

The Standard Construction Document CCDC 2 – 2020 Stipulated Price Contract, consisting of the AGREEMENT BETWEEN OWNER AND CONTRACTOR, DEFINITIONS, and GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT made part of the *Contract Documents*, with the following amendments, additions and modifications:

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The Standard Construction Document for Stipulated Price Contract, 2020 English version consists of the Agreement between *Owner* and *Contractor*, Definitions and General Conditions of the Stipulated Price Contract, Parts 1 to 14 inclusive governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications specifically reference a change to the Agreement, Definitions or General Conditions, these amendments, additions and modifications shall govern.

Supplementary Conditions include amendments to the General Conditions and shall be read in conjunction with, and in the case of conflict take precedence over General Conditions. Where any of the General Conditions are supplemented or amended hereinafter, the unaffected provisions of such General Conditions shall be considered as added thereto.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

1. ARTICLE A-1 – THE WORK

- .1 Delete Article 1.3 and replace it with the following:

1.3 Attain:

.1 Substantial Performance of the Contract within 240 Calendar Days

.2 Total Performance of the Contract within 270 Calendar Days

From the commencement date specified in the Owner's written notice to commence the Work (the "Commencement Date"), subject to potential adjustment pursuant to Part 6 Changes in the Work; and

- .2 Add new Article 1.4:

1.4 provide all labour, materials, equipment, machinery, Products and work including, without limitation, all commissioning services required by the Contract Documents to fully complete and construct the Work in accordance with, and to the satisfaction of, all applicable federal, provincial, municipal and local laws, regulations, rules, bylaws, guidelines, standards, permits, statutes, ordinances, and codes including, without limitation, those relating to occupational health and safety and any and all obligations, responsibilities and duties required by or set out in any site plan agreement or approval, attributable to the Place of the Work and/or the proposed development therein, and furnish efficient business and construction administration and superintendence consistent with the interests of the Owner.

2. ARTICLE A-4 – CONTRACT PRICE

- .1 Add the following to the end of Article 4.4:

4.4 Notwithstanding the foregoing, the Contractor shall not be entitled to any increases in the Contract Price, or to the prices for any individual items, for any reason whatsoever including, but not limited to, increases in prices due to inflation or the escalation of labour or material costs.

3. ARTICLE A-5 – PAYMENT

- .1 Delete paragraph 5.1.2 in its entirety and substitute new paragraph 5.1.2:

5.1.2 upon *Substantial Performance of the Work*, as certified by the *Consultant*, and at least 61 days after the publication of the certificate of *Substantial Performance of the Work*, there being no claims for lien registered against the title to *the Place of the Work* and the conditions described in GC 5.5 having been satisfied, pay the

Contractor the unpaid balance of the holdback together with such *Value Added Taxes* as may be applicable to such payment.

4. ARTICLE A-9 – TIME OF THE ESSENCE

.1 Add the following article in its entirety:

ARTICLE A-9 TIME OF THE ESSENCE

- 9.1 It is agreed that in selecting the *Contractor for the Work*, the *Owner* has relied and is entitled to rely upon the *Contractor's* covenant, representation and warranty that it will attain *Substantial Performance of the Work* within the *Contract Time*, or any subsequent construction schedules approved in writing by the *Owner*.
- 9.2 The *Contractor* acknowledges and agrees that it is responsible to marshal its resources and those of the *Subcontractors* and *Suppliers* in a manner which will permit timely attainment of the *Substantial Performance of the Work*. The *Contractor* agrees that time is of the essence of this *Contract*.

DEFINITIONS

Add the following to previously defined terms:

8. Contract Time

Add 'All time limits stated in the *Contract Documents* are of the essence of the *Contract*.'

25. Work

Delete the period at the end of the definition of item 25. *Work* and add the following:

'including all work that can reasonably be inferred from or is incidental to same based on the judgement of a good, competent, and experienced *Contractor*.'

Add the following definitions:

27. Estimated Quantity

Estimated Quantity means the quantity of a unit price item that is initially assumed in calculating the *Contract Price*.

28. Inspector

Inspector is the individual or firm appointed by Victoria Park Management to carry out inspections of work performed.

29. Lump Sum Item

Lump Sum Item means pay item included in the schedule of *Contract Prices* that stipulates a fixed price to be paid when the *Work* is completed.

30. Pay Quantity

Pay Quantity means the actual quantity of the unit price item that was required to be completed as part of the *Work*.

31. Project Manager

Project Manager is the individual responsible to act as the point of contact on behalf of *Victoria Park Management* in regards to the Design, Engineering and Construction for VPCH properties.

32. Schedule of Stipulated Unit Prices

Schedule of Stipulated Unit Prices means the itemized breakdown of Lump Sum, Unit Prices and Estimated Quantities used to calculate the *Contract Price* and to determine payment.

33. Statutory Declaration

Statutory Declaration is submitted by the *Contractor* to the *Consultant* on a copyright sealed form CCDC Document 9A-2001 to declare that all payments for wages and salaries, payments due to Subcontractors, payments for materials furnished on-site and all other accounts have received the latest progress payment.

34. Unit Price Measurement

Unit Price Measurement means the units or dimensions necessary to calculate the *pay quantity*.

35. Victoria Park Management

Victoria Park Management (VPM) refers to a limited registered company who is the Owner's Property Management firm and responsible for all Victoria Park Community Homes Inc. (VPCHI) properties and Victoria Park Affordable Housing Corp. (VPAHC), decisions and associated Design, Engineering and Construction Contracts.

36. WSIB

WSIB means Workplace Safety and Insurance Board (Ontario)

37. OHSa

OHSa means the Occupational Health and Safety Act (Ontario).

PART 1 – GENERAL PROVISIONS

1.1. GC 1.1 – CONTRACT DOCUMENTS

.1 Amend paragraph 1.1.4 by adding the following at the end of the paragraph: "If the Contractor finds discrepancies in or omissions from the Contract Documents or has any doubt as to the meaning or intent of any part thereof, the Contractor shall immediately notify the Consultant, who will provide written instructions or explanations. Neither the Owner nor the Consultant will be responsible for oral instructions."

.2 Delete paragraph 1.1.5 in its entirety and substitute new paragraph 1.1.5:

The order of priority of documents, from highest to lowest, shall be:

- The Supplementary Conditions,
- The Agreement between the Owner and the Contractor,
- The Award Letter signed by Owner and the Contractor,
- The Definitions,
- The General Conditions,
- Division 01 of the Specifications,
- The Technical Specifications,
- The Material and Finishing Schedules,
- The Drawings,
- The Bid Form,
- The Bid submitted by the Contractor

.3 Delete paragraph 1.1.11. in its entirety and substitute new paragraph 1.1.11:

- 1.1.11 The Owner shall provide the Contractor without charge one (1) digital copy via email of the Contract Documents to perform the Work.

.4 Add the following paragraphs in their entirety:

- 1.1.12 The *Contract Documents* shall be signed and initialed in duplicate by the *Owner* and the *Contractor*.

- 1.1.13 The *Contract Documents* are to be interpreted as a whole although they are arranged in divisions for convenience and clarity. The *Contractor* is responsible for all the Work, regardless of the division of the Work in the *Contract Documents*, and such division does not impose any obligations of the *Consultant*, *Project Manager* or upon the *Owner* as arbitrators to establish limits or responsibility between the *Contractor* and *Subcontractors*.

.5 GC 1.4: ASSIGNMENT

- .1 Delete paragraph 1.4 and replace with new paragraph as follows:

- 1.4.1 "The Contractor shall not assign the Contract, either in whole or in part, without the written consent of the Owner."

PART 2 – ADMINISTRATION OF THE CONTRACT

GC 2.3 – REVIEW AND INSPECTION OF WORK

- .1 Add the following paragraphs in their entirety:

- 2.3.8 Where standards of performance are specified and any part of the Work does not comply with the performance specified or implied the Contractor shall correct such deficiency as directed by the Consultant.

- 2.3.9 Any *Work* that proves faulty howsoever arising whether by negligence, breach of *Contract* or poor workmanship must be made right by the *Contractor* who remains solely responsible. The Contractor shall do any subsequent testing (including re-testing by Owner) to verify performance at the Contractor's own expense.

GC 2.4 – DEFECTIVE WORK

- .1 Delete Paragraph 2.4.1 and replace with the below:

- 2.4.1 The Contractor shall promptly correct defective work in a manner acceptable to the Owner and the Consultant, all defective Work, and deficiencies throughout the Work, whether or not they are specifically identified by the Consultant.

- .2 Add New Paragraph:

- 2.4.4 The Contractor shall prioritize the correction of any defective Work which, in the sole discretion of the Owner, adversely affects the day to day operations of the Owner."

PART 3 – EXECUTION OF THE WORK**3.1 GC 3.1 – CONTROL OF WORK**

.1 Add the following paragraphs in their entirety:

- 3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or contradictions exist or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* and/or *Owner* in writing and obtain written instruction from the *Consultant* before proceeding with any part of the affected *Work*.
- 3.1.4 If the *Contractor* becomes aware of any cause, event, occurrence, circumstance, matter, omission, error or anything else of any nature whatsoever that it reasonably believes will, or is likely to, significantly or materially delay or restrict the performance of the *Work*, or any part thereof, or necessitate any significant or material change to the anticipated date of *Substantial Performance of the Work*, the *Contractor* shall provide *Notice in Writing* to the *Owner* and the *Consultant* within four (4) Working Days after the *Contractor* first becomes aware of the same.

3.2 GC 3.4 – CONSTRUCTION SCHEDULE

.1 Delete in GC 3.4 its entirety and replace it with the following:

3.4.1 The Contractor shall:

- .1 prior to commencement of construction, prepare and submit to the Owner and the Consultant for their review and acceptance a construction schedule indicating the critical path for the Project, using "Microsoft Project" or equivalent, demonstrating that the Work will be performed in conformity with the Contract Time, and shall conform to the phasing and sequencing requirements for the Work as set out in the Contract Documents or as otherwise required by the Consultant or the Owner including, without limitation, a Products delivery schedule with respect to the Products whose delivery is critical to the schedule of the Work. The Contractor shall provide the schedule information required by this paragraph 3.4.1.1 in both electronic format and hard copy. Once approved by the Owner and the Consultant, the construction schedule submitted by the Contractor under this paragraph 3.4.1.1, as updated by the Contractor and approved by the Owner, shall become the "Construction Schedule";
- .2 monitor the progress of the Work on a weekly basis relative to the Construction Schedule and update the Construction Schedule on a monthly basis;
- .3 perform the Work in accordance with the Construction Schedule;
- .4 advise the Consultant of any revisions required to the Construction Schedule as a result of extension of the Contract Time in accordance with Part 6 – Changes in the Work; and

- .5 identify potential variances between scheduling and scheduled completion dates and implement necessary adjustments in the Construction Schedule in order to meet the Substantial Performance Date.

- 3.4.2 On request of the Consultant the Contractor shall provide information regarding the progress of the Work or any part of it, or copies, schedules and orders covering materials, components and services. The Contractor shall cooperate fully with the Consultant and shall ensure that all Subcontractors and Suppliers and anyone for whom the Subcontractors and Suppliers may be responsible also cooperate and make available on request the same documents.
- 3.4.3 Without limiting the other obligations of the Contractor under GC 3.4 – CONSTRUCTION SCHEDULE, the Contractor shall not amend the Construction Schedule (including, without limitation, any changes to the critical path) without the prior written approval of the Owner.
- 3.4.4 If, at any time, the Owner or the Consultant advise the Contractor that it appears that the actual progress of the Work is behind schedule or is likely to become behind schedule, or if the Contractor has given notice of such to the Owner or the Consultant, the Contractor shall take appropriate steps to cause the actual progress of the Work to conform to the schedule or minimize the resulting delay and shall produce and present to the Owner and the Consultant a recovery plan demonstrating how the Contractor will achieve the recovery of the schedule. If the Contractor intends to apply for a change in the Contract Price or claim compensation for delay in relation to a schedule recovery plan, then the Contractor shall proceed in accordance with GC 6.5 – DELAYS

3.3 GC 3.5 – SUPERVISION

- .1 Amend 3.5.1 by adding, after “competent representative”, “who shall be a competent person, as the term is defined in the OHSA” and delete and replace the last line with the following: “The Contractor shall not be entitled to change the Competent Person without the prior written authorization of the Owner, which shall not be unreasonably withheld.”
- .2 Add the following paragraph in its entirety:
 - 3.5.3 If the appointed supervisor must be replaced, the supervisor shall have equal or greater experience and expertise and shall be approved by the *Owner* and *Consultant*.

3.4 GC 3.6 – SUB-CONTRACTORS

- .1 Delete GC 3.6.2 and replace with the following paragraph:

The Contractor shall provide the Owner with the complete list of Subcontractors and Suppliers retained to carry out the Work. The list shall be provided at least one week prior to the pre-construction meeting or, in the absence of such a meeting, at least one week prior to the commencement of work, and shall include the scope of work being undertaken by each Subcontractor or Supplier. Should the Owner object to any of the Subcontractors or Suppliers, the Contractor shall make best efforts to locate alternate Subcontractors or Suppliers to carry out the Work. The Contractor may not amend the list of Subcontractors without giving prior written notice to the Owner.

3.5 GC 3.7 – LABOUR AND PRODUCTS

- .1 Add the following paragraphs in their entirety:

- 3.7.4 *Product* specified by their proprietary names or by part and/or catalogue numbers shall form the basis for the *Specifications* and *Contract*. No substitutes for these *Products* may be used without the Consultant's approval with notice in writing. Substitutes will be considered only when submitted in sufficient time to permit proper review by the *Consultant*. In applying for permission to substitute, the *Contractor* shall prove that the substitution is equal to or better than the specified *Product* to the *Consultant's* satisfaction. Each application shall be accompanied by a list of properties of the specified *Products* and the proposed substitution and the benefit to the *Owner*. No application to use substitutes will be considered unless submitted as described.
- 3.7.5 The *Contractor* shall ensure all *Products* are delivered on-site in original containers and packages with label and seals intact. *Products* shall be stored to avoid dangerous conditions or contamination, protect from the elements and be visible for inspection by the *Consultant*.

3.6 GC 3.8 – SHOP DRAWINGS

- .1 Add the following sentence to the end of paragraph 3.8.7:

Unless otherwise agreed to, the schedule for the *Consultant* to review and return *Shop Drawings* shall not be less than ten (10) working days.

ADD NEW GENERAL CONDITIONS AS FOLLOWS:

3.7 GC 3.9 – USE OF WORK

- .1 Add the following paragraphs in their entirety:

- 3.9.1 The *Owner* and/or *Consultant* may direct the *Contractor* to suspend *Work* that causes excessive disruption to the tenants pending development and implementation of acceptable solutions that allow the *Work* to proceed.
- 3.9.2 The residents/tenants shall occupy the premises during the entire *Contract Time*. It is the *Contractor's* responsibility to maintain all services to the entire building and site at all times unless specific agreement is made otherwise. The occupants of the building and site must be able to continue to use the premises in a safe and efficient manner.

3.8 GC 3.10 – CLEANUP

- .1 Add the following paragraphs in their entirety:

- 3.10.1 The *Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris.
- 3.10.2 If the *Contractor* fails after reasonable notification to clean up as provided in the *Contract Documents*, the *Owner* may arrange for other forces to complete the cleanup and the costs thereof shall be charged to the *Contractor*. The *Owner's* cost for such cleanup will include a fifteen percent (15%) mark-up for administration.

3.9 GC 3.11 – DOCUMENTS AT THE SITE

.1 Add the following paragraph in its entirety:

- 3.11.1 The Contractor shall keep one (1) copy of Contract Documents, submittals, reports and Shop Drawings approved by authorities having jurisdiction on-site for access by building officials or other parties.

3.10 GC 3.12 – STANDARD OF CARE

.1 Add the following paragraph in its entirety:

- 3.12.1 In performing its services and obligations under the Contract, the Contractor shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent Contractor supplying similar services for similar projects. The Contractor acknowledges and agrees throughout the Contract, the Contractor's obligations, duties and responsibilities shall be interpreted in accordance with this standard. The Contractor shall exercise the same standard of due care and diligence in respect of any Products, personnel, or procedures which may be recommended by the Owner.

- 3.10.2 The Contractor further represents, covenants and warrants to the Owner that there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the Contractor to perform its Work under the Contract.

3.11 GC 3.13 – USE OF SITE

.1 Add the following paragraph in its entirety:

- 3.13.1 It is the responsibility of the Contractor, and not the Owner, to secure transportation to the Place of the Work and parking near the Place of the Work for its employees, Subcontractors or Suppliers.

PART 4 – ALLOWANCES**4.1. GC 4.1 – CASH ALLOWANCES**

.1 Delete GC 4.1 in its entirety and replace it with the following:

GC 4.1 Cash Allowances

- 4.1.1 The Contract Price includes the cash allowances, if any, stated in the Contract Documents. The scope of work or costs included in such cash allowances shall be as described in the Contract Documents.
- 4.1.2 The Contract Price, and not the cash allowances, includes the Contractor's overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the Owner in writing.
- 4.1.4 Where the actual cost of the Work under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, at the Consultant's direction, to cover the shortfall, and, in that case,

there shall be no additional amount added to the Contract Price for overhead and profit. Only where the actual cost of the Work under all cash allowances exceeds the total amount of all cash allowances shall the Contractor be compensated for the excess incurred and substantiated, plus an amount for overhead and profit on the excess only, as set out in the Contract Documents. The maximum mark up on the authorized overrun on cash allowances shall be 5%."

- 4.1.5 The Contractor shall have no claim on any unused portion of any cash allowance item. The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the Contract Price by Change Order without any adjustment for the Contractor's overhead and profit on such amount.
- 4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments. The Contractor shall submit, with its application for payment, documentation showing the date of purchase, the vendor from which the purchase was made, the date of delivery of the Product or service, and the price, including delivery to the Site and all applicable taxes. Cash allowance payments will only be made with the written authorization of the Owner and shall not include any markups whatsoever.
- 4.1.7 The Contractor shall consult with the Owner and/or the Consultant in the selection of the Products, services and/or vendors required to carry out the work under the cash allowance, and shall obtain the Owner's approval for the selection of Products, services and/or vendor(s) in relation to the cash allowance.
- 4.1.8 The Contractor shall obtain competitive bids from a minimum of three vendors for portions of the Work to be paid for out of cash allowances unless otherwise directed by the Owner. The Contractor shall submit the bids received to the Owner and/or the Consultant for approval.
- 4.1.9 At the commencement of the Work, the Contractor shall prepare for the review and acceptance of the Owner and the Consultant, a schedule indicating the times, within the construction schedule referred to in GC 3.4 – CONSTRUCTION SCHEDULE, that items called for under cash allowances and items that are specified to be Owner purchased and Contractor installed or hooked up are required at the site to avoid delaying the progress of the Work.

PART 5 – PAYMENT

5.1 GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER

- .1 Delete GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER and all paragraphs thereunder in their entirety, as well as all references to GC 5.1 throughout the *Contract*.

5.2 GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT

- .1 Delete GC 5.2 in its entirety and replace with the below:
 - 5.2.1 A "proper invoice" (as defined in the *Construction Act*) shall be delivered to the Owner and the Consultant by the 25th day of every month for the previous month's work. Subject the terms of the Contract Documents, including the holdback provisions of the Contract Documents and the *Construction Act*, and subject to any notice of non-payment delivered by the Owner under the *Construction Act*, the

Owner shall pay the amount approved and certified by the Consultant as payable under a proper invoice no later than 28 days after receiving the invoice from the Contractor.

- 5.2.2 The copy of the proper invoice delivered to the Owner shall be provided by email to: [finance@vpch.com] along with a hard copy to: 155 Queen St N, Hamilton.
- 5.2.3 No less than 7 days prior to the delivery of a proper invoice, the Contractor shall submit to the Owner and the Consultant a payment certificate (in a form prescribed by the Consultant) and all necessary supporting documentation, a WSIB clearance certificate and a Statutory Declaration of Progress Payment Distribution. For clarity, no proper invoice shall be submitted earlier than 7 days following submission of a duly completed payment certificate.
- 5.2.4 Notice of non-payment may be made by email to the Contractor. For greater clarity, this provision constitutes the consent of the Contractor to service of the notice of non-payment in this manner.
- 5.2.5 The Contractor shall, within 10 days of signing the Contract, and prior to the first claim for payment, submit to the Owner, if requested by Owner, a detailed breakdown of the lump sum tender price for the purpose of establishing monthly expenses. The Owner, acting reasonably, reserves the right to modify costs allocated to the various breakdown items to prevent unbalancing.
- 5.2.6 Payment for mobilizing and setting up plant, temporary buildings and services, premiums and other disbursements, shall be prorated based on the value of the Work performed during a billable period.
- 5.2.7 Payment for bonds and insurance will be paid 100 percent on the first progress payment, provided that respective invoices are submitted as proof of payment.
- 5.2.8 Prior to the first progress draw, the Contractor shall submit a monthly projected payment schedule based on the detailed construction schedule for the duration of the Contract.

5.3 GC 5.3 – PROGRESS PAYMENT

- .1 Add the following paragraph in its entirety:
 - 5.3.1.3 The *Owner* shall make payments to the *Contractor* as provided in article A-5 of the Agreement – PAYMENT on or before 28 calendar days after receipt of the *Consultant* certificate for payment.
- .2 Add the following paragraph in its entirety:
 - 5.3.2 If the *Contractor* fails to provide the statutory declaration as required under GC 5.2.3 or evidence of compliance with worker's compensation legislation as required by GC 10.4 – WORKER'S COMPENSATION, the *Owner* shall not be required to make any payment to the *Contractor* until such time as the *Contractor* remedies such failure.

5.4 GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK

- .1 Delete paragraph 5.4.2 in its entirety.

- .2 Delete paragraph 5.4.3 in its entirety (including bulleted points) and substitute new paragraph 5.4.3:

5.4.3 Immediately prior to the issuance of the certificate of Substantial Performance of the Work, the Contractor, in consultation with the Consultant, shall establish a schedule for completion of the Work and correcting deficient Work, and the construction schedule shall be deemed to be amended to include the completion schedule.”

The holdback amount authorized by the certificate for payment of the holdback amount issued by the consultant, pursuant to GC 5.5.2, is due and payable on the 61st calendar day following the publication of the certificate of substantial performance of the work referred to in GC 5.4.4. The Owner may retain out of the holdback amount any sums required by law to satisfy any liens against the Work or, if permitted by the lien legislation applicable to the Place of the Work, other third party monetary claims against the Contractor which are enforceable against the Owner.

- .3 Delete 5.4.4 in its entirety and replace with:

Prior to submitting its written application for Substantial Performance of Work, the Contractor shall submit to the Consultant all:

- .1 guarantees;
- .2 warranties;
- .3 certificates;
- .4 testing and balancing reports;
- .5 distributing system diagrams;
- .6 spare parts;
- .7 maintenance/operation manuals;
- .8 training manuals;
- .9 samples;
- .10 reports and correspondence from authorities having jurisdiction in the Place of the Work;
- .11 Shop Drawings, and marked up Drawings;
- .12 completed as-built drawings in an electronic format acceptable to the Consultant;
- .13 inspection certificates

and any other materials or documentation required to be submitted under the Contract or otherwise reasonably requested by the Consultant, together with written proof of acceptance to the Owner and the Consultant that the Work has been substantially performed in conformance with the requirement of the municipal, government and utility authorities having jurisdiction in the Place of the Work

- .4 Delete 5.4.5 in its entirety and replace with:

Where the Contractor is unable to deliver the documents and materials described in paragraph 5.4.4, then, provided that none of the missing documents and materials interferes with the use and occupancy of the Project in a material way, and except as described herein, the failure to deliver shall not be grounds for the Consultant to refuse to certify the Substantial Performance of the Work. However, certification of the Substantial Performance of the Work may be withheld if the Contractor fails to deliver maintenance manuals or completed as-built drawings.

- .5 Add the following paragraph in its entirety:

5.4.6 The *Contractor* shall publish, in a construction trade newspaper in the area of the location of the *Work*, a copy of the certificate of *Substantial Performance of the Work* referred to in GC 5.4.2.2 within seven (7) days of receiving a copy of the certificate signed by the *Consultant*, and the *Contractor* shall provide suitable evidence of the publication to the *Consultant* and the *Owner*. If the *Contractor* fails to publish such notice, the *Owner* shall be at liberty to publish said certificate and back-charge the *Contractor* its reasonable costs for doing so, plus an administrative fee of fifteen percent (15%).

5.5 GC 5.5 – FINAL PAYMENT

- .1 Amend 5.5.1 to add to the end of the paragraph: “The Contractor’s application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.4, together with proof that all permits in respect of the Work have been closed. The Work shall be deemed not to be complete until all of the aforementioned materials have been delivered, and the Owner may withhold payment in respect of the delivery of any documents in an amount determined by the Consultant.”
- .2 Amend paragraph 5.5.4 by deleting the number “5” and replacing it with “61”.

5.6 GC 5.6 – DEFERRED WORK

- .1 Revise paragraph 5.6.1; delete ‘only’ and add the words ‘together with any amounts withheld pursuant to 5.8.2’ after ‘such remaining work’.
- .2 Add the following paragraph in its entirety:
- 5.6.2 In the event of deficiencies or delays in the work that the contractor fails or refuses to address upon receiving Notice in Writing of same in accordance with the requirements of the contract, then the owner may, without limiting the remedies available to it under this contract, retain and set off as against any payments that would otherwise be owing to the contractor, the reasonable costs of rectifying such deficiencies or delays as determined by the consultant.

PART 6 – CHANGES IN THE WORK

6.1 GC 6.1– OWNER’S RIGHT TO MAKE CHANGES

- .1 Revise paragraph 6.1.2; add the words to the end of paragraph 6.1.2:

This requirement is of the essence and it is the express intention of the parties that any claims by the contractor for a change in the contract price and/or Contract Time shall be barred unless there has been strict compliance with PART 6 – CHANGES IN THE WORK.

No course of conduct, including any express, or implied acceptance of alterations or additions to the Work shall qualify for a change in Contract Price or Contract Time unless there has

been strict compliance with PART 6 – CHANGES IN THE WORK, irrespective of whether there is a claim for unjust enrichment.

6.2 GC 6.2– CHANGE ORDER

.1 Add the following paragraph in its entirety:

6.2.3 The Contractor shall observe the following procedure when submitting a claim for a change in the Contract Price and if applicable, a change in the Contract Time:

- .1 The claim must set out the increase in cost and time caused by the proposed changes referred to in the notice of contemplated change in sufficient detail for a proper assessment to be made including breakdowns of labour and materials for the Contractor and each sub-Contractor. The valuations must indicate that additional Sums for overhead and profit are included as set out herein.
- .2 The claim must indicate that the total increase in cost and time caused by the proposed changes referred to in the notice of contemplated change is the product of the quantity of work involved and of the applicable unit price as set out in the Schedule of Contract Unit Prices or such other unit price as may be agreed upon. Unit prices include all additional sums for overhead and profit. No additional markups are permitted for valuations submitted under this method.
- .3 The claim must set out the increase in cost and time caused by the proposed changes referred to in the notice of contemplated change and be accompanied by the signed time sheets, invoices and vouchers to enable to proper assessment to be made. The valuation must indicate that additional sums for overhead and profit are included as set out herein.

.2 Add the following paragraph in its entirety:

6.2.4 Where changes in the work are to be established by cost and a percentage fee or overhead and profit, the following percentages shall apply:

- .1 The Contractor shall be entitled to a markup for a combined overhead and profit of 10% on work he performs.
- .2 Subcontractors shall be entitled to a markup for combined overhead and profit of 10% on work he performs.
- .3 The Contractor shall be entitled to a markup for combined overhead and profit of 5% on work performed by subcontractors.

.3 Add the following paragraphs in their entirety:

6.2.5 The mark-ups provided for in paragraphs 6.2.3 and 6.2.4. shall constitute the only compensation the Contractor shall be entitled to for any and all overhead, profit, incidental and administrative costs whatsoever related to the change, including but not limited to: costs related to superintendence and supervision, shop drawing production, estimating, site office and home office expenses, workers tools, temporary facilities and controls, and coordination of any and all Work-related activities.

6.2.6 No claim whatsoever for a change in the Contract Time, delay, prolongation charges, remobilization or otherwise shall be permitted with respect to a change, unless authorized by the Consultant and approved by the Consultant and set out in the Change Order or Change Directive, as the case may be, by the *Owner*.

- 6.2.7 No compensation for any change in the Work shall be allowed unless such change is first ordered in writing by the Consultant and authorized by the Owner.

GC 6.3 CHANGE DIRECTIVES

- .1 Delete paragraph 6.3.7.1 in its entirety and replace it with the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the Contractor, applying the labour rates set out in the wages schedule in the Contract Documents or as otherwise agreed between the Owner and the Contractor for personnel,
- (1) carrying out the Work, including necessary supervisory services;
- (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
- or (3) engaged in the preparation of Shop Drawings, fabrication drawings, coordination drawings and Contract as-built drawings.
- .2 Delete paragraph 6.3.7.17 in its entirety.
- .3 Add new paragraph 6.3.14 as follows:
- 6.3.14 For greater certainty, and without limitation, the cost of performing the Work attributable to the Change Directive does not include, and no payment shall be made for:
- .1 head office salaries and benefits and all other overhead or general expenses, except only for wages, benefits, compensation, contributions, assessments, or taxes described in paragraph 6.3.7.1;
- .2 capital expenses and interest on capital;
- .3 general clean-up, except where the performance of the Work in the Change Directive causes specific additional and extraordinary clean-up requirements;
- .4 wages paid for project managers, superintendents, assistants, watch persons and administrative personnel, provided the Change Directive does not result in extension of Contract Time;
- .5 wages, salaries, rentals, or other expenses that exceed the rates that are standard in the locality of the Place of the Work, that are otherwise deemed unreasonable by the Consultant;
- .6 any costs or expenses attributable to the negligence, improper Work, deficiencies, or breaches of Contract by the Contractor or Subcontractor; or
- .7 any increase to the cost of materials, services, or labor from what has been agreed upon in this Contract.

6.4 GC 6.5 – DELAYS

- .1 Revise paragraph 6.5.1; delete 'reasonable costs incurred by the Contractor as a result of such delay' and add the words 'reasonable direct costs directly flowing from the delay, but excluding any consequential, indirect or special damages (including, without limitation, loss of profits, loss of opportunity, or loss of productivity)'.
- .2 Revise paragraph 6.5.2; delete 'reasonable costs incurred by the Contractor as a result of such delay' and add the words 'reasonable direct costs directly flowing from the delay, but

excluding any consequential, indirect or special damages (including, without limitation, loss of profits, loss of opportunity, or loss of productivity)'.

- .3 Revise paragraph 6.5.3; delete 'unless such delays results from actions by the Owner, Consultant, or anyone employed or engaged by them directly or indirectly'

- .4 Add the following paragraphs in their entirety:

6.5.6 If the Contractor is delayed in the performance of the Work by an act or omission of the Contractor or anyone directly or indirectly employed or engaged by the Contractor, or by any cause within the contractor's control, then the Contract Time may be extended for such reasonable time as the Owner may decide in consultation with the Consultant and the Contractor. The Owner shall be reimbursed by the Contractor for all reasonable costs incurred by the Owner as a result of such delay, including, but not limited to, the cost of all additional services required by the Owner from the Consultant or any subconsultants, project managers, or others employed or engaged by the Owner, and in particular, the costs of the Consultant's services during the period between the date of Substantial Performance of the Work stated in Article A-1 herein, as the same may be extended through the provision of these General Conditions, and any later or actual date of Substantial Performance of the Work achieved by the Contractor.

6.5.7 No claim for delay shall be made by the Contractor and the Contract Time shall not be extended due the following:

- .1 any labour disputes, strikes or lock-outs affecting the Work or the Project.
- .2 fire or unusual delay by common carriers,
- .3 abnormally adverse weather conditions, or
- .4 any other cause which could not be reasonably anticipated to occur during the course of a construction project, which the Owner deems to be beyond the Contractor's (including any Subcontractors) reasonable control (other than financial incapacity) other than one resulting from a default or breach of Contract by the Contractor. For the purpose of this provision, delays in the supply and/or delivery of materials, Products and/or equipment, or arising from the breakdown of equipment, do not constitute causes which are beyond the Contractor's control.

then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Contractor agrees to a shorter extension. The Contractor shall not be entitled to payment for costs incurred by such delays, unless such delays result from the actions of the Owner, Consultant or anyone employed or engaged by them directly or indirectly. Notwithstanding the foregoing, the Contractor shall use its best efforts to minimize the impact of such event upon the performance of the Work and Contract Time.

6.5.8 Without limiting the obligations of the Contractor described in GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS and GC 9.4 – CONSTRUCTION SAFETY, the Owner may, by Notice in Writing, direct the Contractor to stop the Work where the Owner determines that there is an imminent risk to the safety of the persons or property at the Place of the Work. In the event that the Contractor receives such notice, it shall immediately stop the Work and

secure the Project site. The Contractor shall not be entitled to an extension of the Contract Time or to an increase in the Contract Price unless the resulting delay, if any, would entitle the Contractor to an extension of the Contract Time or reimbursement of the Contractor's costs as provided in paragraphs 6.5.1, 6.5.2 or 6.5.3.

- 6.5.9 In addition to the amount set out in paragraph 6.5.6, the Contractor recognizes and agrees that the Owner will suffer a financial loss if the Work is not completed within the time prescribed by the Contract. The Contractor also recognizes the delays, expenses and difficulties involved in proving the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Contractor agrees that as liquidated damages for delay (but not as penalty) the Contractor shall pay the Owner 0.1% for each and every day's delay, and up to no more than 10% of project value, from the specified time for Ready-for-Takeover until the actual date of Ready-for-Takeover, and it is further expressly acknowledge and agreed by the Contractor that: (a) this amount is a reasonable estimate of the actual damages that will be incurred by the Owner due to any failure to attain Ready-for-Takeover within the time required by this Contract; (b) the Owner may deduct the amount due under this section from any monies that may be due or payable to the Contractor, whether under the Contract or any other agreement; and, (c) the liquidated damages provided for in this section shall be without prejudice to any other remedy to which the Owner is entitled at law or in equity.
- 6.5.10 In the event that paragraph 6.5.9 is held by a court of competent jurisdiction to be invalid, unenforceable or void, the Contractor shall be held responsible for the payment of the Owner's actual costs associated with the delay in achieving Ready-for-Takeover. The Owner's costs will include, but are not limited to, the amounts relating to the items set out in paragraph 6.5.6 and all other costs directly or indirectly associated with the delay in the completion of the Work by the Contractor. The amounts payable pursuant to paragraph 6.5.10 are in addition to the amounts payable by the Contractor to the Owner pursuant to paragraph 6.5.6."
- 6.5.11 No compensation for delay shall be paid to the Contractor, and no extension shall be made for delay unless Notice in Writing of the cause of delay is given to the Consultant and Owner not later than 10 Working Days after the commencement of the delay. In the case of a continuing cause of delay only one Notice in Writing shall be necessary. Without limiting the generality of the foregoing, the following shall also apply to the event of delay dealt with by paragraphs noted above.
- .1 the notice provided by the Contractor shall include, without limitation, sufficient and adequate information and documentation to allow the Consultant and Owner to properly consider the claim of the Contractor.
 - .2 the Contractor shall take all reasonable steps to minimize the impact of the delay event upon the performance of the Work, the Contract Time and the Contract Price, resume performance of all its obligations under the Contract affected by the delay as soon as practicable and use all reasonable endeavors to remedy any failure to perform.

Failure to adhere strictly to these notice provisions shall constitute a waiver and release of any obligation of the Owner to extend the Contract Time as a result of such delay and of any claim by the Contractor for costs as a result of such delay.

6.5 GC 6.6 CLAIMS FOR CHANGE IN CONTRACT PRICE

- .1 Delete “timely” and add to the end of the sentence: “within 7 Working Days of the commencement of the Work giving rise to the claim.”

PART 7 – DEFAULT NOTICE**7.1 GC 7.1– OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT**

- .1 Revise paragraph 7.1.2; add the words ‘including failure of the Contractor to pay its Subcontractors, Suppliers, or employees on a timely basis’ after ‘substantial degree’.
- .2 Add the following paragraph in its entirety:
- 7.1.7 The Owner may terminate this contract at any time for any or no reason. In such event, the Owner shall pay for the Work performed up to the effective date of termination, including demobilization costs, and for such additional 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. The Owner shall not be liable to the Contractor for any other claims, costs or damages from the Contractor arising from such termination of the Contract.

7.2 GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- .1 Delete paragraph 7.2.3.1 in its entirety.
- .2 Revise paragraph 7.2.4; delete the period at the end of paragraph and replace it with ‘10 working days’.
- .3 Revise paragraph 7.2.5; delete the period at the end of paragraph and replace it with ‘but excluding any consequential, indirect or special damages and any claims for loss of opportunity.’

PART 9 – PROTECTION OF PERSONS AND PROPERTY**9.1 GC 9.1 – PROTECTION OF WORK AND PROPERTY**

- .1 Delete paragraph 9.1.1.1 and replace with:
- 9.1.1.1: errors in the Contract Documents which the Contractor could not have discovered applying the standard of care described in GC 3.14 – STANDARD OF CARE.”
- .2 Amend 9.1.1.2 to include “negligent” prior to “acts and omissions”.
- .3 Add the following paragraphs in their entirety:
- 9.1.5 No comments, suggestions or instructions from the *Consultant* and/or *Owner* are to be relied upon or assumed to reduce or replace the *Contractor’s* responsibility for the construction safety.
- 9.1.6 The *Contractor* shall indemnify and hold harmless the *Consultant* and *Owner*, their agents and employees from and against claims, demands, losses, costs, damages,

action suits or proceedings by third parties that arise out of, or are attributed, to the *Contractor's* safety performance.

- 9.1.7 The Contractor shall neither undertake to repair and/or replace any damage whatsoever to the Work of other Contractors, or to adjoining property, nor acknowledge the same was caused or occasioned by the Contractor, without first consulting the Owner and receiving written instructions as to the course of action to be followed from either the Owner or the Consultant. However, where there is danger to life or public safety, the Contractor shall take such emergency action as it deems necessary to remove the danger.

9.2 GC 9.4 – CONSTRUCTION SAFETY

- .1 Delete 9.4.1 in its entirety and replace with:

9.4.1 The Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.

- .2 Add the following paragraphs in their entirety:

9.4.6 Prior to the commencement of the Work, the Contractor shall submit to the Owner:

- .1 a current WSIB clearance certificate;
- .2 documentation of the Contractor's in-house safety-related programs; and,
- .3 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under the OHSA.

9.4.7 The Contractor shall indemnify and save harmless the Owner, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the Contractor or Subcontractors under the OHSA, including the payment of legal fees and disbursements on a full indemnity basis.

PART 10- GOVERNING REGULATIONS

10.1 GC 10.1 – TAXES AND DUTIES

- .1 Delete 10.1.2 and replace as follows:

10.1.2 Any increase or decrease in costs to the Contractor due to changes in such included taxes and duties at the time of the bid closing shall increase or decrease the Contract Price accordingly. For greater certainty, the Contractor shall not be entitled to any mark-up for overhead or profit on any increase in such taxes and duties.

- .2 Add the following paragraphs in their entirety:

10.1.3 Any refund of taxes, including, without limitation, any government sales tax, customs duty, excise tax or Value Added Tax, whether or not paid, which if found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the Owner. The Contractor agrees to cooperate with the Owner and to obtain from all Subcontractors and Suppliers cooperation with the

Owner in the application for any refund of any taxes, which cooperation shall include but not be limited to, making or concurring in the making of an application for any such refund or exemption and providing to the Owner copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications for exemptions or refunds. All such refunds shall either be paid to the Owner, or shall be a credit to the Owner against the Contract Price, in the Owner's discretion. The Contractor agrees to enable, assist with and submit to any reasonable audit requested by the Owner with respect to the potential refunds under this paragraph.

- 10.1.4 Custom duties, penalties, or any other penalty, fine or assessment levied against the Contractor, shall not be treated as a tax or customs duty for the purpose of this GC 10.1.

10.2 GC10.2 – LAWS, NOTICES, PERMITS, FEES

Add the following paragraph in its entirety:

- 10.2.6 If the Contractor fails to notify the Owner and the Consultant in writing, fails to obtain direction required in paragraph 10.2.5, or performs work that contravenes any laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes, the Contractor shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses, and damages attributable to the failure to comply with the provisions of such laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes and, notwithstanding any limitation described in Part 13, shall indemnify and hold harmless the Owner and the Consultant from and against any claims, demands, losses, costs, damages, actions, suits or proceeding resulting from failure or breach of law.

PART 12 – OWNER TAKEOVER

12.1 GC 12.2 – EARLY OCCUPANCY BY THE OWNER

- .1 Delete all of 12.2.2 in its entirety and substitute "intentionally left blank."
- .2 Delete all of 12.2.3 in its entirety and substitute "intentionally left blank."
- .3 Delete all of 12.2.4 in its entirety and substitute "intentionally left blank."

12.2 GC 12.3 – WARRANTY

- .1 Revise paragraph 12.3.1; delete 'one year' and replace with 'two years'.
- .2 Revise paragraph 12.3.3; delete 'one year' and replace with 'two years'.
- .3 Revise paragraph 12.3.4; delete 'one year' and replace with 'two years'.
- .4 Revise paragraph 12.3.6; delete 'one year' and replace with 'two years'.
- .5 Add the following paragraphs in their entirety:
 - 12.3.7 Nothing in these warranty provisions shall be deemed to alter, in any matter whatsoever, the warranty rights to which the *Owner* would otherwise be entitled by statute, elsewhere in the *Contract Documents*, or otherwise. Further, nothing in

these warranty provisions shall deprive the Owner of any action, right or remedy otherwise available to the Owner for the Contractor's failure to fulfill its obligations or responsibilities under the Contract and shall not be construed as a waiver of claims in favour of the Contractor or as limitation on the time in which the Owner may pursue such other action, right to remedy. The warranties set out in the Contract are supplemental to and do not limit or preclude the application of any other conditions and warranties, express or implied, by law or trade usage.

- 12.3.8 Any Product, or equipment requiring excessive servicing during the warranty period (or free maintenance period, if applicable) shall be considered defective and the warranty (or free maintenance period) shall be deemed to take effect from the time that the defect has been corrected so as to cause excessive servicing to terminate.
- 12.3.9 Following Substantial Performance of the Work, and without limiting the Contractor's warranty under GC 12.3, the Contractor shall assign to the Owner, to the extent assignable, the benefit of all warranties and guarantees relating to the Work. The assignment shall expressly reserve the rights of the Contractor to make any claims under such warranty and guarantees and such assignment shall in no way prejudice any rights of or benefits accruing to the Contractor pursuant to such warranties and guarantees.

PART 13: INDEMNIFICATION AND WAIVER

13.1 GC 13.1 – INDEMNIFICATION

- .1 Delete paragraph 13.1.2 in its entirety, including all subparagraphs thereunder.
- .2 Delete paragraph 13.1.5 in its entirety, including all subparagraphs thereunder.

13.2 GC 13.2 – WAIVER OF CLAIMS

- .1 Delete paragraph 13.2.2.3 in its entirety.
- .2 Delete paragraph 13.2.4 in its entirety.
- .3 Delete paragraph 13.2.5 in its entirety, together with all references to the Deleted Waiver Provisions. For clarity, all provisions of the Contract that reference the Deleted Waiver Provisions otherwise remain in full force and effect.

ADD new section as follows:

PART 14 – OTHER PROVISIONS

14.1 GC 14.1 – OWNERSHIP OF MATERIALS

- .1 The Contractor shall remove all surplus or rejected materials from the Work site as its property when notified in writing to do so by the Consultant.

14.2 GC 14.2 – CONSTRUCTION LIENS

- .1 In the event that a construction lien is registered or is delivered to the Owner in respect of the Project, or written notice of lien is delivered to the Owner, the Contractor, at its own expense and within ten (10) days, shall ensure that such lien or notice of lien is vacated, discharged or withdrawn.

- .2 In the event that the Contractor fails to comply with the requirements of 14.2.1, the Owner may set off and deduct from any amount owing to the Contractor, all costs and associated expenses, including legal fees and disbursements incurred to vacate or discharge the lien, including costs of obtaining and posting a lien bond or other security. The Contractor shall reimburse the Owner for all of the said cost and associated expenses.
- .3 Notwithstanding any other provision of the Contract, the Owner shall not be obligated to pay any amount otherwise owing to the Contractor until any liens are vacated or discharged.

14.3 GC 14.3 – CONTRACTOR DISCHARGE OF LIABILITIES

- .1 In addition to the obligation assumed by the Contractor pursuant to GC 3.6 and 3.7, the Contractor agrees to discharge all liabilities incurred by it for labour, materials, services, Subcontractors and Products used or reasonably required for use in the performance of the Work, except for amounts withheld by reason of legitimate dispute and which have been identified to the party or parties, from whom payment has been withheld.

14.4 GC 14.4 – SET OFF

- .1 In addition to and without limiting any other rights the Owner may have under the Contract and at law, the Owner may retain from monies owing to the Contractor under the Contract an amount sufficient to cover any outstanding or disputed liabilities including the cost to remedy deficiencies, the reduction in value of substantial portion of the Work, claims for damages by third parties, and any assessment due to the WSIB.