accordance with the Motor Vehicle Act.

1.2 Construction Manager’s Equipment Insurance
(1) This policy shall cover all Construction Manager’s tools and equipment used at the Place of the Work against “all risks” of direct physical loss or damage, including the perils of earthquake and flood, subject to customary exclusions.

(2) All such contractor’s equipment insurance policies shall contain a waiver of subrogation against the Owner, the fee simple owner of the Place of the Work, B.C. Housing, the Construction Manager, the Consultant, the Subcontractors, architects, engineers, consultants and sub-consultants engaged on the Project, and shall provide for 60 calendar days prior written notice of cancellation or material change to be given by the insurer(s) to the Owner and B.C. Housing.

1.3 Errors and Omission Insurance
The Construction Manager shall ensure that any consultants engaged by the Construction Manager in the design of the Work each carry Errors and Omissions Insurance that has limits appropriate to the risk arising out of the work conducted.

11.1.6 The Construction Manager shall be responsible for deductible amounts under all policies described in paragraph 11.1.5 except where such amounts may be excluded from the Construction Manager’s responsibility by the terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY.

11.1.7 The Construction Manager shall, prior to the commencement of the Work, provide the Owner with Certificates of Insurance evidencing compliance with paragraph 11.1.6. For automobile liability the standard I.C.B.C. Certificate of Insurance Form #APV-47 shall be used.
11.1.8 The Owner shall not be responsible for injury to the Construction Manager’s employees or for loss or damage to the Construction Manager’s or to the Construction Manager’s employees’ machinery, equipment, tools or supplies which may be temporarily used or stored in, on or about the premises during construction and which may from time to time, or at the termination of the contract, be removed from the premises. The Construction Manager hereby waives all rights of recourse against the Owner or any other contractor with regard to damage to the Construction Manager’s property.”

60. GC 11.2 Delete and replace with the following:

“GC 11.2 BONDS

11.2.1 The Construction Manager shall, at least 7 calendar days prior to the commencement of construction, provide to the Owner a performance bond and a labour and material payment bond, each in the amount of 50% of the Price of the Work.

11.2.2 All bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in British Columbia and shall be maintained in good standing until the fulfillment of the Contract including all warranty obligations pursuant to GC12.3 WARRANTY, provided that the performance bond may be qualified to exclude the following:

(a) any warranty obligation for events or circumstances occurring or discovered more than two years after the date of Substantial Performance of the Work;

(b) errors or omissions in design or engineering or breach of warranty of design by the Construction Manager.

The obligee on the bonds shall be the Owner, and B.C. Housing shall be named as dual obligee on the bonds pursuant to a dual obligee rider acceptable to the Owner and B.C. Housing.

11.2.3 All bonds shall be held and be subject to enforcement by the Owner without prejudice to any other legal remedy available to the Owner.”

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

61. GC 12.1 Delete and replace with the following:

“12.1.1 Delete and replace with the following:

“Without restricting the parties’ obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, and excepting always losses arising out of the independent acts of the party for whom indemnification is sought, the Owner and the Construction Manager shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this contract, provided such claims are:

1. caused by:
   (a) the acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or

   (b) a failure of the party to the Contract from whom indemnification is sought to fulfill its terms or conditions;
.2 and made by Notice in Writing within such periods as prescribed by the Limitation Act of the Province of British Columbia.”

12.1.2 Delete and replace with the following:
“The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:
.1 In respect to losses suffered by the Owner and the Construction Manager for which insurance is to be provided by the owner pursuant to GC 11.1 – INSURANCE, the limit of the COURSE OF CONSTRUCTION POLICY– GC11.1.1.1 or the limit of the WRAP UP LIABILITY POLICY– GC11.1.1.2 whichever is pertinent to the loss.
.2 In respect to losses suffered by the Owner and the Construction Manager for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the Price of the Work or $2,000,000, but in no event shall the sum be greater than $20,000,000.00
.3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.”

62. GC 12.2 WAIVER OF CLAIMS

12.2.1 Delete the following:
“Subject to any lien legislation applicable to the Place of Work, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable to the Place of Work, the Construction Manager waives and releases the Owner from“

And replace with the following:
“The Construction Manager’s request or application for the Certificate of Completion shall constitute a waiver and release by the Construction Manager of any and”

12.2.1.1 Delete the following:
“no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the Place of Work”

And replace with the following:
“together with or prior to the Construction Manager’s request or application for the Certificate of Completion”.

12.2.3 Delete the following:
“Subject to any lien legislation applicable to the Place of Work, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable to the Place of Work, the Owner waives and releases the Construction Manager from”

And replace with the following:
“The issuance of the Certificate of Completion shall constitute a waiver and release by the Owner of any and”

12.2.3.1 Delete “no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the Place of Work”

And replace with “together with or prior to the Construction Manager’s request or application for the Certificate of Completion”.

12.2.3.4 Add at the end:

“or for which the aggregate cost of repair or remedying the defects or deficiencies would be greater than 10% of the Price of the Work.”

12.2.4 Delete and replace with the following:

“The Owner waives and releases the Construction Manager from all claims referred to in paragraph 12.2.3.4 except claims for which Notice in Writing of claim has been received by the Construction Manager from the Owner within a period of six years from the date of Substantial Performance of the Work or, as to any defect or deficiency or other claim of which the Owner is not aware at the end of the said period of six years, a period of one year after the Owner has become aware.”

12.2.8 Immediately before the words “further interim” and again immediately before the words “submit a final account” insert the following:

“upon request”

12.2.9 Delete.

12.2.10 Delete.

Add:

“12.2.11 For greater certainty, in paragraphs 12.2.1, 12.2.2, 12.2.3 and 12.2.5 of GC 12.2 WAIVER OF CLAIMS, “claims” includes claims based on changes and delay (e.g. under Part 6 CHANGES).”

63. GC 12.3 WARRANTY

12.3.6 Delete.

Add:

“12.3.8 Where specific warranties or guarantees are required by the Contract Documents relating to the Work and including without limitation those relating to any fixtures, improvements, appliances, equipment or other chattels for the Project, the Construction Manager shall secure such warranties or guarantees from the Subcontractors and Product suppliers and they shall be assigned to or addressed to and in favour of the Owner. The Construction Manager shall cooperate and assist in the enforcement of such warranties or guarantees. The Construction Manager shall deliver the originals plus 2 copies of such warranties or
guarantees to the Owner no later than 30 calendar days following issuance of the Certificate of Completion.”

63. **Add the following General Conditions:**

**“GC13.1 GAS AND ELECTRICITY”**

13.1.1 The occupancy date will be the date of turnover of all gas and electricity billings to the Owner. The Construction Manager shall notify the gas and electricity suppliers and the Owner in writing as to the date of billing turnover at least 45 calendar days prior to such date.

13.1.2 The Owner shall be responsible for notifying the gas and electricity suppliers of start-up billing, failing which the Owner shall reimburse the Construction Manager for all charges accruing thereafter.

**GC 14.1 PUBLIC STATEMENTS AND SIGNS**

14.1 The Construction Manager shall not make any public statement with respect to the Project without the prior written consent of the Owner and B.C. Housing.

14.1.2 The Construction Manager shall not erect or permit the erection of any sign or advertising at the Place of the Work without the prior written approval of the Owner.

**GC 15.1 LIENS**

15.1.1 The Construction Manager will pay or cause to be paid promptly when due all claims, debts and charges against the Construction Manager or Subcontractors engaged by the Construction Manager which might become a lien upon the Project arising out of the Work performed or materials furnished by the Construction Manager or any Subcontractors under the Contract, and will not suffer or permit any lien or encumbrance of any kind to be filed against or upon the Project, regardless of whether the basis of such lien is a claim against the Construction Manager or any Subcontractor.

15.1.2 If the Owner is not in default in making payment to the Construction Manager as required under this Contract and if a claim of builders lien is filed against title to the Project by anyone claiming under or through the Construction Manager, the Owner may notify the Construction Manager in writing that the filing of such claim or claims of builders lien is a material default by the Construction Manager of its contractual obligations and instruct the Construction Manager to obtain and file a release of the said claim or claims in the Land Title Office within 7 Working Days immediately following receipt of such notice.

15.1.3 If such default is not corrected within the time specified or subsequently agreed upon in writing, the Owner, without prejudice to any other right or remedy it may have, may:

.1 pay, settle or compromise any such claim or claims of builders lien, or pay into Court sufficient security for the cancellation thereof as determined by the Court and deduct the amount of any such payment from the next ensuing payment which may become due to the Construction Manager; or

.2 pay into Court from the holdback account established by the Owner in accordance with the Builders Lien Act sufficient security for the cancellation of any such claim or claims of builders lien as determined by the Court and this provision will constitute
the agreement of the Construction Manager to make such payment as required under Section 5(2) (c) of the Builders Lien Act;
and the Owner may deduct from the next ensuing payment which may become due to the Construction Manager all costs and expenses thereby incurred by the Owner, including any account for legal fees and disbursements incurred by the Owner.

15.1.4 If the Owner is not in default in making payment to the Construction Manager as required under this Contract, the Construction Manager will indemnify and save the Owner harmless from and against the costs of any and all actions commenced by any lien claimant claiming under or through the Construction Manager against the Owner pursuant to the Builders Lien Act, including solicitor and client costs.

15.1.5 Notwithstanding any other provision of the Contract, no payments whatsoever shall be due or owing to the Construction Manager so long as any liens filed by anyone claiming under or through the Construction Manager remain registered against title to the Project.

GC16.1 INFORMATION TECHNOLOGY RELATED THREATS

16.1.1 The Construction Manager shall notify the Owner and its mutual affiliates, as soon as reasonably possible, of any information technology related threat that may be transmitted electronically to the Owner or any of its affiliates which includes but is not limited to: viruses, rogue security software, trojan horses, spyware, computer worms, phishing, rootkits and any real or perceived electronic attack (the “IT Threat”). In the event the Owner becomes aware of an IT Threat, the Owner may, at its sole discretion, notify any organization that it reasonably believes could be exposed to the same IT Threat and include in such notification any relevant details for the purpose of avoiding or minimizing any negative impact.”

APPENDIX – STIPULATED PRICE OPTION

Delete this Appendix and replace with the BC Housing Supplementary General Conditions to the CCDC 5B Stipulated Price Option.

END OF SUPPLEMENTARY CONDITIONS
ATTACHMENT 1
Form Of Amendment To Convert To A Stipulated Price Contract

AMENDMENT # ______ to
SUPPLEMENTARY GENERAL CONDITIONS TO
CCDC5B—2010 CONSTRUCTION MANAGEMENT CONTRACT—FOR SERVICES AND CONSTRUCTION,
STIPULATED PRICE AGREEMENT (the “Agreement”)

This Amendment [Insert #] to the Agreement is dated as of [Insert Date of the Amendment] between [Insert Legal Name of Owner] (“Owner”) and [Insert Legal Name of the Construction Manager] (“Construction Manager”), collectively (the “Parties”) or individually (the Party”).

WHEREAS the Parties entered into the Agreement dated as of [Insert the date of the Construction Management Agreement] for the construction of the [Insert Name of Project] located at [Insert project Address];

AND WHEREAS pursuant to section 1.4 of Article A-1 of the Agreement, the Parties agreed to set out the mutually agreed to Contract Price amounts and the date by which the Construction Manager must attain Substantial Performance of the Work in the form of an amendment to the Agreement upon the completion of the Construction Procurement Phase of the Agreement (as set out in Schedule A1 to the Agreement);

AND WHEREAS the Construction Procurement Phase of the Agreement was completed on [Insert Date];

NOW THEREFORE in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound the Parties hereby agree as follows;

1. Section 1.5 of Article A-1 to the Agreement is hereby amended by deleting existing section and inserting the following:

“The Construction Manager shall subject to adjustment in Contract Time as provided for in the Contract Documents, attain Substantial Performance of the Work, by the following date: [Insert Mutually Agreed to Date].”

2. ARTICLE A-4 CONTRACT DOCUMENTS is hereby amended by adding the following documents:

• [Insert document number, description, version]
• [Insert document number, description, version]

For greater clarity, in the event that a new version of a document is added, the newest version of the document shall prevail.

3. ARTICLE A-8 CONTRACT PRICE to the Agreement is hereby amended by deleting the existing section and inserting the following:

“ARTICLE A-8 CONTRACT PRICE

8.1 The Contract Price, which excludes Value Added Taxes, is:
$ ____________________ [Complete as Agreed to]

8.2 **Value Added Taxes** (of _____ %) payable by the Owner to the Construction Manager are: $ ____________________ /100 dollars [Complete as Agreed to]

8.3 Total amount payable by the Owner to the Construction Manager for the construction of the Work is: $ ____________________ /100 dollars [Complete as Agreed to]

8.4 These amounts shall be subject to adjustments as provided in the Contract Documents.

8.5 All amounts are in Canadian funds.”

4. **New GC 3.15 – LIQUIDATED DAMAGES**

Add new General Condition as follows:

“**GC 3.15 LIQUIDATED DAMAGES**

3.15 If the Construction Manager fails to achieve **Substantial Performance of the Work** on or before the date set out in the **Contract Documents**, as may be adjusted in accordance with this **Contract** (the “Scheduled Substantial Performance Date”), the Construction Manager will pay to the Owner by way of liquidated damages and not as a penalty the sum of $[POPULATE] per day for each and every day after the Scheduled Substantial Performance Date that Substantial Performance of the Work is not achieved (or if the Owner has extended the Contract Time in accordance with this **Contract**, such other date established for the Scheduled Substantial Performance Date). The maximum aggregate amount of such liquidated damages will be ten percent (10%) of the **Contract Price**. If this **Contract** is terminated, the reference in this GC 3.15 to the “**Contract Price**” will be deemed only for purposes of this GC 3.15 to be the amount to which the Construction Manager would have been entitled if the Construction Manager had properly performed and completed the Work and this **Contract** had not been terminated. The liquidated damages will not relieve the Construction Manager from its obligation to complete the Work or from any other duties, obligations or responsibilities of the Construction Manager under this **Contract**, and will not limit the Owner’s rights to terminate this **Contract** for default of the Construction Manager under this **Contract**.

The Owner and the Construction Manager agree that the amount in GC 3.15 represents a genuine pre-estimate of the damages and expenses that the Owner is likely to incur for such failure to meet the Scheduled Substantial Performance Date 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 any amounts payable to the Construction Manager under this **Contract** or may require payment thereof by the Construction Manager on demand.”

5. This Amendment #______ to the Agreement is effective as of [Insert month/day/year] (“Effective Date”),

6. Except as provided in this Amendment #______, all terms used in this Amendment that are not otherwise defined shall have the respective meanings ascribed to such terms in the Agreement.
7. Except as set forth in this Amendment #_______ to the Agreement, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this amendment and the Agreement or any earlier amendment, the terms of this Amendment #_______ to the Agreement will prevail.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment #_______ to the Agreement to be executed by their duly authorized officers and be effective as of the Effective Date.

[INSERT OFFICIAL NAME OF OWNER]

Per:

______________________________
Print name and title of authorized representative

______________________________
Signature of authorized representative

______________________________
Date of signature

[Insert Construction Manager’s Legal Name]

PER:

______________________________
Print name and title of authorized representative

______________________________
Signature of authorized representative

______________________________
Date of signature