

The Standard Construction Document CCDC-5B 2010 Construction Management Contract – for Services and Construction, English Version, consisting of the Agreement Between *Owner* and *Construction Manager*, Definitions, and General Conditions of the Stipulated Price Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications. Where these amendments, additions and modifications specifically reference a change to the Agreement, Definitions, or General Conditions, these amendments, additions and modifications shall govern.

## **AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER**

### **AMENDMENTS TO ARTICLES**

#### **ARTICLE A-3 – DESCRIPTION OF THE PROJECT**

- 3.1 Amend paragraph 3.1 to include Description Project – Schedule C from the RFT Documents

#### **ARTICLE A-4 – CONTRACT DOCUMENTS**

- 4.1 Amend paragraph 4.1 to include Supporting Documents and Drawings – Schedule D from the RFT Documents

#### **ARTICLE A-5 – CONSTRUCTION MANAGER'S FEE**

- 5.2.2 Delete Paragraph 5.2.2 in its entirety.

- 5.2.3 Delete Paragraph 5.2.3 in its entirety.

- 5.3.1 Amend Article 5.3.1 as follows:

Delete from the first sentence "A percentage fee of \_\_\_\_\_ percent ( %) of the *Cost of the Work*"

And Replace with: "A percentage fee of zero percent (0%) of the *Cost of the Work*"

- 5.3.2 Delete Paragraph 5.3.2 in its entirety.

#### **ARTICLE A-6 – REIMBURSABLE EXPENSES FOR THE SERVICE**

- 6.1 Amend Article 6.1 as follows:

Delete from 6.1 the words "the administrative charge of \_\_\_\_\_ percent ( %). "

And Replace With: the words "the administrative charge of zero percent (0%). "

- 6.2 Amend Article 6.2, in the first line, by deleting the words "The Owner may by written request require the Construction Manager to:" and replacing them with "The Owner requires the Construction Manager to:"

#### ARTICLE A-7 – COST OF THE WORK

- 7.1.1 Delete Paragraph 7.1.1 in its entirety.
- 7.1.2 Delete Paragraph 7.1.2 in its entirety.
- 7.1.3 Delete Paragraph 7.1.3 in its entirety
- 7.1.7 Delete Paragraph 7.1.7 in its entirety.
- 7.1.8 Delete Paragraph 7.1.8 in its entirety.
- 7.1.9 Amend Paragraph 7.1.9 by Deleting the words "and the unrecoverable costs to the *Construction Manager* that result from any *Subcontractor's* or *Supplier's* default, insolvency or abandonment; termination of any *Subcontractor's* or *Supplier's* right to perform due to default by the *Subcontractor* or *Supplier*; or termination of any *Subcontractor's* or *Supplier's* contract due to default by the *Subcontractor* or *Supplier*
- 7.1.12 Amend by Deleting the words "and damages for infringement of patents and cost of defending suits therefor".
- 7.1.13 Amend by Adding the following words at the end of the section "save and except premiums for General Liability Insurance, Owned and Non-Owned Automobile Liability Insurance and Broad Form Contractors' Equipment Insurance."
- 7.1.15 Delete Paragraph 7.1.15 in its entirety.
- 7.1.18 Delete Paragraph 7.1.18 in its entirety.
- 7.1.19 Delete Paragraph 7.1.19 in its entirety.
- 7.1.20 Delete Paragraph 7.1.20 in its entirety.
- 7.1.21 Delete Paragraph 7.1.21 in its entirety.
- 7.1.23 Delete Paragraph 7.1.23 in its entirety.
- 7.4 Delete paragraph 7.4 in its entirety.
- 7.6 Amend 7.6 as follows:
- 7.6 Replace the words "The *Owner* may by written request require the *Construction Manager* to" to read "The Owner requires the Construction Manager to:..."
- 7.7 Add new paragraph 7.7 as follows:

- 7.7 Notwithstanding the inclusion of Time-Based Rates for Personnel Employed by the Construction Manager in Schedule B and details relating to Performance Bonding and Labour and Materials Bonding costs, the Construction Manager acknowledges and agrees that the Work will be performed by Subcontractors such that no Time-Based Charges for Personnel Employed by the Construction Manager are anticipated under the Contract. In addition, all Performance Bonding and Labour and Material Bonding costs are to be borne by the Construction Manager and included in the fixed fee amount specified in Paragraph 5.2.1. Accordingly, no additional Time-Based Charges for Personnel Employed by the Construction Manager and no bonding costs may be charged to the Owner unless such amounts are pre-approved in writing by both the Owner and made pursuant to a validly authorized and approved Change Order signed by the Owner.

#### **ARTICLE A-9 – PAYMENT**

- 9.1.5 Amend paragraph 9.1.5 , in the first line, by deleting the words “the issuance of the” and replacing them with “receipt of the Consultants”.

- 9.3 Amend by Deleting Paragraph 9.3 in its entirety and replace as follows:

“9.3.1 Should either party fail to make payments as they become due under the terms of the Contract or in an award by arbitration or court, interest on such unpaid amounts shall also become due and payable from the date that is 30 calendar days after the date when the payment became due until payment, compounded on a monthly basis, at the prime rate established from time to time by the Royal Bank of Canada.”

#### **ARTICLE A-10 – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

Amend by Deleting the words “or other form of electronic communication” after the words “or by facsimile” in paragraphs 10.2 and 10.4.

#### **ARTICLE A-11 – LANGUAGE OF THE CONTRACT**

- 11.1 Delete Paragraph 11.1 in its entirety.

- 11.2 Delete Article 11.2 in its entirety

And Replace With: “11.2 This Agreement is drawn in English.”

#### **ARTICLE A-13 – CONFLICT OF INTEREST**

Add new Article A-13 – Conflict of Interest:

- 13.1 The *Construction Manager* and any of its respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*. The *Construction Manager* acknowledges and agrees that a conflict of interest includes the use of

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*Confidential Information* where the *Owner* has not specifically authorized such use.

- 13.2 The *Construction Manager* shall disclose to the *Owner*, in writing, without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Construction Manager*.
- 13.3 The *Construction Manager* covenants and agrees that it will not hire or retain the services of any employee or previous employee of the *Owner* where to do so constitutes a breach by such employee or previous employee of the employee or previous employee's employment contract or the previous employer's conflict of interest policy, as it may be amended from time to time.
- 13.4 A breach of this Article by the *Construction Manager*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity.

#### ARTICLE 14 – CONFIDENTIALITY

Add new Article A-14 – Confidentiality:

- 14.1 The *Construction Manager* agrees to ensure that it shall, both during or following the term of the *Contract*, maintain the confidentiality and security of all *Confidential Information* and *Personal Information*, and that it shall not directly or indirectly disclose, destroy, exploit, or use any *Confidential Information* or *Personal Information*, except where required by law, without first obtaining the written consent of the *Owner*. The *Construction Manager* may disclose any portion of the *Contract Documents* or any other information provided to the *Construction Manager* by the *Owner* to any *Subcontractor* or *Supplier* if the *Construction Manager* discloses only such information as is necessary to fulfill the purposes of the *Contract* and the *Construction Manager* has included a commensurate confidentiality provision in its contract with the *Subcontractor* or *Supplier*. The *Construction Manager* acknowledges that it will comply with all requirements at law with respect to the handling of *Personal Information* and *Confidential Information*. The *Construction Manager* acknowledges that the *Owner* is bound by the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"). The *Construction Manager* further acknowledges that the *Owner* may be required to disclose any or all of the *Confidential Information* and *Personal Information* in the event that it is compelled to do so by law, through a request under *MFIPPA*, or by the rules of any applicable regulatory authority.

#### SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

"Schedule A1, Complete all boxes for "Performed by the Construction Manager" using code "F1".

**SCHEDULE A2 TO THE AGREEMENT – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1**

Mark: Items 1, 2, and 3 as "Costs Included in the Construction Manager's Fee (A-5.2)".

Delete: Items 4, 5, 8, 9, 10, 11, and 12.

Amend Item 7 by deleting the words "and damages for infringement of patents and cost of defending suits therefore".

**SCHEDULE B – TIME BASED RATES FOR PERSONNEL EMPLOYED BY THE CONSTRUCTION MANAGER**

Delete Schedule B in its entirety.

**DEFINITIONS**

Add the following definitions:

**Confidential Information**

*Confidential Information* means all the information or material of the *Owner* that is of a proprietary or confidential nature, whether it is identified as proprietary or confidential or not, including but not limited to information and material of every kind and description (such as drawings and move-lists) which is communicated to or comes into the possession or control of the *Construction Manager* at any time, but *Confidential Information* shall not include information that:

- 1) is or becomes generally available to the public without fault or breach on the part of the *Construction Manager*, including without limitation breach of any duty of confidentiality owed by the *Construction Manager* to the *Owner* or to any third party, but only after that information becomes generally available to the public;
- 2) the *Construction Manager* can demonstrate to have been rightfully obtained by the *Construction Manager* from a third party who had the right to transfer or disclose it to the *Construction Manager* free of any obligation of confidence;
- 3) the *Construction Manager* can demonstrate to have been rightfully known to or in the possession of the *Construction Manager* at the time of disclosure, free of any obligation of confidence; or
- 4) is independently developed by the *Construction Manager* without use of any *Confidential Information*.

**Contract Value**

*Contract Value* is the sum of the *Construction Manager's Fee* and the *Construction Cost*.

**Personal Information**

*Personal Information* has the same definition as in subsection 2(1) of *MFIPPA* and includes an individual's name, address, age, date of birth, sex, and religion, whether recorded in printed form, on film, by electronic means, or otherwise and

disclosed to the *Construction Manager*.

**Submittals**

*Submittals* are documents or items required by the *Contract Documents* to be provided by the *Construction Manager*, such as:

- *Shop Drawings*, samples, models, mock-ups to indicate details of characteristics, before the portion of the *Work* that they represent can be incorporated into the *Work*; and
- As-built drawings and manuals to provide instructions to the operation and maintenance of the *Work*.

**SUPPLEMENTARY CONDITIONS****GC 1.1 – CONTRACT DOCUMENTS**

Add to the end of sub-paragraph 1.1.2.2

"..., except where the *Consultant* shall be indemnified as a third party beneficiary as provided in subparagraphs 9.2.7.4, 9.5.3.4 and in 12.1.3."

**GC 1.3 RIGHTS AND REMEDIES**

Delete the words "either of the parties to this *Contract*" in the second line of paragraph 1.3.2 and add the words "any of them under this *Contract*" after the words "or duty afforded."

**GC 2.2 AUTHORITY OF THE CONSULTANT**

In paragraph 2.2.2 after the words "of the *Construction Manager*", Delete the words "following consultation with the *Consultant*", and add the words "*Owner and Consultant*."

**GC 2.3 CONSULTANT'S RESPONSIBILITIES**

Amend 2.3.7 to read as follows:

"2.3.7 The *Consultant* will be, in the first instance, the interpreter of the requirements of the *Work*."

Add at the end of paragraph 2.3.9. "The *Owner* and the *Construction Manager* waive any claims against the *Consultant* arising out of the making of such interpretations and findings made in accordance with paragraphs 2.3.7, 2.3.8 and 2.3.9, provided same were made in good faith and without negligence on the part of the *Consultant*".

**GC 2.5 DEFECTIVE WORK**

Add new subparagraphs 2.5.1.1 and 2.5.1.2 and 2.5.1.3

2.5.1.1 The *Construction Manager* shall rectify, 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*.

2.5.1.2 The *Construction Manager* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the

*Owner.*

- 2.5.1.3 The Construction Manager 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.

### **GC 3.1 CONTROL OF THE WORK**

Add new Article 3.1.3:

- 3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Construction Manager* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for the 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 *Construction Manager* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected work.

### **GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONSTRUCTION MANAGERS**

Delete Article 3.2.2.2 in its entirety

Delete Article 3.2.2.4 in its entirety

Delete Article 3.2.2.5 in its entirety

Add new Article 3.2.3.4:

- 3.2.3.4 Subject to General Condition 9.4 - CONSTRUCTION SAFETY, where paragraph 3.2.4 of General Condition 3.2 - CONSTRUCTION BY OWNER OR OTHER CONSTRUCTION MANAGERS applies, for the work to be performed by other contractors, or the *Owner's* own forces performing work identified in the *Contract Documents*, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in the *Place of the Work*, including all of the responsibilities of the constructor as that term is defined in the *Occupational Health and Safety Act*.

### **GC 3.4 REVIEW OF DRAWINGS, SPECIFICATIONS AND MATERIAL AND FINISH SCHEDULES**

Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

- 3.4.1 The *Construction Manager* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Construction Manager* may discover. If the *Construction Manager* does discover any error, inconsistency or omission in the *Contract Documents*, the *Construction Manager* shall not proceed with the work affected until the *Construction Manager* has received corrected or missing information from the *Consultant*.

Delete 3.4.2 and replace with new paragraph 3.4.2:

- 3.4.2 Such review by the *Construction Manager* shall comply with the standard of care

described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Construction Manager* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Construction Manager* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Construction Manager* could not reasonably have discovered.

### GC 3.5 CONSTRUCTION SCHEDULE

Delete paragraph 3.5.1 in its entirety and substitute new paragraph 3.5.1:

3.5.1 The *Construction Manager* shall,

- .1 within 15 days following the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a construction schedule that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. Unless otherwise agreed to in writing, in advance by the *Owner* and the *Construction Manager*, when required by the *Specifications* to employ construction scheduling software, the *Construction Manager* shall employ the software Microsoft Project or a comparable software as acceptable to the *Consultant* or the *Owner*, in generating the construction schedule, which permits the progress of the *Work* to be monitored in relation to the critical path established in the schedule. The *Construction Manager* shall provide the construction schedule and any successor or revised schedules to the *Owner* in electronic format and paper copy. When required by the *Specifications* to employ construction scheduling software, the *Construction Manager* shall provide the construction schedule to the *Owner* in editable format, together with a record version in PDF format. Once accepted by the *Owner* and the *Consultant*, the construction schedule submitted by the *Construction Manager* shall become the baseline construction schedule;
- .2 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline construction schedule or any successor or revised schedule accepted by the *Owner* pursuant to General Condition 3.5 – CONSTRUCTION SCHEDULE;
- .3 monitor the progress of the *Work* on a weekly basis relative to the baseline construction schedule, or any successor or revised schedule accepted by the *Owner* pursuant to General Condition 3.5 – CONSTRUCTION SCHEDULE, update the schedule on a monthly basis and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the schedule; and
- .4 if, after applying the expertise and resources required under subparagraph 3.5.1.2, the *Construction Manager* forms the opinion that the variation or slippage in schedule reported pursuant to subparagraph 3.5.1.3 cannot be recovered by the *Construction Manager*, it shall, in the same notice, indicate to the *Consultant* and the *Owner* if the *Construction Manager* intends to apply for an extension of *Contract Time* as provided in PART 6 of the General Conditions - CHANGES.

Add new paragraph 3.5.2:

- 3.5.2 Having regard to the *Owner's* rights under paragraph 6.5.7, if, at any time, it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Construction Manager* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.5.1.3, the *Construction Manager* 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 *Construction Manager* will achieve the recovery of the schedule. If the *Construction Manager* intends to apply for a change in the *Contract Value* in relation to a schedule recovery plan, then the *Construction Manager* shall proceed in accordance with General Condition 6.5 – DELAYS.

### **GC 3.6 SUPERVISION**

Amend paragraph 3.6.1 by adding the following after the words, "competent representative",

, who shall be a Competent Person, as the term is defined in the OHSA", and by deleting the last sentence, and replacing it with the following, "The Construction Manager shall not be entitled to change the Competent Person without the prior written authorization of the Owner, which shall not be unreasonably withheld.

Add New Article 3.6.3

- 3.6.3 Supervision must at least include:
- 1 – Full Time Construction Supervisor
  - 1 – Project Manager
  - 1 – Clerk

Cost to be included in Construction Manager's Base Price.

Add New Article 3.6.4

- 3.6.4 Construction Manager to provide field office for his use and must include telephone, internet, copier, fax, printer, computer, meeting table and chairs, and also make it available for consultants" and client's use.

### **GC 3.7 SUBCONTRACTORS AND SUPPLIERS**

Delete paragraph 3.7.2 in its entirety and substitute new paragraph 3.7.2:

- 3.7.2 The *Construction Manager* shall, before entering into contracts or agreements with any *Subcontractors* and *Suppliers*, issue and complete a procurement process that is in conformity with the *Owner's* Purchasing By-Law, guidelines and directives, which the *Construction Manager* hereby acknowledges having read as part of the *Contract Documents*. As part of this procurement process, the *Construction Manager* shall solicit proposals in accordance with the thresholds of procurement methods as set out in the City's Purchasing By-Law. Tenders may be required to be opened at the offices of the *Owner* and the *Owner may* have representatives present at the date, time and location when tenders are opened. For greater certainty, the parties acknowledge and agree that the *Owner* or its representatives" presence at the opening of the tender is only for

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the purpose of assuring the *Owner* that the *Construction Manager* adheres to the *Owner's* Purchasing By-Law, guidelines and directives and shall not be construed or deemed an acceptance, approval or vetting of the *Subcontractors* or *Suppliers* for the various parts of the *Work* to be subcontracted. If the *Owner* determines that the *Construction Manager* has violated any of the *Owner's Purchasing By-Laws*, guidelines or directives, the *Owner* may require the *Construction Manager* to cancel the procurement process or take such further action as may be necessary to ensure compliance with same, all at the *Construction Manager's* expense. The *Construction Manager*, at all times, shall be in control of the tendering process for *Subcontractors* and *Suppliers* and hereby indemnifies and saves the *Owner* and its trustees, officers and employees harmless from any liability, claim, costs or damages arising as a result of the *Construction Manager's* selection of the *Subcontractors* or *Suppliers* as the case may be, the tendering process related thereto and any application for judicial review of relief in the nature of prohibition or mandamus.

### **GC 3.8            LABOUR AND PRODUCTS**

Add new paragraph 3.8.3:

3.8.3 The *Construction Manager* shall not change the source of supply of any *Product* without the written authorization of the *Consultant*.

### **GC 3.10           SHOP DRAWINGS**

Add the words "AND OTHER SUBMITTALS" to the Title after SHOP DRAWINGS.

Add "and *Submittals*" after the words "*shop Drawings*" in paragraphs 3.10.1, 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, 3.10.11 and 3.10.12.

Delete 3.10.3 in its entirety and substitute new paragraph 3.10.3

3.10.3 Prior to the first application for payment, the *Construction Manager* and the *Consultant* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings* and any *Submittals*.

Delete the words "with reasonable promptness so as to cause no delay in the performance of the "*Work*" and replace with "within 10 working days or such longer period as may be reasonably required" in paragraph 3.10.12.

### **GC 3.11           USE OF THE WORK**

Add new paragraph 3.11.3:

3.11.3 The *Construction Manager* shall abide by and enforce directives and policies of the *Owner* and the City of Waterloo, including any by-laws regarding signs, advertisements, fires and smoking at the *Place of the Work* as directed by the *Owner* or required by law or directed by any governmental or quasi-governmental authority.

**GC 3.13 CLEANUP**

Add new paragraph 3.13.4

3.13.4 The Owner shall have the right to back charge cleaning to the Construction Manager if the cleaning is not completed within 24 hours of written notice to clean and the Owner shall have the right to back charge the cost of damage to the Place of the Work caused by the Construction Manager's, Subcontractor's or Supplier's transportation in and out of the Place of Work if not repaired within 5 Working Days or written notice to repair or before final payment, whichever is earlier.

Add new General Conditions 3.14, 3.14.2 and 3.15:

**GC 3.14 PERFORMANCE BY CONSTRUCTION MANAGER**

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

3.14.2 The *Construction Manager* further represents, covenants and warrants to the *Owner* that:

- .1 the personnel it assigns to the *Project* are appropriately experienced;
- .2 it has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation; and
- .3 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Construction Manager* to perform its work under the *Contract*.

**GC 3.15 RIGHT OF ENTRY**

3.15.1 The *Owner* shall have the right to enter or occupy the *Work* in whole or in part for the purpose of placing fittings and equipment or for other uses before *Substantial Performance of the Work*, if, in the reasonable opinion of the *Consultant* and *Construction Manager*, such entry or occupation does not prevent or substantially interfere with the *Construction Manager's* completion of the *Contract* within the *Contract Time*. Such entry or occupation shall not be considered as acceptance of the *Work* or in any way relieves the *Construction Manager* from responsibility to complete the *Contract*.

**GC 3.16 CONSTRUCTION MANAGER'S SERVICES AND RESPONSIBILITIES**

3.16 **In addition**, the Construction Manager will perform the following services:

1. Perform the normal duties of a "General Contractor".
2. Perform all contractual, procedural and administrative discussions with the sub-trades.
3. Prepare and schedule various tender packages. Award sub-trade contracts in the name of the Construction Management Firm to the successful tenderers.
4. Prepare all communications in the form of Change Notices, Quotations, Change Orders, Instructions, Progress Payments, Completion Documents, etc.
5. Prepare and monitor construction schedule, budgeting and estimating. Prepare monthly progress billings, project accounting, schedule updates and budget updates.
6. Issue cheques to suppliers and subcontractors.
7. Chair and co-ordinate regular on-site trade contractors' meetings.
8. Receive, review, stamp and process shop drawings.
9. Co-ordinate the work of all Trade Contractors.
10. Co-ordinate the services of Inspection and Testing Companies.
11. Assume the responsibility on the Owner's behalf as the "Constructor" under the Ontario Occupational Health and Safety Act (OHSA). "Constructor" means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer.
12. Trade Subcontractors on all subjects pertaining to the work shall deal only through the Construction Manager. In no instance will the subcontractor/supplier deal directly with the Owner, Architect, Engineer or their representatives.
13. The Construction Manager cannot perform "own forces" work unless prior written approval obtained from Owner.

**GC 3.17 STANDARD OF CARE**

ADD new paragraph 3.17

- 3.17.1 In performing its services and obligation under the Contract, the Construction Manager shall exercise a standard of care, skill and diligence that would normally be provided by an experience and prudent Construction Manager supplying similar services for similar projects. The Construction Manager acknowledges and agrees throughout the Contract, the Construction Manager's obligations, duties and responsibilities shall be interpreted in accordance with this standard. The Construction Manager 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.

3.17.7 The Construction Manager 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 Construction Manager to perform its Work under the Contract.

#### **GC 4.1 CASH ALLOWANCES**

Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:

4.1.4 Where costs under any cash allowance exceed the amount of the allowance, unexpended amounts from other cash allowances shall be reallocated, at the *Consultant's* direction, to cover the shortfall. 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 Value by Change Order*.

Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5

4.1.5 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 Value by Change Order* without any adjustment for the *Construction Manager's* overhead and profit on such amount.

Delete paragraph 4.1.7 in its entirety and substitute new paragraph 4.1.7

4.1.7 At the commencement of the *Work*, the *Construction Manager* shall prepare for the review and acceptance of the *Owner* and the *Consultant*, a schedule indicating the times, with the construction schedule referred to in GC 3.5, that items called for under cash allowances and items that are specified to be *Owner* purchased and *Construction Manager* installed or hooked up are required at the site to avoid delaying the progress of the *Work*.

Add new paragraph 4.1.8

4.1.8 The *Owner* reserves the right to call, or to have the *Construction Manager* call for competitive bids for portions of the *Work*, to be paid for from cash allowances.

#### **GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER**

Revise the heading, "**GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**" to read, "**GC 5.1 FINANCING INFORMATION REQUIRED**".

Delete paragraph 5.1.1 in its entirety and substitute new paragraph 5.1.1:

5.1.1 The *Owner* and *Construction Manager* shall provide each other with timely *Notice in Writing* of any material change in their financial ability to fulfil their respective obligations under the *Contract*.

Delete paragraph 5.1.2 in its entirety.

**GC 5.3 – PROGRESS PAYMENT FOR THE SERVICES**

Revise paragraph 5.3.1 to change the words “20 days” to “30 days”.

**GC 5.4 - APPLICATIONS FOR PROGRESS PAYMENT**

Revise paragraph 5.4.7.3 to change the words “20 days to “30 days”.

Add to the end of paragraph 5.4.7.2 the following new sentence:

For clarity, the ten calendar day period referenced in this paragraph shall not commence until such time as the Consultant has determined that he has received from the Construction Manager all required documents supporting the invoice and evidencing the Work being invoice, all to the Construction Manager’s reasonable satisfaction; and

Add to the end of paragraph 5.4.7.3 the following new sentence:

- the Consultant and the Construction Manager have reached a mutual agreement on the amount of the invoice evidencing the Work being invoiced and the required supporting documents.

Add to the end of paragraph 5.4.8 the following new sentence:

Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Construction Manager* notwithstanding that title has passed to the *Owner* pursuant to General Condition 13.1 - OWNERSHIP OF MATERIALS.

Amend paragraph 5.4.9:

5.4.9 The *Construction Manager* shall, with each application for progress payment, submit a Workplace Safety & Insurance Board Clearance Certificate and CCDC 9A “statutory Declaration” to state that all accounts for labour, subcontracts, Products, Construction Equipment, and other indebtedness which may have been incurred by the Construction Manager in the Performance of the Work and for which the Owner might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.

Add new paragraph 5.4.10

5.4.10 Prior to applying for any payment from the City, the Construction Manager shall submit a monthly projected/estimated payment schedule based on the detailed construction schedule and the *Contract Value* for the duration of the Contract.

**GC 5.5 SUBSTANTIAL PERFORMANCE OF THE WORK**

Delete paragraph 5.5.3 in its entirety and substitute new paragraph 5.5.3:

5.5.3 Immediately prior to the issuance of the certificate of Substantial Performance of the Work, the Construction Manager, 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.

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Add new paragraphs 5.5.4, 5.5.5, 5.5.6, 5.5.7, 5.5.8 and 5.5.9:

- 5.5.4 Within 7 calendar days of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Construction Manager* shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Construction Lien Act*) and shall provide to the *Consultant* and the *Owner* the date of publication and the name of the construction trade newspaper in which the publication occurred. If the *Construction Manager* fails to comply with this provision, the *Owner* may publish a copy of the certificate and charge the *Construction Manager* with the costs so incurred.
- 5.5.5 Prior to submitting its written application for *Substantial Performance of the Work*, the *Construction Manager* shall submit to the *Consultant* all:
- .1 guarantees;
  - .2 warranties;
  - .3 certificates;
  - .4 testing and balancing reports;
  - .5 distribution system diagrams;
  - .6 spare parts;
  - .7 maintenance and training manuals;
  - .8 samples;
  - .9 existing reports and correspondence from authorities having jurisdiction in the *Place of the Work*; and other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, governmental, and utility authorities having jurisdiction in the *Place of the Work*.
  - .10 Shop Drawings, and marked up Drawings;
  - .11 completed as-built drawings in the latest edition of a Computer Assisted Design Drawings software program;
  - .12 Inspection certificates.
- 5.5.6 Where the *Construction Manager* is unable to deliver the documents and materials described in paragraph 5.5.5, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, the failure to deliver shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*. If the *Construction Manager* fails to deliver any of the materials required in subparagraphs 5.5.5.7 or 5.5.5.8, the *Consultant* shall retain from the payment of holdback under General Condition 5.5 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, the amount set out in paragraph 5.5.7., until the materials required pursuant to subparagraphs 5.5.5.7 or 5.5.5.8 are delivered.
- 5.5.7 The amount to be retained by the *Consultant* as contemplated in subparagraph 5.5.6 is the greater of \$25,000 or 3% of the *Contract Value*.
- 5.5.8 Should any documents or materials not be delivered in accordance with paragraph 5.5.5 by the earlier of 60 days following publication of the certificate of Substantial Performance of the Work and the submission of the Construction Manager's application

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for final payment under paragraph 5.8.1 of General Condition 5.8 – FINAL PAYMENT FOR THE WORK, then the amount previously retained pursuant to 5.5.7 shall be forfeit to the *Owner* as compensation for the damages deemed to have been incurred by the *Owner*, and not as a penalty, arising from the failure to deliver the documents or materials, and the *Contract Value* shall be reduced accordingly.

5.5.9 Together with the submission of its written application for *Substantial Performance of the Work*, the *Construction Manager* shall submit to the *Consultant* and to the *Owner* a statutory declaration setting forth in reasonable detail any then outstanding and unresolved disputes or claims between the *Construction Manager* and any *Subcontractor Manager* or *Supplier*, including any claims allegedly arising from delay, which are, directly or indirectly, related to any then outstanding or anticipated disputes or claims between the *Construction Manager* and the *Owner*, and this disclosure shall, at a minimum:

- .1 identify the parties involved;
- .2 identify the amount in dispute;
- .3 provide a brief statement summarizing the position of each party;
- .4 include copies of any correspondence or documents in support of either party's position;
- .5 include copies of any documents of any court or arbitration process related to the matter;
- .6 identify the dispute or claim between the *Construction Manager* and the *Owner* to which the matter relates; and
- .7 include a copy of any written agreement or a summary of any oral agreement between the parties related to resolution of the matter.

The disclosure requirements detailed herein are of a continuing nature and survive completion of the *Work*. Accordingly, the *Construction Manager* shall supplement the information provided with the original statutory declaration with additional materials pertaining to new or existing disputes or claims, as they become available. The *Construction Manager* shall not be entitled to recover from the *Owner* any amount pertaining to any claim or dispute referred to in this paragraph, if the provisions of this paragraph have not been fully complied with. For greater certainty, the *Construction Manager* is not obliged to make the aforementioned disclosure with respect to any dispute or claim that is not related to or does not touch upon any then outstanding and unresolved dispute or claim between the *Construction Manager* and the *Owner*.

#### **GC 5.6 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

Add new subparagraph 5.6.1.3:

5.6.1.3 submit a statement that no written notices of lien have been received by it.

Delete paragraph 5.6.3 in its entirety.

Add new paragraph 5.6.6

5.6.6 The Owner shall not pay the Statutory Holdback until such time as any construction liens have been discharged.

#### **GC 5.7 - PROGRESSIVE RELEASE OF HOLDBACK FOR THE WORK**

Delete paragraph 5.7.2 in its entirety

#### **GC 6.2 - CHANGE ORDER**

Add new paragraphs 6.2.3.1, , 6.2.3.2, 6.2.3.3, 6.2.3.4,

6.2.3.1 Any agreement reached by the Owner with the Construction Manager on an adjustment of the *Contract Value*, on either a lump-sum or unit price basis shall be subject to the conditions contained in paragraph 6.2.3.

6.2.3.2 Where a change in the Work is performed either by the Construction Manager or a Subcontractor, and requires Construction Equipment, reasonable rental charges for Construction Equipment, such as tractors, bulldozers, ditching machines, air compressors, concrete mixers and graders, for the actual time required in operation for the performance of the Work must be agreed upon before commencing the Work.

6.2.3.3 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.

6.2.3.4 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 DIRECTIVE**

Delete paragraph 6.3.3 in its entirety.

Add new paragraph 6.3.9

6.3.9 For greater certainty, and without limitation, the cost of performing the Work attributed 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 salaries, wages and benefits of personnel described in paragraph 6.3.5;
- .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 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 Construction Manager or Subcontractor;
- .7 any costs of quality assurance, such as inspection and testing services, charges levied by authorities, and any legal fees unless any such costs or fees are pre-approved in writing by the Owner.

#### GC 6.4 - CONCEALED OR UNKNOWN CONDITIONS

Add new paragraph 6.4.5:

- 6.4.5 The *Construction Manager* confirms that, prior to bidding the *Project*, it carefully investigated the *Place of the Work* and applied to that investigation the degree of care and skill required by paragraph 3.14.1. The *Construction Manager* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Construction Manager* by such careful investigation undertaken prior to the submission of the bid.

#### GC 6.5 - DELAYS

Delete the period at the end of paragraph 6.5.1, and substitute the following words:

“, but excluding any consequential, indirect or special damages, loss of profits, loss of opportunity or loss of productivity resulting from such delay.”

Delete the period at the end of paragraph 6.5.2, and substitute the following words:

“, but excluding any consequential, indirect or special damages.”

Delete subparagraph 6.5.3.3 and place the word “or” at the end of 6.5.3.2.

Add new paragraph 6.5.6.

- 6.5.6 If the *Construction Manager* is delayed in the performance of the *Work* by an act or omission of the *Construction Manager* or anyone employed or engaged by the *Construction Manager* directly or indirectly, or by any cause within the *Construction Manager's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Construction Manager*. The *Owner* shall be reimbursed by the *Construction Manager* for all reasonable costs incurred by the *Owner* as a result of such delay, including all services required by the *Owner* from the *Consultant* as a result of such delay by the *Construction Manager* and, in particular, the cost 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 provisions of these General Conditions and any later, actual date of *Substantial Performance of the Work* achieved by the *Construction Manager*.

Add new paragraph 6.5.7

6.5.7 If the *Construction Manager* is delayed in the performance of the *Work* by abnormally adverse weather conditions beyond a period of 3 calendar days or, in any event, which has the effect or the possible effect of delaying the *Contract Time*, the *Construction Manager* shall immediately notify the *Consultant* in an attempt to mitigate any delays to the *Contract Time* as a result of the abnormally adverse weather conditions.

Add new paragraph 6.5.8,

6.5.8 Without limiting the obligations of the Construction Manager described in GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS and GC 9.8 – CONSTRUCTION SAFETY , the Owner may, by Notice in Writing, direct the Construction Manager 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 Construction Manager receives such notice, it shall immediately stop the Work and secure the Project site. The Construction Manager shall not be entitled to an extension of the Contract Time or to an increase in the *Contract Value* unless the resulting delay, if any, would entitle the Construction Manager to an extension of the Contract Time or the reimbursement of the Construction Manager’s costs as provided in paragraphs 6.5.1, 6.5.2 or 6.5.3.

#### **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**

Add to the end of 6.6.1 “, within 30 Working Days of the completion of the Work giving rise to the claim.”

#### **GC 7.1 - OWNER’S RIGHT TO PERFORM THE WORK OR TERMINATE THE CONTRACT**

Add to the end of paragraph 7.1.2 new sentence

“Failure by the Owner to provide such reasonable notice shortly after the default has occurred shall not constitute condonation of the default.”

Add 7.1.5.5

“5. Charge the Construction Manager for any damages the Owner may have sustained as a result of the default.”

Delete paragraph 7.1.7 and add new paragraphs 7.1.7, 7.1.8, 7.1.9, 7.1.10 and 7.1.11:

7.1.7 In addition to its right to terminate the Contract set out herein, the *Owner* may terminate this *Contract* at any time for any other reason and without cause upon giving the *Construction Manager Notice in Writing* to that effect. In such event, the *Construction Manager* shall be entitled to be paid for all *Work* performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Construction Manager* may have sustained as a result of the termination of the *Contract*, but in no event shall the *Construction Manager* be entitled to be compensated for any loss of profit on unperformed portions of the *Work*, or indirect, special, or consequential damages incurred.

7.1.8 The *Owner* may suspend *Work* under this *Contract* at any time for any reason and

without cause upon giving the *Construction Manager Notice in Writing* to that effect. In such event, the *Construction Manager* shall be entitled to be paid for all *Work* performed to the date of suspension and be compensated for all actual costs incurred arising from the suspension, including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Construction Manager* may have sustained as a result of the suspension of the *Work*, but in no event shall the *Construction Manager* be entitled to be compensated for any indirect, special, or consequential damages incurred. In the event that the suspension continues for more than 180 calendar days, the *Contract* shall be deemed to be terminated and the provisions of paragraph 7.1.6 shall apply.

- 7.1.9 In the case of either a termination of the *Contract* or a suspension of the *Work* under General Condition 7.1 - OWNER'S RIGHT TO PERFORM THE WORK OR TERMINATE THE CONTRACT or General Condition 7.2 - CONSTRUCTION MANAGER'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Construction Manager* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.
- 7.1.10 Upon the resumption of the *Work* following a suspension under General Condition 7.1 - OWNER'S RIGHT TO PERFORM THE WORK OR TERMINATE THE CONTRACT or General Condition 7.2 - CONSTRUCTION MANAGER'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Construction Manager* will endeavour to minimize the delay and financial consequences arising out of the suspension.
- 7.1.11 The *Construction Manager's* obligation under the *Contract* as to quality, correction, and warranty of the *Work* performed by the *Construction Manager* up to the time of termination or suspension shall continue after such termination of the *Contract* or suspension of the *Work*.

#### **GC 7.2 - CONSTRUCTION MANAGER'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

Amend paragraph 7.2.2 to read as follows:

- 7.2.2. If the *Work* is suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority other than the City of Waterloo and providing that such order was not issued as the result of an act or fault of the *Construction Manager* or of anyone directly or indirectly employed or engaged by the *Construction Manager*, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, terminate the *Contract* by giving the *Owner Notice in Writing* to that effect.

Delete subparagraph 7.2.3.1 in its entirety.

Delete subparagraph 7.2.3.3 in its entirety and substitute new subparagraph 7.2.3.3:

- 7.2.3.3 the *Owner* fails to pay the *Construction Manager* when due the amount certified by the *Consultant* or awarded by arbitration or a court, except where the *Owner* has a bona fide claim for set off, or

Amend subparagraph 7.2.3.4, the words:

7.2.3.4 "the Owner violates the requirements of the Contract to a substantial degree."

Delete from the end of paragraph 7.2.4 the words "or terminate the *Contract*" and substitute the words:

"until the default is corrected, provided however, that in the event of such suspension, the provisions of subparagraph 7.1.10 shall apply. If the *Construction Manager's Notice in Writing* to the *Owner* was given pursuant to subparagraph 7.2.3.3, then, 180 days after the delivery of the *Notice in Writing*, the *Construction Manager* may terminate the *Contract*, provided, however, that in the event of such termination, the provisions of subparagraph 7.1.10 shall apply."

Add new paragraphs 7.2.5 and 7.2.6

7.2.5 If the default cannot be corrected within the 5 Working Days specified in paragraph 7.2.5, the Owner shall be deemed to have cured the default if it:

.1 commences the correction of the default within the specified time;

.2 provides the Construction Manager with an acceptable schedule for such correction; and

.3 completes the correction in accordance with such schedule.

7.2.6 If the Construction Manager terminates the Contract under the conditions described in this GC7.2, the Construction Manager shall also be entitled to be paid for all Work performed to the date of termination. The Construction Manager shall also be entitled to recover the costs associated with termination, including the costs of demobilization, losses sustained on Products and Construction Equipment. The Construction Manager shall not be entitled to any recovery for special, indirect or consequential losses, or loss of use.

#### **GC 8.1 - AUTHORITY OF THE CONSULTANT**

Delete last sentence of 8.1.3 and substitute the following sentence:

If it is subsequently determined that such instructions were at variance with the *Contract Documents*, the *Owner* shall pay the *Construction Manager* costs incurred by the *Construction Manager* in carrying out such instructions which the *Construction Manager* was required to do beyond the requirements of the *Contract Documents*, including costs resulting from interruption of the *Work*.

#### **GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION**

Delete paragraphs 8.2.6, 8.2.7, and 8.2.8 in their entirety and substitute new subparagraph 8.2.6:

8.2.6 When a dispute has not been resolved through negotiation or mediation, within 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may give a *Notice in Writing* to the other party and to the *Consultant* inviting the other party to agree to submit the dispute to be finally resolved by arbitration, pursuant to provisions of the *Arbitration Act, 1991*. If the other party wishes to accept the invitation to submit the dispute to arbitration, it shall so indicate by the delivery of a responding *Notice in Writing* within 10 *Working Days* of receipt of the

invitation. If, within the required times, no invitation is made or, if made, is not accepted, either party may refer the dispute to the courts or to any other form of dispute resolution, including arbitration, which the parties may agree to use.

Add the following new paragraphs 8.2.9, 8.2.10, 8.2.11, 8.2.12, 8.2.13., and 8.2.14.

8.2.9 Within five days of receipt of the notice of arbitration by the responding party under paragraph 8.2.6, the *Owner* and the *Construction Manager* shall give the *Consultant* a written notice containing:

- a) a copy of the notice of arbitration
- b) a copy of supplementary conditions 8.2.9 to 8.2.14 of this *Contract*, and;
- c) any claims or issues which the *Construction Manager* or the *Owner*, as the case may be, wishes to raise in relation to the *Consultant* arising out of the issues in dispute in the arbitration.

8.2.10 The *Owner* and the *Construction Manager* agree that the *Consultant* may elect, within ten days of receipt of the notice under paragraph 8.2.9, to become a full party to the arbitration under paragraph 8.2.6 if the *Consultant*:

- a) has a vested or contingency financial interest in the outcome of the arbitration
- b) gives the notice of election to the *Owner* and the *Construction Manager* before the arbitrator is appointed
- c) agrees to be a party to the arbitration within the meaning of the rules referred to in paragraph 8.2.6, and;
- d) agrees to be bound by the arbitral award made in the arbitration.

8.2.11 If an election is made under paragraph 8.2.10, the *Consultant* may participate in the appointment of the arbitrator and, notwithstanding the rules referred to in paragraph 8.2.6, the time period for reaching agreement on the appointment of the arbitrator shall begin to run from the date the respondent receives a copy of the notice of arbitration.

8.2.12 The arbitrator in the arbitration in which the *Consultant* has elected under paragraph 8.2.10 to become a full party may:

- a) on application of the *Owner* or the *Construction Manager*, determine whether the *Consultant* has satisfied the requirements of paragraph 8.2.10, and;
- b) make any procedural order considered necessary to facilitate the addition of the *Consultant* as a party to the arbitration.

8.2.13 The provisions of paragraph 8.2.9 shall apply mutatis mutandis to written notice to be given by the *Consultant* to any sub-consultant;

8.2.14 In the event of notice of arbitration given by the *Consultant* to a sub consultant, the sub consultant is not entitled to any election with respect to the proceeding as outlined in 8.2.10, and is deemed to be bound by the arbitration proceeding.

## **GC 9.1 – PROTECTION OF WORK AND PROPERTY**

Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:

9.1.1.1 Errors in the *Contract Documents* which the *Construction Manager* could not have

discovered applying the standard of care described in paragraph 3.14.1;

Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2:

9.1.2 Before commencing any *Work*, the *Construction Manager* shall determine the locations of all underground utilities and structures indicated in the *Contract Documents*, or that are discoverable by applying to an inspection of the *Place of the Work* the degree of care and skill described in paragraph 3.14.1.

Add new paragraph 9.1.5:

9.1.5 With respect to any damage to which paragraph 9.1.4 applies, the *Construction Manager* shall neither undertake to repair or replace any damage whatsoever to the work of other contractors, or to adjoining property of the *Owner* or any third party, nor acknowledge that the same was caused or occasioned by the *Construction Manager*, 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*. Where, however, there is danger to life, the environment, or public safety, the *Construction Manager* shall take such emergency action as it deems necessary to remove the danger.

Add new paragraph 9.1.6:

9.1.6 The *Construction Manager* shall be responsible for securing the *Place of Work* at all times and shall take all reasonable precautions necessary to protect the *Place of Work*, its contents, materials (including *Owner*-supplied materials) and the public from loss or damage during and after working hours. Where the *Consultant* or the *Owner* deems the provision of security guard services to be necessary, the *Construction Manager* shall provide those services at the *Owner's* expense.

## **GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES**

Add new subparagraph 9.2.5.5

9.2.5.5 take all reasonable steps to mitigate the impact on Contract Time and *Contract Value*

Add to paragraph 9.2.6 after the word "responsible", the following new words:

"or whether any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,"

Add "and the *Consultant*" after the word "*Construction Manager*" in sub-paragraph 9.2.7.4

Add to paragraph 9.2.8 after the word "responsible", the following new words:

"or that any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal

and regulatory requirements) were dealt with by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,"

Add to subparagraph 9.2.8.3 immediately before the comma, the following new words:

"and as a result of the delay"

#### **GC 9.4 - CONSTRUCTION SAFETY**

Amend paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1

9.4.1 The Construction Manager 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.

Add new paragraphs 9.4.2, 9.4.3 and 9.4.4:

9.4.2 Prior to the commencement of the *Work*, the *Construction Manager* shall submit to the *Owner*:

- .1 a current Workplace Safety & Insurance Board Clearance Certificate;
- .2 copies of the *Construction Manager's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 documentation setting out the *Construction Manager's* in-house safety programs;
- .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under the *Occupational Health and Safety Act*.

9.4.3 The *Construction Manager* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Construction Manager* under the *Occupational Health and Safety Act*, including the payment of legal fees and disbursements on a solicitor and client basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance.

#### **GC 9.5 - MOULD**

Add to subparagraph 9.5.2.3 immediately before the comma, the following new words:

"and as a result of the delay"

Add " and the *Consultant*" after "*Construction Manager*" in sub-paragraph 9.5.3.4

#### **GC 10.1 - TAXES AND DUTIES**

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Add to the end of 10.1.1 "Any Value Added Taxes (including Harmonized Sales Tax), where applicable, shall be listed as line items separate from the total *Contract Value*."

Amend 10.1.2 to read:

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

Add new paragraph 10.1.3:

10.1.3 Where the *Owner* is entitled to an exemption, reduction or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Construction Manager* shall, at the request of the *Owner*, assist with application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Construction Manager* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.

Add new paragraphs 10.1.4, 10.1.5 and 10.1.6

10.1.4 The Construction Manager shall maintain accurate records of Construction Equipment, Product and component costs reflecting the taxes, custom duties, excise taxes and Value Added Taxes paid.

10.1.5 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 Construction Manager 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 Value, in the Owner's discretion. The Construction Manager agrees to enable, assist with and submit to any reasonable audit requested by the Owner with respect to the potential refunds under this paragraph.

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

## **GC 10.2 - LAWS, NOTICES, PERMITS, AND FEES**

Add to the end of paragraph 10.2.4 the following words:

"The *Construction Manager* shall notify the Chief Building Official or the registered code agency, where applicable, of the readiness, substantial completion, and completion of the stages of

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construction set out in the *Ontario Building Code*. The *Construction Manager* shall be present at each site inspection by an inspector or registered code agency. If any laws, ordinances, rules, regulations, or codes conflict, the more stringent shall govern."

Delete from the first line of paragraph 10.2.5 the word, "The" and substitute the words:

"subject to paragraph 3.4.1, the ..."

Add new paragraphs 10.2.6 and 10.2.7

10.2.6 If the *Construction Manager* fails to notify the *Owner* and the *Consultant* in writing, fails to obtain direction required in paragraph 10.2.5, or performs work that it knows or ought to have known that contravenes any laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes, the *Construction Manager* 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 paragraph 12.1.1, 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."

10.2.7 Without limiting the generality of any other provision in the *Contract Documents*, the *Construction Manager* shall cause all certificates to be furnished that are required or given by the appropriate governmental or quasi-governmental authorities as evidence that the *Work* as installed conforms with the laws and regulations of any authorities having jurisdiction over the *Place of the Work*, including, without limitation, certificates of compliance for the *Owner's* occupancy or partial occupancy. The certificates are to be final certificates giving complete clearance of the *Work*, in the event that such governmental or quasi-governmental authorities furnish such certificates."

### **GC 10.3 - PATENT FEES**

Amend 10.3.1, line 3 to read "...A-7 COST OF THE WORK. The *Construction Manager* shall indemnify and hold the *Owner* harmless from...."

Delete paragraph 10.3.2 in its entirety.

### **GC 10.4 - WORKERS' COMPENSATION**

Add to subparagraph 10.4.1 immediately after the first comma, the following new words:

"again with each application for progress payment, and"

Add to the beginning of subparagraph 10.4.2 the following new words:

"The *Construction Manager* shall ensure that each *Subcontractor* complies with the workers' compensation legislation at the *Place of the Work*."

Add new paragraph 10.4.3:

10.4.3 Where a *Subcontractor* is not required to participate in the insurance plan provided for under the workers' compensation legislation, the *Construction Manager* shall require the *Subcontractor* to provide a sworn declaration of its exemption as a condition of the *Subcontractor's* admission to the *Place of Work*. When requested by the *Owner*, the *Construction Manager* shall require the *Subcontractor* to provide a letter of exemption under the workers' compensation legislation.

#### GC 11.1 - INSURANCE

Amend GC 11.1 – INSURANCE to read as follows:

11.1.1 The Construction Manager shall insure its undertaking, business and equipment under the following coverage so as to protect and indemnify and save harmless the City:

- (a) **General Liability Insurance:** The Construction Manager shall maintain liability insurance acceptable to the City throughout the term of this Agreement from the date of commencement of work until one year from the date of substantial performance of work. Liability coverage shall be provided for completed operations hazards from the date of substantial performance of the work, as set out in the certificate of substantial performance of work, on an ongoing basis for a period of 6 years following substantial performance of work. Coverage shall consist of a comprehensive policy of public liability and property damage insurance, with all available coverage extensions/endorsements, in an amount of not less than \$5,000,000 per occurrence. **Such insurance shall name The Corporation of the City of Waterloo and any other person or party identified in the contract documents, as an additional insured with a cross liability endorsement and severability of interest provision.** The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit. A combination of primary coverage plus umbrella or excess liability insurance may be used.

Such insurance coverage shall be endorsed to cover shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading.

- (b) **Owned and Non-Owned Automobile Liability Insurance:** The Construction Manager shall maintain liability insurance on all Owned, Non-Owned and Leased Automobiles used in the performance of this work to a limit of \$5,000,000 per occurrence throughout the term of this Agreement from the date of commencement of work and until one year after the date of substantial performance of work.
- (c) The Construction Manager shall provide and maintain as required during the term of the Agreement, **Broad Form Contractors' Equipment Insurance** coverage for construction machinery and equipment used by the Construction Manager for the performance of the work. Such insurance shall be in a form acceptable to the City and shall not allow subrogation claims by the Insurer against the City.
- (d) The Construction Manager shall provide and maintain as required by the City, in consultation with the Construction Manager, if there is an application to the project, an **All Risk Installation Floater Insurance** policy covering the installation of

any machinery and equipment associated with the construction project. Coverage shall be in an amount equal to the value of the machinery and/or equipment and shall include coverage while it is in transit to, while stored at a temporary location and awaiting installation at the work site.

- (e) The Construction Manager shall provide and maintain as required by the City, in consultation with the Construction Manager, if there is an application to the project, **Boiler & Machinery Insurance** coverage on a Comprehensive Plus Form to the full replacement cost of the boiler and machinery equipment.
- (f) The Construction Manager shall ensure its professional consultants, architects, landscape architects, planners and engineers, providing a professional service in connection with the contract, maintain until three (3) years after the Agreement, **Professional Liability Insurance** to a limit not less than \$1,000,000 per claim providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. Certificates evidence such coverage shall be supplied to the City prior to the completion of the project and in accordance with the provisions stated above.
- (g) The Construction Manager shall take out and keep in force as required by the City, in consultation with the Construction Manager, if there is an application to the project, **Contractor's Pollution Liability** (CPL) coverage to ensure that their work does not exacerbate any pre-existing environmental condition during construction. Coverage shall be in an amount of not less than \$2,000,000 per claim or per occurrence, or such greater amount as the City may from time to time require, naming the City as an additional insured, which coverage shall be maintained in force for 1 year following the termination of the Contract. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit.
- (h) **Provisions:** Prior to the commencement of work the Construction Manager shall forward a Certificate of Insurance evidencing this insurance with the executed Agreement. The Certificate shall state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days (ten 10 days if cancellation is due to non-payment of premium) prior written notice by certified mail to the City.

It is also understood and agreed that in the event of a claim any deductible or self-insured retention under these policies of insurance shall be the sole responsibility of the Construction Manager and that this coverage shall preclude subrogation claims against the City and any other person insured under the policy and be primary insurance in response to claims. Any insurance or self-insurance maintained by the City and any other person insured under the policy shall be considered excess of the Construction Manager's insurance and shall not contribute with it. The minimum amount of insurance required herein shall not modify, waive or otherwise alter the Construction Manager's obligation to fully indemnify the City under this Agreement.

- (i) **Claims Process:** Claims reported to the Construction Manager, either directly by a third party or through the City shall be promptly investigated by the Construction Manager. The Construction Manager shall make contact with the third party claimant within 48 hours of receipt of notice of a claim. The Construction Manager shall initiate an investigation of the claim immediately upon notice, and advise the third party claimant in writing, with a copy to the City, of its position regarding the claim within 21 calendar days of the notice. The Construction Manager shall include in their response the reasons for their position.

Should this position not resolve the claim and be accepted by the third party claimant, the Construction Manager shall immediately report the claim to its Insurer for a further review. The Construction Manager's Insurer upon receipt of this claim shall advise the third party claimant by letter, with a copy to the City, that they are now investigating the claim. When a final position on the claim has been determined, the Construction Manager's Insurer shall advise the third party claimant by letter, with a copy to the City. Failure to follow this procedure shall permit the City to investigate and resolve any such claims.

Nothing herein shall limit the right of the City to investigate and resolve any such claims notwithstanding the response of the Construction Manager and/or its Insurer and to seek indemnification from the Construction Manager or to exercise any other rights under the Contract.

The City may, without breaching this contract, retain from the funds owing to the Construction Manager an amount that, as between the City and the Construction Manager, is equal to the balance in the City's favour of all outstanding debts, claims or damages, whether or not related to this contract."

## GC 11.2 - CONTRACT SECURITY

Delete paragraph 11.2.1 in its entirety and substitute new paragraph 11.2.1:

11.2.1 The *Construction Manager* shall, prior to commencement of the *Work*, provide to the *Owner*:

- .1 a performance bond, in the form set out in the *Contract Documents*, in an amount equal to 50% of the *Contract Value*, covering the performance of the *Contract*, including the *Construction Manager's* requirements with respect to the correction of deficiencies and the fulfillment of all warranties; and
- .2 a labour and material payment bond, in the form set out in the *Contract Documents*, in an amount equal to 50% of the *Contract Value* covering payment for labour, *Product*, or both.

Delete paragraph 11.2.2 in its entirety and substitute new paragraph 11.2.2:

11.2.2 The bonds referred to in paragraph 11.2.1 shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing, with respect to the bond in 11.2.1.1 until five (5) days after the expiry of all warranty periods in relation to the performance of the *Work* and materials and, in respect of the bond in 11.2.1.2 above, until 60 days following *Substantial Performance of the Work*.

Add new paragraph 11.2.3:

11.2.3 If approved changes pursuant to the *Contract* result in approved increase or cumulative increases to the *Contract Value* the *Construction Manager* shall promptly acquire additional bonding at the *Owner's* expense. Where additional bonding premiums are paid by the *Owner*, the *Construction Manager* shall promptly submit written confirmation that the premiums were paid to the surety and promptly provide the *Owner* with the original revised performance bond(s).

Add new paragraph 11.2.4:

11.2.4 The premiums for the bonds required by the Contract Documents are included in the Contract Value.

## **GC 12.1 - INDEMNIFICATION**

Amend GC 12.1 – INDEMNIFICATION to read as follows:

12.1.1 The *Construction Manager* shall indemnify and hold harmless the *Owner* and each of the *Owner's* elected officials, officers, employees and agents (hereinafter referred to collectively as the "Indemnities") from and against all claims, demands, actions, suits or proceedings which may be brought against or made by third parties, hereinafter called "claims", directly or indirectly arising or alleged to arise out of the performance of or the failure to perform any of its obligations under the *Contract Documents*.

12.1.2 The *Construction Manager* shall indemnify and hold harmless the *Owner* and the Indemnitees from all and every claim for damages, royalties or fees for the infringement of any patented invention or copyright occasioned by the *Construction Manager* in connection with the *Work* performed or *Product* furnished by the *Construction Manager* under the *Contract*.

12.1.3 The *Owner* shall indemnify and hold harmless the *Construction Manager* from and against all claims, demands, actions, suits or proceedings ("claims") in respect to claims against the *Construction Manager* by third parties that arise out of the *Construction Manager's* direct involvement in this *Contract* provided such claims are directly caused by the negligent act or omission of the *Owner*, and then only to the extent the loss or damage was caused by the *Owner*. The *Construction Manager* expressly waives the right to indemnity for claims other than those stated above.

12.1.4 The *Construction Manager* shall pay to the Indemnitees, or any of them, on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by the Indemnitees, or any of them, in consequence of any such action, suit, claim, lien, execution or demand and any moneys paid or payable by the Indemnitees in settlement or in discharge or on account thereof. If the *Construction Manager* fails to make such payment all such mentioned loss, costs, damages and expenses and all such moneys so paid or payable may be deducted from any moneys of the *Construction Manager* then remaining in the possession of the *Owner* on account of the *Work* or from moneys payable by the *Owner* to the *Construction Manager* on any account whatever or may be recovered from the *Construction Manager* or its Surety, as the case may be, in any court of competent jurisdiction as moneys paid at their request. The *Construction Manager* hereby authorizes and empowers the *Owner* or the *Consultant* as the case

may be, or their said solicitor, from the time being, to defend, settle or compromise any of such actions, suits, claims, liens, executions or demands as the *Owner* or the Construction Manager, as the case may be, or their said solicitor may deem expedient. The *Construction Manager* shall ratify and confirm all the acts of the *Owner* or the *Consultant* or their solicitor in that behalf, and shall pay to such solicitor on demand his or her reasonable costs of any such defense, settlement or compromise, and that in default of such payment the same may be deducted from any moneys payable by the *Owner* to the *Consultant* on any account whatever."

#### **GC 12.2 - WAIVER OF CLAIMS**

Delete the reference to "395 calendar days" in the last line of paragraph 12.2.2 and substitute "120 calendar days".

Delete paragraph 12.2.5.

Amend 12.2.7 to read as follows:

12.2.7 The Construction Manager giving "Notice in Writing of claim" as provided for in GC 12.1 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.

Delete paragraphs 12.2.9 and 12.2.10.

#### **GC 12.3 – WARRANTY**

Amend 12.3.1 to read as follows:

12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under this Contract is two years from the date of Substantial Performance of the Work. With respect to equipment installed at the request of the Owner, and successfully operating at its intended design capacity before completion of the Work, the warranty period shall be two years from the date the equipment commenced its successful operations.

Delete from the first line of paragraph 12.3.2 the word, "The" and substitute the words:

"subject to paragraph 3.4.1, the...".

Amend 12.3.3 to read as follows:

12.3.3 The Owner, through the Consultant, shall promptly give the Construction Manager Notice in Writing of observed defects and deficiencies which occur during the two year warranty period.

Amend 12.3.4 to read as follows:

12.3.4 Subject to paragraph 12.3.2, the Construction Manager shall correct promptly, at the Construction Manager's expense, defects or deficiencies in the Work which appear prior to and during the two year warranty period.

Amend 12.3.7, first line, change "...beyond the one year warranty period....." to read as follows:

"...beyond the two year warranty period....."

Add new paragraphs 12.3.8, 12.3.9 and 12.3.10

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 *Construction Manager's* warranty under GC 12.3, the *Construction Manager* 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 *Construction Manager* 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 *Construction Manager* pursuant to such warranties and guarantees.

12.3.10 The provisions of the GC 12.3 – WARRANTY shall not deprive the *Owner* of any action, right or remedy otherwise available to the *Owner* for the *Construction Manager'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 *Construction Manager* 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.

Add new PART 13 as follows:

## **PART 13 OTHER PROVISIONS**

### **GC 13.1 - OWNERSHIP OF MATERIALS**

13.1.1 All *Work* and *Products* delivered to the *Place of the Work* by the *Construction Manager* shall be the property of the *Owner*. The *Construction Manager* shall remove all surplus or rejected materials when notified in writing to do so by the *Consultant*. Notwithstanding that ownership of the *Work* and *Products* may vest in the *Owner*, the risk of all *Work* and *Products* shall remain with the *Construction Manager* until the *Work* and *Products* are accepted and assumed by the *Owner* as set out in the *Contract*.

### **GC 13.2 - CONSTRUCTION LIENS**

13.2.1 In the event that a written notice of lien is delivered to the *Owner* in respect of the *Project* by or through a *Subcontractor* or *Supplier*, the *Construction Manager*, at its own expense and within ten (10) days, shall ensure that such written notice of lien is withdrawn in writing.

13.2.2 In the event that the *Construction Manager* fails to conform with the requirements of 13.2.1, the *Owner* may set off and deduct from any amount owing to the *Construction Manager*, all costs and associated expenses, including legal fees and disbursements

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reasonably incurred to secure a written withdrawal of the notice of lien. If there is no amount owing by the *Owner* to the *Construction Manager*, then the *Construction Manager* shall reimburse the *Owner* for all of the said cost and associated expenses.

13.2.3 Notwithstanding any other provision of the *Contract*, the *Owner* shall not pay any amount owing to the *Construction Manager*, until any liens are discharged and any notices of lien are withdrawn.

13.2.4 In the event that the *Construction Manager* fails to discharge any liens within five (5) *Working Days* of being given written notice, the *Owner* shall be entitled to take the necessary steps to have the construction liens discharged or vacated from title and will be entitled to full compensation for its costs and associated expenses, including legal fees, disbursements and costs of obtaining and posting a lien bond. The *Owner* shall also be entitled to back charge all costs associated with discharging or vacating the construction liens.

### **GC 13.3 – CONSTRUCTION MANAGER DISCHARGE OF LIABILITIES**

13.3.1 In addition to the obligation assumed by the *Construction Manager* pursuant to GC 3.7, the *Construction Manager* 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.

### **GC 13.4 – DAILY REPORTING/DAILY LOGS**

13.4.1 The *Construction Manager* shall cause its supervisor or such competent person as it may delegate, to prepare a daily log or diary reporting on weather conditions, work force of the *Construction Manager*, *Subcontractors*, *Suppliers* and any other forces on site and also record the general nature of *Project* activities. Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the site who are not part of the day-to-day work force.

13.4.2 The *Construction Manager* shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the *Project*, including records which document the activities of the *Construction Manager* in connection with GC 3.4, and comparing the resourcing to the resourcing anticipated when the most recent version of the schedule was prepared pursuant to GC 3.5. The *Construction Manager* shall make these records available to the *Owner* and/or the *Consultant* for inspection upon reasonable notice.

### **GC 13.5 – PUBLIC STATEMENTS**

13.5.1 The *Construction Manager* shall not publish issue or make any statements or news release, electronic or otherwise concerning the *Contract*, the *Work*, or the *Project*, without the express written consent of the *Owner*.

### **GC 13.6 – OWNER SET-OFF**

13.6.1 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 *Construction*

*Manager* 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, undermined claims by the *Owner*, and any assessment due to the Workplace Safety and Insurance Board."

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**GC 14.1 – CONFIDENTIALITY, FREEDOM OF INFORMATION AND PUBLICITY**

- 14.1.1 Without limiting the generality of the sections of the *Contract* relating to compliance with all applicable laws and statutes, the *Construction Manager* acknowledges that the *Owner* is governed by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M.56 ("MFIPPA") and the *Construction Manager* covenants to follow these Acts and to protect the privacy of residents in keeping with these Acts, as agent of the *Owner* for the purpose of this section.
- 14.1.2 The *Construction Manager* shall not at any time before, during or after the completion of the *Contract*, divulge any confidential information communicated to or acquired by the *Construction Manager* or disclosed by the *Owner* in the course of carrying out *Work* provided for herein. No such information shall be used by the *Construction Manager* before, during or after the completion of the *Contract* on any project without the prior written consent of the *Owner*. For the purpose of this *Contract*, "confidential information" means any information that is not in the public domain.
- 14.1.3 In accordance MFIPPA or other applicable privacy legislation, the *Construction Manager* agrees that any personal information it has provided as a proponent or bidder in the course of submitted a proposal or tender has been collected under the authority of the *Municipal Act, 2001*, S.O. 2001 c. 25 and has been properly used in the proposal or tender evaluation process and is now properly used for the purpose of this *Contract*. All correspondence, documentation and other information, including the proposal or tender, provided to the *Owner* or its employees, agents or representatives by the *Construction Manager*, as a proponent or bidder or now, or in the future in connection with, or arising out of, the proposal or tender process or this *Contract*, is or shall become property of the *Owner* and a record of the *Owner*. Such records and the *Contract Documents* are subject to the provision of MFIPPA and the *Owner's* obligations under this or other privacy legislation and may be released pursuant to such Acts. The *Construction Manager's* name at a minimum will be made public on request. In addition, certain contractual information must be disclosed to the *Owner* and accordingly may become part of the public record. All correspondence, documentation and information provided to the *Owner* may be produced for the purpose of evaluating the *Construction Manager's* or proponent's proposal or bid, or for purposes of this *Contract*.
- 14.1.4 All correspondence, documentation and information provided by the *Owner* to any bidder or contractor in connection with or arising out of any tender, request for proposal, or contract or the acceptance of any of the aforesaid remains the property of the *Owner* and must not be used for any purpose other than as related to the tender or proposal or in the fulfilment of any purpose other than as related to the tender or proposal or this *Contract* must be maintained at all times by the *Construction Manager*. Where any proprietary or confidential information belonging to or in the care of the *Owner* is disclosed to the *Construction Manager*, the *Construction Manager* shall:
- safeguard all information provided by the *Owner* at the request of the *Owner*;
  - maintain in strict confidence and not reproduce or disclose any such information to any person except as required by law or as expressly permitted in advance and in writing by the *Owner*;
  - return forthwith upon demand all such information as may be in documentary form or recorded electronically; and,

- not use any such information for any purpose other than the purpose for which it was provided by the owner or by any other person at the request of the *Owner*.

14.1.5 Any publicity or press releases with respect to this *Contract* shall be within the sole discretion and control of the *Owner*. The *Construction Manager* shall within the obtain prior approval from the *Owner* before making any information public with regard to this *Contract* at any time, during or after the term of the *Contract*."

#### **GC 15.1 – CONFIDENTIALITY, FREEDOM OF INFORMATION AND PUBLICITY**

15.1.1 Without limiting the generality of the sections of the *Contract* relating to compliance with all applicable laws and statutes, the *Construction Manager* acknowledges that the *Owner* is governed by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M.56 ("MFIPPA") and the *Construction Manager* covenants to follow these Acts and to protect the privacy of residents in keeping with these Acts, as agent of the *Owner* for the purpose of this section.

15.1.2 The *Construction Manager* shall not at any time before, during or after the completion of the *Contract*, divulge any confidential information communicated to or acquired by the *Construction Manager* or disclosed by the *Owner* in the course of carrying out *Work* provided for herein. No such information shall be used by the *Construction Manager* before, during or after the completion of the *Contract* on any project without the prior written consent of the *Owner*. For the purpose of this *Contract*, "confidential information" means any information that is not in the public domain.

15.1.3 In accordance MFIPPA or other applicable privacy legislation, the *Construction Manager* agrees that any personal information it has provided as a proponent or bidder in the course of submitted a proposal or tender has been collected under the authority of the *Municipal Act, 2001*, S.O. 2001 c. 25 and has been properly used in the proposal or tender evaluation process and is now properly used for the purpose of this *Contract*. All correspondence, documentation and other information, including the proposal or tender, provided to the *Owner* or its employees, agents or representatives by the *Construction Manager*, as a proponent or bidder or now, or in the future in connection with, or arising out of, the proposal or tender process or this *Contract*, is or shall become property of the *Owner* and a record of the *Owner*. Such records and the *Contract Documents* are subject to the provision of MFIPPA and the *Owner's* obligations under this or other privacy legislation and may be released pursuant to such Acts. The *Construction Manager's* name at a minimum will be made public on request. In addition, certain contractual information must be disclosed to the *Owner* and accordingly may become part of the public record. All correspondence, documentation and information provided to the *Owner* may be produced for the purpose of evaluating the *Construction Manager's* or proponent's proposal or bid, or for purposes of this *Contract*.

15.1.4 All correspondence, documentation and information provided by the *Owner* to any bidder or contractor in connection with or arising out of any tender, request for proposal, or contract or the acceptance of any of the aforesaid remains the property of the *Owner* and must not be used for any purpose other than as related to the tender or proposal or in the fulfillment of any purpose other than as related to the tender or proposal or this *Contract* must be maintained at all times by the *Construction Manager*.

Where any proprietary or confidential information belonging to or in the care of the *Owner* is disclosed to the *Construction Manager*, the *Construction Manager* shall:

- safeguard all information provided by the *Owner* at the request of the *Owner*;
- maintain in strict confidence and not reproduce or disclose any such information to any person except as required by law or as expressly permitted in advance and in writing by the *Owner*;
- return forthwith upon demand all such information as may be in documentary form or recorded electronically; and,
- not use any such information for any purpose other than the purpose for which it was provided by the owner or by any other person at the request of the *Owner*.

15.1.5 Any publicity or press releases with respect to this *Contract* shall be within the sole discretion and control of the *Owner*. The *Construction Manager* shall within the obtain prior approval from the *Owner* before making any information public with regard to this *Contract* at any time, during or after the term of the *Contract*."

END OF DOCUMENT