

BRITISH COLUMBIA HOUSING
SUPPLEMENTARY GENERAL CONDITIONS TO
CCDC5B—2010 CONSTRUCTION MANAGEMENT CONTRACT—FOR SERVICES AND CONSTRUCTION,
STIPULATED PRICE AGREEMENT
(1 May 2023 Version)

The Agreement is hereby amended as follows:

ARTICLES OF AGREEMENT

Add:

ARTICLE A-0 BC HOUSING RIGHTS AND INVOLVEMENT

"If *BC Housing* is not identified as the *Owner* in the Agreement between *Owner* and *Construction Manager*, then, notwithstanding anything else in the *Contract*, the *Construction Manager* shall:

- .1 include *BC Housing* as a dual/multiple obligee on the bonds required by Part 11;
- .2 indemnify *BC Housing* to the same extent as the *Construction Manager* indemnifies the *Owner* pursuant to Part 12 (as modified by these Supplementary Conditions)
- .3 agrees and acknowledges that *BC Housing* has the same right of inspection, review and audit as the *Owner* under GC 1.7 (as modified by these Supplementary Conditions) and as otherwise identified in the *Contract*."

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 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*.

- 1.9 The *Construction Manager* will give to the *Owner* a minimum of 45 calendar days' written notice that the *Construction Manager* will meet the date set in the Article A-1 for *Substantial Performance of Work*, or the latest revision to this date that is executed through the endorsement of the *Contract* or change order/s."

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;
- *BC Housing's* Supplier Code of Conduct latest version at the effective date of this *Contract*. The detail of *BC Housing's* Supplier Code of Conduct is posted on *BC Housing's*

website at the following hyperlink: <https://www.bchousing.org/about/doing-business/supplier-centre/contract-essentials.>”

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%)
 - 50% *Construction Documents* Phase (25%)
 - 100% *Construction Documents* Phase (25%)
 - Construction Procurement Phase (35%)

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*.”

ARTICLE A-6 REIMBURSABLE EXPENSES FOR THE SERVICES

Delete this Article in its entirety.

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:"

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.”

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

SCHEDULE A2 TO THE AGREEMENT

Delete this Schedule in its entirety.

SCHEDULE B TO THE AGREEMENT

Delete this Schedule in its entirety.

DEFINITIONS

Definition 5 – CHANGE DIRECTIVE

Delete and replace with the following:

“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.”

Definition 6 – CHANGE ORDER

Delete and replace with the following:

“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.”

Definition 31—SUBSTANTIAL PERFORMANCE OF THE WORK

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

“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.”

Definition 32 – SUPPLEMENTAL INSTRUCTION

Delete and replace with the following:

“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.”

New Definition 38 – CONTRACT PRICE

“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.”

New Definition 39 – BC HOUSING

“BC Housing

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

New Definition 40 – BUILDERS’ LIEN ACT

“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.”

New Definition 41 – Certificate of Completion

“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

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 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”

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*.”

GC 1.7 RECORDS AND AUDIT

Add a new GC 1.7 as follows:

“GC 1.7 RECORDS AND AUDIT

1.7.1 The *Construction Manager* will keep and maintain full and detailed records for six years after expiry of the warranty period pursuant to Part 12 all records, reports and other documentation required under this *Contract*. During this period, the *Owner*, the *Consultant*, and the *Owner’s* representatives may on request, and acting reasonably, require copies of, inspect and audit all books, invoices, and records of the *Construction Manager* that relate to any *Change Order*, *Change Directives*, delay claims or disputes by the *Construction Manager*, including but not limited to quotations and invoices by *Subcontractors* or *Suppliers*. The *Owner* may be assisted by a third-party audit firm of the *Owner’s* choice. In conducting the audit, the *Owner* will have all powers necessarily incidental to conducting an audit, including the right to have reasonable access to the *Construction Manager*, its offices and its personnel and to inspect and take copies of any record.

1.7.2 If the *Owner* provides notice to the *Construction Manager*, that the *Owner* is conducting an audit, the *Construction Manager* will promptly provide all other information reasonably requested by the *Owner* or its audit firm. The *Construction Manager* will cooperate with the *Owner* and its audit firm in the conduct of any audit and the parties will promptly review and settle all matters arising from such audit, including the refunding or payment of monies to the other, if applicable.

1.7.3 The *Construction Manager* must ensure that all direct and indirect contracts with *Subcontractors* and *Suppliers* include an agreement to be bound by the terms of this GC 1.5 and to provide access to the *Owner* and its third-party audit firm to perform an audit in accordance with GC 1.7. The *Construction Manager* acknowledges that both the *Owner* and its third-party audit firm may request information to support an audit directly from any of its *Subcontractors* or *Suppliers* and the *Construction Manager* will not prevent or influence its *Subcontractors* or *Suppliers* from supplying the information.

- 1.7.4 Notwithstanding the above, subject to applicable law, the right to review, inspect audit, or copy will not extend to financial statements **and other information not directly associated with the Project** or to the composition of agreed-upon lump sums, fixed unit rates or percentages except to the extent the *Owner* requires such information to validate the cost make-up of a *Change Order*.”

PART 2 ADMINISTRATION OF THE CONTRACT

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.”

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*.”

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.”

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*.”

GC 2.5 DEFECTIVE WORK

2.5.1 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

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*.

3.1.4 The *Construction Manger* agrees to allocate only those key personnel proposed in writing, for the roles of Site Supervisor, Project Coordinator and Project Manager, or, any other key personnel specified, and accepted by the *Owner* with the acceptance of the tender or on entering into this *Contract*. Any changes to key personnel must be proposed in writing and approved by the *Owner*”

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.”

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."

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*."

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."

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

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

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

5.1.1 Delete.

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.”

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.”

GC 5.5 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 Add at the end:

“The *Construction Manager* shall submit the following documents and other items 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* this will include, at minimum, a holdback of \$15,000.00 CAD for each sub-paragraph .4 and .5 and \$10,000.00 CAD for sub-paragraph .11.

- .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*; and
- .11 the final Waste Management Reporting Form demonstrating achievement against the targets identified at Article 1.7.”

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*.”

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.

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*.”

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

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.”

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*.”

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.”

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*.”

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*.”

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

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 the *Contract* at any time for any reason. In such event, the *Owner* shall pay to the *Construction Manager*:

- .1 the proportionate part of the *Contract Price* earned up to the effective date of termination; plus
- .2 the *Construction Manager's* reasonable demobilization costs, to the extent not already included in paragraph 7.1.8.1; plus
- .3 such unavoidable and reasonable additional third-party costs, if any, directly flowing from and which are a reasonable consequence of the termination, but excluding any consequential, indirect or special damages, and any claims for loss of profit or opportunity.

Notwithstanding the foregoing, the *Owner* shall not be liable to the *Construction Manager* for any claims, costs or damages whatsoever arising from such termination of the *Contract* other than as set out in this paragraph.

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*.”

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

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

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.”

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.”

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.”

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.”

GC 9.5.3 MOLD

- 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 mold 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 mold;
- .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

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.”

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.”

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.

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 – CONTRACT SECURITY

GC 11.1 Delete and replace with the following:

“GC 11.1 INSURANCE

Without restricting the generality of GC 12.1—Indemnification, insurance and coverage will be arranged and paid for as under-noted.

11.1.1 For the period when the *Owner's* Commercial General Liability – Wrap Up Insurance is not in force, the *Construction Manager* shall, with limiting its obligation or liabilities herein and at its own expense, provide and maintain the following insurance with insurers licensed in British Columbia.

(a) Commercial General Liability Insurance with a limit of not less than FIVE MILLION DOLLARS (\$5,000,000), inclusive per occurrence against bodily injury and property damage, and the *Owner* is to be added as an additional insured and include a cross liability clause. This insurance shall be primary and not required the sharing off any loss by any insurer of the *Owner*.

11.1.2 **The *Construction Manager* shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance with insurers licensed in British Columbia and in forms and amounts acceptable to the *Owner*:**

(a) Automobile Liability Insurance in respect of all owned or leased vehicles if used directly or indirectly in the performance of the *Services* and *Project*, subject to limits of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence. This

insurance shall be maintained continuously from commencement of the *Services* (including *Temporary Work*) and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Consultant*, in consultation with the *Construction Manager* and the *Owner*.

- (b) **Owned or Non-Owned Aircraft (including Unmanned Aircraft Vehicles) Liability Insurance** if used directly or indirectly in the performance of the *Work*, subject to limits not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and including aircraft passenger hazard where applicable. This insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance shall be maintained continuously from commencement of the *work* involving aircraft (including unmanned aircraft vehicles) until such *work* is completed.
- (c) **Owned or Non-Owned Watercraft Liability Insurance** if used directly or indirectly in the performance of the *Work*, subject to limits of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. The insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance shall be maintained continuously from commencement of the *work* involving watercraft until such *work* is completed.
- (d) **Contractors Pollution Liability Insurance**, where the *Construction Manager's* performance or the *Subcontractor's* performance of the *Work* is associated with hazardous materials clean up, removal and/or containment, transit or disposal. This insurance must have a limit of liability not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence insuring against bodily injury, death, and damage to property including loss of use thereof.

Any insurance required under this clause 11.1.2 (d) must name the *Owner* as an additional insured, but only with respect to liability arising out of the *Construction Manager's* or *Subcontractor's* performance of the *work*. Such insurance must include sudden and accidental and gradual pollution events for third party liability including ongoing and completed operations and shall not be impaired by any, biological contaminants (without limitation, mould and bacteria), asbestos, or lead exclusions. Any 'insured vs. insured' exclusion shall not prejudice coverage for the *Owner* and shall not affect the *Owner's* ability to bring suit against the *Construction Manager* as a third party.

This insurance shall be maintained continuously from commencement of the *work* involving hazardous materials clean-up, removal and/or containment, transit and disposal until such *work* is completed and including a twenty-four (24) month extended reporting period if any such insurance is provided on a claims-made basis.

- (e) **Hot Roofing or Installation of Hot Membranes**
If the *project* is a renovation involving hot roofing *work* or installation of hot membranes, the contractor will provide, maintain and pay for a liability policy insuring hot roofing or installation of hot membrane operations with a limit of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence against bodily injury and property damage. This insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance will be treated as primary coverage and *Owner's* Commercial General Liability – Wrap up Insurance will be treated as excess coverage.

Such insurance shall include, but not be limited to:

- .01 Premises and Operations Liability;
- .02 Products and Completed Operations;
- .03 Owner's and Contractor's Protective Liability;
- .04 Blanket Written Contractual Liability;
- .05 Contingent Employer's Liability;
- .06 Personal Injury Liability;
- .07 Non-Owned Automobile Liability;
- .08 Employees as Additional Insureds; and
- .09 Broad Form Property Damage.

This insurance shall be maintained continuously from commencement of hot roofing or installation of hot membrane *work* until such *work* is completed.

11.1.3 Any insurance required under clauses 11.1.1 (a) and 11.1.2 (b), (c), (d) and (e) must be endorsed to provide the *Owner* with 30 days' advance written notice of cancellation.

11.1.4 As may be applicable, the *Construction Manager* must cause all *Subcontractors* to comply with the insurance requirements outlined in clauses 11.1.2 (a) (b), (c), (d) and (e).

11.1.5 **The *Owner* shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance and coverages:**

(a) Commercial General Liability - Wrap Up Insurance with a limit of not less than TEN MILLION DOLLARS (\$10,000,000.00), inclusive per occurrence, TWENTY MILLION DOLLARS (\$20,000,000.00) general aggregate for bodily injury, death, and damage to property including loss of use thereof, product/completed operations hazard liability with a limit of not less than TEN MILLION DOLLARS (10,000,000.00) aggregate.

This insurance shall cover the *Owner*, *Construction Manager*, *Subcontractors*, *Consultant*, *sub-consultants* and anyone employed by them to perform a part or parts of the *Project*, excluding *suppliers* whose only function is to supply and/or transport *products* to the *project* site, or security protection persons or organizations providing site protection on or at the insured *project*. The insurance does not extend to any activities, *works*, jobs or undertakings of the insureds other than those directly related to the *Project* of this *Contract*.

The insurance shall preclude subrogation claims by the insurer against anyone insured hereunder.

Such insurance shall include, but not be limited to:

- .01 Premises and Operations Liability;
- .02 Products and Completed Operations Liability (24 months);
- .03 Blanket Written Contractual Liability;
- .04 Cross Liability and/or Severability of Interests;
- .05 Contingent Employer's Liability;
- .06 Personal Injury Liability;
- .07 Shoring, Blasting, Excavating, Underpinning, Demolition, Piledriving, Subsurface and Grading, as applicable;
- .08 Limited Pollution Liability (TWO MILLION DOLLARS (\$2,000,000))
- .09 Broad Form Tenants Legal Liability (ONE MILLION DOLLARS (\$1,000,000))

- .10 Operation of Attached Machinery
- .11 Forest Fire Fighting Expenses (ONE MILLION DOLLARS (\$1,000,000))

There will be a deductible not exceeding FIFTY THOUSAND DOLLARS (\$50,000) per occurrence except with respect to completed operations, to which a deductible not exceeding ONE HUNDRED THOUSAND DOLLARS (\$100,000) per occurrence will apply.

This insurance will be maintained continuously from commencement of the *Work* and kept in force until the *Project* is ready for use or being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Consultant*, in consultation with the *Construction Manager* and the *Owner*, plus with respect to completed operations cover a further period of twenty-four (24) months.

(b) Course of Construction (Builders Risk) against “All Risks” of physical loss or damage including the peril of equipment breakdown, and will cover all materials, property, structures and equipment purchased for, entering into, or forming part of the *Work* whilst located anywhere within Canada and continental United States of America (excluding Alaska) during construction, erection, installation, testing and commissioning, but such coverage shall be subject to off-site storage and transit exposure sub-limits and shall not include coverage for the *Construction Manager’s* and *Subcontractor’s* equipment of any description.

There will be a deductible not exceeding:

- (1) TWENTY THOUSAND DOLLARS (\$20,000) for each and every occurrence where the *project* value is TEN MILLION DOLLARS (\$10,000,000) or less, or;
- (2) FIFTY THOUSAND DOLLARS (\$50,000) for each and every occurrence where the *project* value exceeds TEN MILLION (\$10,000,000)

except for the following perils:

Earthquake with a deductible not exceeding FIVE PERCENT (5%) of the total *project* value at the time of the loss, subject to a minimum TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000);

Water Damage perils (includes Flood and Sewer and Drain Back Up) with a deductible not exceeding ONE HUNDRED THOUSAND DOLLARS (\$100,000);

Soft Costs with a one day waiting period for each month of the estimated *project* term subject to a minimum waiting period of 30 days will apply with respect to soft costs.

The coverage shall include as a protected entity, the *Owner*, the *Construction Manager*, *Consultant* and each *Subcontractor* who is engaged in the *Project*.

The coverage will contain a waiver of the *Owner’s* rights of subrogation against all protected entities except that rights of subrogation will be retained against architects, engineers and manufacturers (who are not employees of a protected entity) for liability in the event of loss caused by or resulting from any error in design or any other professional error or omission pertaining to the subject of this insurance.

The *Construction Manager* shall, at his own expense, take precautions to prevent fires occurring in or about the *Project* and shall observe, and comply with, all insurance policy warranties and all laws and regulations in force respecting fires. This insurance will be maintained continuously from commencement of the *Work* and will be kept in force until the *Project* is ready for use or is being used for the purpose intended and is so

confirmed in writing by the *Consultant*, in consultation with the *Construction Manager* and the *Owner*.

- 11.1.6 The description of the *Owner* arranged insurance described herein is provided on a summary basis only and is not a statement of the actual policy terms and conditions. The *Owner* does not represent or warrant that the *Owner* arranged insurance contains insurance for any and all losses. It is the *Construction Manager's* responsibility to ascertain the exact nature and extent of coverage provided by the *Owner* arranged insurance, to review all policies pertaining thereto and to obtain any other insurance that it may be prudent for the *Construction Manager* to obtain.
- 11.1.7 The *Construction Manager* shall provide, maintain and pay for any additional insurance which they are required to provide by law or which they consider necessary.
- 11.1.8 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the *Owner* placed coverage and insurance are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
- 11.1.9 The *Owner* shall, upon request, provide the *Construction Manager* with proof of insurance required to be provided by the *Owner* prior to commencement of the *Services* and subsequent certified copy of policies within a reasonable time period thereafter.
- 11.1.10 The *Construction Manager*, shall provide the *Owner* with advance proof of insurance for those coverages required to be provided by the *Construction Manager* prior to the commencement of the *Services* or *Work* as applicable in the form of a completed certificate of insurance and will also provide a certified copy of any required policies upon request.
- 11.1.11 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 *project* site during construction and which may, from time to time, or at the termination of the *Contract*, be removed from the *project* site. The *Construction Manager* hereby waives all rights or recourse against the *Owner* or any other contractor with regard to damage to the *Construction Manager's* property.
- 11.1.12 If the *Construction Manager* fails to provide, maintain and pay for insurance as required by this schedule, other than automobile liability insurance, the *Owner* may obtain and pay for the required insurance, the cost of which will be payable on demand by the *Owner*. The *Owner* may offset such amounts from any monies due to the *Construction Manager* if not paid within 15 days.

GC 11.2 Delete and replace with the following:

“GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Construction Manager* shall, prior to the commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security required by this *Contract* as in accordance with paragraph 7.1.13 of the Agreement A-7 – COST OF THE WORK.
- 11.2.2 The *Construction Manager* shall prior to the commencement of the *Work* furnish performance and labour and material payment bonds within fourteen (14) days of the date of this *Contract*. Each bond must be in a sum equal to 50% of the total estimated *Price of*

Work. The bonds must be issued on the latest CCDC-221 or CCDC-222 approved forms or other such forms approved by the Surety Association of Canada and issued by a surety company registered in the Province of BC or another surety company acceptable to the *Owner*. The *Construction Manager* must maintain bonds in good standing until fulfilment of the *Contract*.”

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1 INDEMNIFICATION, delete GC 12.1.1 and 12.1.2 and replace with the following:

“GC 12.1 INDEMNIFICATION

12.1.1 Without restricting the parties’ obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, and excepting always losses caused or contributed by the 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:

- (1) the acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
- (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and

.2 made by *Notice in Writing* within such periods as prescribed by the Limitation Act of the Province of British Columbia.

12.1.2 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 *Construction Manager* or *Owner* as applicable pursuant to GC 11.1 – INSURANCE, the limit of:

- (1) Commercial General Liability Insurance – GC 11.1.1 (a)
- (2) Commercial General Liability - Wrap Up Insurance – GC 11.1.5 (a); or
- (3) Course of Construction (Builders Risk) – GC 11.1.5 (b)

whichever is pertinent to the loss.

.2 In respect of losses suffered by the *Owner* and *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of:

- (1) the final *Price of Work* as confirmed in the final certificate of payment or;
- (2) TWO MILLION DOLLARS (\$2,000,000),

but in no event shall the sum be greater than TWENTY MILLION DOLLARS (\$20,000,000).

.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.”

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).”

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*.”

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.

GC17.1 CRIMINAL RECORDS REVIEW ACT

- 17.1.1 Due to the sensitive nature of BC Housing’s properties and in accordance with the BC Criminal Records Review Act, the *Construction Manager*, their current and new employees, and *subcontractors/trades* hired by the *Construction Manager* during the term of the *Contract* who will be providing any portion of the *Work* may be required by *BC Housing* to clear a Criminal Records Review Act (CRRRA) check through the Ministry of Public Safety and Solicitor General Criminal Records Review Program (CRRP) and provide proof of such by submitting to *BC Housing* a completed and signed BC Housing Declaration of Criminal Records Review Program Clearance form. The BC Housing Declaration of Criminal Records Review Program Clearance form must be updated and resubmitted to *BC Housing* in the event any changes occur to employees or *subcontractors/trades* hired during the term of the *Contract*.

Where a person does not clear a CRRRA check, the person will not be authorized to conduct work on BC Housing property.

BC Housing reserves the right to request copies of the Criminal Records Review Act letter(s) when required.

All costs to complete and maintain these Criminal Records Review Act checks are to be borne by the Supplier.

The BC Criminal Records Review Act states: “All individuals who work with children or vulnerable adults, or have unsupervised access to children or vulnerable adults in the ordinary course of their employment, or in the practice of an occupation, or during the course of an education program and who are employed by or licensed by, or receive regular ongoing operating funds from the provincial government are covered under the BC Criminal Records Review Act”.

APPENDIX – STIPULATED PRICE OPTION

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

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:

_____/100 dollars

\$ _____ **[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. **GC 11.1.8** Delete and replace with the following:

“11.1.8 The *Construction Manager* as may be applicable, shall be responsible for any deductible amounts under the *Owner* placed coverage and insurance except for perils of flood and earthquake. “

5. **GC 11.2.1** delete and replace with the following:

“11.2.1 The *Construction Manager* shall, prior to the commencement of the *Work* or within the specified time, provide to the *Owner* any contract security required by this *Contract*.”

6. This Amendment #_____ to the Agreement is effective as of **[Insert month/day/year]** ("Effective Date"),

7. 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.

8. 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