



THE CORPORATION OF THE CITY OF WINDSOR  
OFFICE OF THE CITY SOLICITOR

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**ADDENDUM NO. 1  
DOUGALL AVENUE RAIL PEDESTRIAN UNDERPASS AND MULTI-USE TRAIL DESIGN-  
BUILD PROJECT  
RFP NO. 156-18**

**November 26, 2018**

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This addendum amends and forms part of the Proposal Documents. The Proponent shall insert the addendum behind the cover page of the Proposal Documents.

**ATTACHED:**

Appendix G – Supplementary Conditions have been attached to this addendum.

Except for the contents of this addendum, all other terms and conditions of this proposal remain the same.

***END OF ADDENDUM NO. 1***

Yours truly,

**THE CORPORATION OF THE CITY OF WINDSOR**

*Elaine Castellan*

Elaine Castellan  
Purchasing Supervisor

EC/jm

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**ADDENDUM NO. 1  
DOUGALL AVENUE RAIL PEDESTRIAN UNDERPASS AND MULTI-USE TRAIL DESIGN-  
BUILD PROJECT  
RFP NO. 156-18**

**November 26, 2018**

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I hereby acknowledge receipt of Addendum No. 1 to the RFP No. 156-18 (30 pages).

The information contained therein is hereby noted and account of same will be taken in our proposal cost.

This information was received on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Company Name

**\*NOTE: You are required to acknowledge this addendum with your proposal submission.**

**PLEASE FAX BACK TO (519) 255-9891 OR E-MAIL @ [purchasing@citywindsor.ca](mailto:purchasing@citywindsor.ca)**  
**SIGNED ACKNOWLEDGEMENT SHEET ASAP**

**Attn: Purchasing Department**

**APPENDIX G – SUPPLEMENTARY CONDITIONS**

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The Design-Build Stipulated Price Contract, Standard construction document CCA 14 – 2013, is amended as follows:

**SC 1. AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER****SC 1.1 ARTICLE A-1 DESIGN SERVICES AND THE WORK**

1.1.1 Add new paragraph 1.4 as follows:

- “1.4 diligently proceed with and complete the *Work* in a thorough, expeditious, economical and good and workmanlike manner and in all respects in accordance with the *Contract*, including the *Design Services and Work schedule*.”

**SC 1.2 ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

1.2.1 Add new paragraphs 6.6 and 6.7 as follows:

- “6.6 *Notices in Writing* which are delivered by the *Design-Builder* to the *Owner* shall also be delivered, using the same method of delivery, to the City Solicitor, 400 City Hall Square East, Suite 201, Windsor, ON N9A 7K6.
- 6.7 All other communications in writing may be delivered by any of the means described in 6.2 above as well as other forms of electronic communication including e-mail, during the transmission of which no indication of failure of receipt is communicated to the sender.”

**SC 1.3 ARTICLE A-9 TIME IS OF THE ESSENCE**

1.3.1 Add a new Article A-9, “TIME IS OF THE ESSENCE”, as follows:

**“ARTICLE A-9 TIME IS OF THE ESSENCE**

- 9.1 It is critical that *Substantial Performance of the Work* of the *Contract* and occupancy of the *Project* be attained by **November 15<sup>th</sup>, 2019**. The *Design-Builder* represents and warrants that it will attain *Substantial Performance of the Work* of the *Contract* by the date stipulated in paragraph 1.3 of Article A-1 – DESIGN SERVICES AND THE WORK, and acknowledges that it has been advised by the **Owner** that it is critical to the *Owner* that *Substantial Performance of the Work* and occupancy of the *Project* is attained by such date. The *Design-Builder* agrees that time shall be of the essence in the performance of the *Design-Builder’s* obligations under this *Contract*.”

**SC 2. DEFINITIONS**

**SC 2.1** Amend the Definition of “Construction Documents”, by adding the following to the end of that Definition:

“Notwithstanding the foregoing, and for greater certainty, the *Construction Documents* shall meet all of the requirements of the *Owner’s Statement of Requirements*.”

**SC 2.2** Amend the Definition of “Owner’s Advisor” by adding the following to the end of that Definition:

2.2.1 “and is the architect, the engineer, or other person or entity engaged by the *Owner* to monitor and comment on compliance of the *Design Services and Work* to the *Owner’s Statement of Requirements* and the *Construction Documents*.”

**APPENDIX G – SUPPLEMENTARY CONDITIONS**

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**SC 2.3** Add a new Definition, “Project Team” as follows:

“Project Team”

“*Project Team* means the Key Members of the Project Team and Other Proposed Project Team Members as requested in Appendix B – Technical Submission Requirements of RFP No. 156-18 and as detailed in the Bid Submission for RFP No. 156-18.”

### **SC 3. GENERAL CONDITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT**

Where a General Condition or paragraph of the General Conditions of the Design-Build Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

#### **SC 3.1 GC 1.1 CONTRACT DOCUMENTS**

3.1.1 Amend paragraph 1.1.3 by adding the following words to the end of that paragraph:

“The intent of the *Contract Documents* is to include all labour, *Products*, materials, equipment and services necessary or normally considered necessary for the performance of the *Work* in accordance with the *Contract Documents*. Any item of the *Work* mentioned in the *Contract Documents* or reasonably inferable from the *Contract Documents* but not otherwise shown or described, shall be provided by the *Design-Builder* as if shown or otherwise described or inferable. Any items omitted from the *Construction Documents* which are reasonably necessary or inferable for the completion of the *Work*, or related work, shall be considered a portion of the *Work* and included in the scope of *Work* to be performed under this *Contract*.”

3.1.2 Amend paragraph 1.1.6 by adding a new paragraph immediately following paragraph 1.1.6.3 as follows:

“Notwithstanding the foregoing, in the event of conflict or discrepancy between the requirements of two (2) or more *Contract Documents* in relation to the amount or quality of labour and/or materials required to complete a particular item of *Work*, the *Design-Builder* shall include in the *Work* the labour and materials which would provide the greatest benefit to the *Owner*.”

3.1.3 Amend paragraph 1.1.8 by deleting the first sentence of that paragraph and replacing it with the following:

“The *Owner* and its successors and assigns shall have an exclusive, royalty-free, irrevocable, world-wide, perpetual license and right to use, reproduce, disclose and distribute the *Consultant’s* or *Other Consultants’* plans, sketches, *Drawings*, graphic representations, and *Specifications*, including computer generated designs, in connection with the *Project* including, without limitation, for (1) the purpose of constructing the *Project* including in the event this *Contract* is terminated; (2) in connection with the *Owner’s* general use, occupancy and maintenance of the *Project*, (3) in the event the *Owner* undertakes renovations and/or modifications to the *Project*.”

3.1.4 Add new paragraph 1.1.11 as follows:

“1.1.11 The *Contract Documents* shall be read as a whole and are the minimum construction requirements. Where the *Contract Documents* differ or potentially differ from federal, provincial and/or local laws, regulations, bylaws, standards and/or requirements, the *Design-Builder* shall request clarification from the *Owner’s Advisor* prior to proceeding with the *Work*.”

**APPENDIX G – SUPPLEMENTARY CONDITIONS**

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**SC 3.2 GC 1.4 ASSIGNMENT**

3.2.1 Delete paragraph 1.4.1 in its entirety and replace it with the following:

“1.4.1 The *Design-Builder* shall not assign the *Contract* or a portion thereof or its interest therein without the written consent of the *Owner*, which consent may be unreasonably and arbitrarily withheld. In the event of an assignment of the *Contract* by the *Design-Builder*, such assignment shall not relieve the *Design-Builder* from its obligations and liabilities hereunder.

1.4.2 The *Owner* may assign the *Contract* or a portion thereof or its interest therein without the written consent of the *Design-Builder* but upon giving *Notice in Writing* to the *Design-Builder*. In the event of an assignment of the *Contract* by the *Owner*, such assignment shall relieve the *Owner* from its obligations and liabilities hereunder and the assignee shall assume all obligations of the *Owner*, from the beginning of this *Contract*.”

**SC 3.3 GC 1.5 CONFIDENTIALITY**

3.3.1 Add a new paragraph 1.5.2 as follows:

“1.5.2 Notwithstanding paragraph 1.5.1, the *Design-Builder* acknowledges that the *Owner* is subject to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) which governs certain information and may require the *Owner* to disclose such information to third parties. The *Design-Builder* waives all claims against and releases the *Owner* from all liability relating to or arising from such disclosure where the disclosure is based on an order or decision made under such Act or any other applicable law.”

**SC 3.4 GC 2.1 OWNER’S INFORMATION**

3.4.1 Amend paragraph 2.1.2 by inserting the words “after execution of this *Contract*” after the words “provided by or on behalf of the *Owner*” in the second line of that paragraph.

3.4.2 Add at the beginning of paragraph 2.1.3 the words “Provided it has exercised the degree of care and skill provided in paragraph 3.1.7,”

**SC 3.5 GC 2.5 OWNER’S REVIEW OF THE DESIGN AND THE WORK**

3.5.1 Amend paragraph 2.5.5 by adding the following to the end of that paragraph:

“There shall be no extensions of the *Contract Time* resulting from any delay caused by such examination and correction.”

**SC 3.6 GC 2.6 WORK BY OWNER OR OTHER CONTRACTORS**

3.6.1 Delete paragraphs 2.6.2.1 and 2.6.2.2 in their entirety.

3.6.2 Add a new paragraph 2.6.3.4 as follows:

“2.6.3.4 assume overall responsibility for compliance with all aspects of the applicable health and construction safety legislation at the *Place of the Work* and all related rules, regulations and practices on the *Project*, including for the *Owner’s* forces and for other contractors.”

**SC 3.7** Add new Part 3A, “PART 3A – DESIGN-BUILDER’S MANAGEMENT OF THE PROJECT” as follows:

3.7.1 Add new GC 3A.1 through GC 3A.4 as follows:

**“PART 3A DESIGN-BUILDER’S MANAGEMENT OF THE PROJECT**

**APPENDIX G – SUPPLEMENTARY CONDITIONS**

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**GC 3A.1 DESIGN-BUILDER'S MANAGEMENT OF THE PROJECT**

3A.1.1 During the *Project*, unless otherwise required by this *Contract*, the *Design-Builder* shall provide a written monthly report to the *Owner*. This monthly report shall include:

- .1 an overview of the state and progress of the *Project*;
- .2 confirmation that the *Project* is on schedule or, if the *Design Services* and *Work* schedule has suffered slippage, the steps that the *Design-Builder* believes are necessary to recover the slippage;
- .3 a list of critical issues of which the *Design-Builder* is aware and which require resolution, including dates by which decisions are required and by whom;
- .4 proposed or anticipated changes of which the *Design-Builder* is aware, and their expected impacts on the *Project*;
- .5 claims or anticipated claims of which the *Design-Builder* is aware, including claims against the *Design-Builder*, the *Owner*, or the *Project*;
- .6 the *Design-Builder's* proposed plan and schedule for repairing, correcting or reworking of any defective work;
- .7 the *Design-Builder's* proposed approach for resolving any deviations from the *Design Services* and *Work* schedule including, where the *Design-Builder* has reported any slippage or negative deviation from the schedule, a recovery plan demonstrating how the *Design-Builder* will achieve recovery of the *Design Services* and *Work* schedule.

The *Design-Builder* may comply with its reporting obligations by including the required information with its monthly application for payment.

**GC 3A.2 PRECONSTRUCTION SERVICES**

3A.2.1 The *Design-Builder* shall, in addition to complying with all of the other terms and conditions of this *Contract*, provide the services described in this GC 3A.2 – PRECONSTRUCTION SERVICES commencing immediately following the execution of this *Contract*.

3A.2.2 The *Design-Builder* shall collaborate and *Work* with the *Consultant* and the *Owner* and the *Owner's Advisor* in order to provide suggestions, recommendations and advice in relation to cost and time saving measures which could be achieved, while incorporating the most sound and economical materials and methods which meet the standards of the *Project* and the *Owner's Statement of Requirements*. Provided that at no time shall the *Design-Builder* be permitted to amend the *Owner's Statement of Requirements* without the *Owner's* prior written approval. In doing so, the *Design-Builder* shall:

- .1 attend meetings and make suggestions and recommendations and advise the *Owner* and the *Owner's Advisor* on site use and improvements, selection of materials, *Products*, building systems, equipment, the completeness and co-ordination of *Work*, and constructability;
- .2 continually review *Drawings* and *Specifications* and draft drawings and specifications and provide regular and timely feedback to the *Owner* and the *Owner's Advisor* with respect to the completeness and co-ordination of *Construction Documents*;
- .3 provide recommendations on construction feasibility, means and methods, the availability of materials and labour, time requirements for installation and construction, and all other factors related to design, procurement, execution, schedule, quality, cost and constructability;
- .4 evaluate and suggest possible alternatives for incorporation into the *Contract Documents* in order to permit the selection of the most sound and economical materials and methods that will meet the standards set for the *Project* by the *Owner*;
- .5 provide value engineering and all other services as may be necessary, required or requested by the *Owner* and the *Owner's Advisor* in connection with the above.

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- 3A.2.3 Where, as a result of the activities described in paragraph 3A.2.2, the *Owner* and the *Design-Builder* agree to an amendment, refinement, improvement or other change which would be inconsistent with the *Owner's Statement of Requirements*, the parties will execute an amendment to the *Owner's Statement of Requirements* incorporating such amendment, refinement, improvement or other change.
- 3A.2.4 In consultation with the *Owner* and the *Owner's Advisor*, the *Design-Builder* shall develop the *Design Services* and *Work* schedule.
- .1 The *Design Services* and *Work* schedule shall indicate the timing of the *Design Services*, construction, and all other major activities of the *Work* and provide sufficient detail of the critical events and their inter-relationship, and shall include a baseline schedule indicating the critical path for the *Project*, demonstrating that *Substantial Performance of the Work* will be attained by the date stipulated in paragraph 1.3 of Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK. The *Design Services* and *Work* schedule shall be prepared in both electronic and paper formats.
  - .2 The *Design-Builder* shall continuously monitor, update and report on the *Design Services* and *Work* schedule including the actual start, actual finish, and percentage of completion of activities, and shall identify steps required to complete the *Work* and identify and inform the *Owner* of any areas which have or are likely to slip from their scheduled dates, and any measures which the *Design-Builder* recommends be undertaken to maintain progress of the *Work*. *Design-Builder* shall report on the *Design Services* and *Work* schedule on a monthly basis, at a minimum.
  - .3 Maintenance of the *Design Services* and *Work* schedule is of paramount importance. Staffing and resources provided for the *Project* must be adequate to attain *Substantial Performance of the Work* by the date stipulated in paragraph 1.3 of Article A-1 of the Agreement –DESIGN SERVICES AND THE WORK, as such date may be adjusted as provided in the *Contract Documents*.
- 3A.2.5 *Design-Builder* shall present to the *Owner*, for the information of the *Owner*, the *Design-Builder's* plan for monitoring and safeguarding the health and safety of all parties involved on the *Project*. Such plan shall comply with the applicable health and construction safety legislation at the *Place of the Work* and all related rules, regulations and practices. The plan shall include an outline of how the *Design-Builder* intends to review the safety programs of each of the *Subcontractors* and *Suppliers*, their *Subcontractors* and *Suppliers*, any work performed by the *Owner* or its own forces, by other contractors, and the *Design-Builder's* own forces.

**GC 3A.3 CONSTRUCTION SERVICES**

- 3A.3.1 The *Design-Builder* shall, in addition to complying with all of the other terms and conditions of this *Contract*, provide the services described in this GC 3A.3 during *Construction*.
- 3A.3.2 *Design-Builder* shall determine the logistics and requirements of the set up of the *Project* site during *Construction*. In consultation with the *Owner*, *Design-Builder* shall develop measures to optimize construction efficiency and minimize and mitigate the impact of *Construction* activities on any adjacent properties or areas and shall maintain the *Project* site as required to ensure the health and safety of all workers, visitors and all other persons. The *Design-Builder* shall comply with all applicable health and construction safety requirements at the *Place of the Work* and all related rules, regulations and practices otherwise stipulated in this *Contract* or required by law.
- 3A.3.3 *Design-Builder* shall take complete charge and control of all activities on the *Project* site and shall monitor, control and co-ordinate the *Work* of all *Subcontractors*, *Suppliers* and others with all activities on the *Project* site, including the work of the *Owner* and any work done by the *Owner's* own forces or by other contractors. Without limiting the generality of the foregoing, the *Design-Builder* shall:
- .1 continually monitor, update and report on adherence of the *Project* to the *Design Services* and *Work* schedule and identify and inform the *Owner* of potential or actual variances in schedules and any measures which must be undertaken to address such variances and to bring the *Project* back to within the original *Design Services* and *Work* schedule;
  - .2 review and continually monitor the adequacy of the forces being supplied by *Subcontractors* and *Suppliers*, as well as the availability of materials, supplies and *Products*, and take steps

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to remedy, at its own cost and expense, any issues which may arise or problems which may be identified;

- .3 monitor and report on known claims and potential claims of which the *Design-Builder* is aware on the *Project*.

3A.3.4 *Design-Builder* shall be responsible for maintaining the *Design Services* and *Work* schedule and for scheduling all of the *Work* related to this *Project* in order to attain *Substantial Performance of the Work* by the date stipulated in paragraph 1.3 of Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK. The *Design-Builder* shall immediately give the *Owner Notice in Writing* describing any events or matters which may have the effect of delaying *Substantial Performance of the Work*, occupancy of the *Project*, or which may result in variances to the *Design Services* and *Work* schedule. Where the *Design-Builder* believes that it is justified in seeking an extension of the *Design Services* and *Work* schedule, it shall give *Notice in Writing* to the *Owner* in accordance with the terms and conditions of this *Contract*.

### GC 3A.4 PRE-CONSTRUCTION SUBMITTALS

3A.4.1 Prior to commencing any *Work* under this *Contract*, the *Design-Builder* shall submit to the *Owner*:

- .1 a current WSIB clearance certificate;
- .2 certified true copies of the insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 the securities described in GC 11.2 – CONTRACT SECURITY;
- .4 a preliminary *Design Services* and *Work* schedule;
- .5 documentation of the *Design-Builder's* in-house safety program to be implemented for the *Project*;
- .6 a copy of the Notice of *Project* filed with the Ministry of Labour naming the *Design-Builder* as “constructor” under the Occupational Health and Safety Act (Ontario).”

### SC 3.8 GC 3.1 CONTROL OF THE DESIGN SERVICES AND THE WORK

3.8.1 Amend paragraph 3.1.2 by adding the following words to the end of that paragraph:

“, and shall make reasonable efforts to co-ordinate the *Work* so as not to interfere with, interrupt, obstruct, delay or otherwise affect, the work of others.”

3.8.2 Amend paragraph 3.1.7 by adding the following words to the end of the last sentence:

“and shall cause the Consultant to re-perform, without additional compensation, any *Design Services* not meeting this standard.”

3.8.3 Amend paragraph 3.1.9 by adding the following sentences to the end of that paragraph:

“The *Design-Builder* shall perform the *Design Services* and the *Work* in accordance with modern practice and shall employ only good workmanship subject to specific requirements of the *Contract Documents*, and in accordance with applicable laws, ordinances, rules, regulations or codes relating to the performance of the *Design Services* and the *Work*. Without limiting the generality of the foregoing, the *Design-Builder* is responsible for the intermeshing of the various parts of the *Design Services* and the *Work* so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between the *Consultant* and *Other Consultants*, or various *Subcontractors*, or between any of the *Subcontractors* and the *Consultant* or any *Other Consultants* or the *Design-Builder*, or due to work performed by the *Owner's* own forces or other contractors, as to where the *Work* of one begins or ends with relation to the *Work* of the other.”

3.8.4 Amend paragraph 3.1.11 by inserting the words “coordinate and arrange for and shall” after the words “The *Design-Builder* shall” in the last sentence of that paragraph.



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3.8.5 Add new paragraphs 3.1.15 through 3.1.19 as follows:

- “3.1.15 The *Design-Builder* shall cause the *Consultant* to prepare and submit to the *Owner* record *Drawings* in both AutoCAD Map version 2014, mylar and paper form or as may otherwise be required by or satisfactory to municipal authorities having jurisdiction over the *Place of the Work*, and/or as may be acceptable to the *Owner*.
- 3.1.16 The *Design-Builder* shall, and shall cause the *Consultant*, to:
- .1 deliver to the *Owner* for review and approval copies of the schematic design development documents and copies of the design development documents;
  - .2 deliver to the *Owner* for review and approval copies of the *Construction Documents* at 30%, 60%, 90% and 100% completion, or at such other intervals as the *Owner* may reasonably require;
  - .2 meet weekly with the *Owner* to review and discuss the development of the *Construction Documents*;
  - .3 provide copies of all *Drawings*, *Specifications* and diagrams to the *Owner* when required for review and acceptance.
- 3.1.17 The *Design-Builder* shall be entirely responsible for the proper laying out of the whole of the *Work*. The *Design-Builder* shall employ an experienced and licensed land surveyor to establish and check grades, benchmarks, references, elevations, points and lines as from time to time may be required for the purposes of the *Work*, or layout of same, and the *Design-Builder* shall at every appropriate stage of the *Work*, take all proper steps to have all proper checks and surveys made so as to ensure that the *Work* and all components thereof will be wholly within the boundaries of the *Project* site and in the exact position (or respective positions) established for such *Work* and shall assume full responsibility for the correctness of all such lines, levels and measurements.
- 3.1.18 The *Design-Builder*, without in any way limiting its responsibilities under this *Contract*, shall ensure that the *Project* site is completely fenced and is not accessible to members of the public at any time. The *Design-Builder* shall perform the *Work* in the least intrusive manner possible and shall carry out its duties, responsibilities and obligations under the *Contract* so as not to disrupt or interfere with any of the *Owner's* or others' existing facilities and on-going operations or activities located at or adjacent to the *Place of the Work*.
- 3.1.19 The *Design-Builder*, without in any way limiting its responsibilities under this *Contract*, shall perform the *Work* in such a manner so as to avoid disturbing the occupants of any adjacent structures or the public in general, shall respect and comply with local regulations regarding permitted work hours, noise levels and work conditions, and shall take all reasonable steps to avoid interference with fire exits, building access and egress, continuity of electric power and all other utilities, to suppress dust and noise, to avoid conditions likely to propagate mould or fungus of any kind, and shall take all other steps reasonably necessary to promote and maintain the safety and comfort of the users and occupants of such structures or adjacent structures and the public in general and/or to maintain access to and the operation of the same.”

**SC 3.9 GC 3.2 DESIGN-BUILDER'S REVIEW OF OWNER'S STATEMENT OF REQUIREMENTS**

3.9.1 Amend paragraph 3.2.2 by inserting the following words to the beginning of that paragraph:

“Provided it has exercised the degree of care and skill described in paragraph 3.2.1,”

3.9.2 Add paragraph 3.2.3 as follows:

“3.2.3 The review by the *Design-Builder* under paragraph 3.2.1 shall meet the standard of care described in GC 3.12 – STANDARD OF CARE. Except for the obligation to make such review and report the result, the *Design-Builder* does not assume any responsibility to the *Owner* for the accuracy of the review.”

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**SC 3.10 GC 3.4 OTHER CONSULTANTS, SUBCONTRACTORS, AND SUPPLIERS**

3.10.1 Delete paragraph 3.4.2 in its entirety and replace it with the following:

“3.4.2 The *Design-Builder* agrees to employ the *Project Team* accepted by the *Owner* at the signing of the *Contract*. The *Design-Builder* shall not change the accepted *Project Team* without the prior written approval of the *Owner*, which may be unreasonably and arbitrarily withheld. The *Design-Builder* shall cooperate with the *Owner* to avoid labour complications and shall employ only *Subcontractors*, *Suppliers* and workers whose presence and work will be acceptable to and in harmony with the workers and others supplying services or *Products* at the *Place of the Work*.”

3.10.2 Amend paragraph 3.4.4 by deleting the words “and Contract Time” in the second line of that paragraph.

3.10.3 Add a new paragraph 3.4.6 as follows:

“3.4.6 Notwithstanding paragraph 3.4.5, the *Owner* may, in its sole discretion, assign to the *Design-Builder* its obligations under any contract for *Work* or services or *Products* required on the *Project* that has been tendered or negotiated separately by the *Owner*, and the *Design-Builder* shall accept such assignment. ”

**SC 3.11 GC 3.6 DESIGN SERVICES AND WORK SCHEDULE**

3.11.1 Delete paragraph 3.6.1 in its entirety and replace it with the following:

“3.6.1 At least ten (10) *Working Days* prior to commencing Construction activities and, in any event, prior to site mobilization, the *Design-Builder* shall submit to the *Owner* an updated *Design Services* and *Work* schedule. The *Design Services* and *Work* schedule shall include underlying critical path schedules, critical milestone dates, summary schedules and bar charts specific to each area of the *Project*. The *Design Services* and *Work* schedule shall be prepared by the *Design-Builder* in accordance with paragraph 3A.2.4 of GC 3A.2 – PRECONSTRUCTION SERVICES.

3.6.2 The *Design-Builder* shall, in addition to its obligations with respect to the *Design Services* and *Work* schedule set out in PART 3A – DESIGN-BUILDER’S MANAGEMENT OF THE PROJECT:

- .1 continuously monitor the progress of the *Work* as compared to the *Design Services* and *Work* schedule and advise the *Owner* by giving *Notice in Writing* of any slippage or anticipated slippage in the *Design Services* and *Work* schedule within two (2) *Working Days* of such variation or slippage becoming apparent;
- .2 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the *Design Services* and *Work* schedule;
- .3 if after applying the expertise and resources required under paragraph 3.6.2.2, the *Design-Builder* forms the opinion that any slippage in the *Design Services* and *Work* schedule cannot be recovered by the *Design-Builder*, it shall, in the same *Notice in Writing* given under paragraph 3.6.2.1, indicate to the *Owner* if the *Design-Builder* intends to apply for an extension of *Contract Time*.

3.6.3 The *Design-Builder* shall not amend the *Design Services* and *Work* schedule without the prior written consent of the *Owner*.

3.6.4 At each site meeting the *Design-Builder* shall provide to the *Owner* a two (2) week look-ahead schedule indicating the major activities to be undertaken or constructed in such two (2) week period.

3.6.5 If at any time it should appear to the *Owner* that the actual progress of the *Work* is behind the *Design Services* and *Work* schedule, or if the *Design-Builder* has given *Notice in Writing* or other notice of any variation or slippage in the *Design Services* and *Work* schedule, the *Design-Builder* shall:

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- .1 produce and present to the *Owner*, for review and approval, a recovery plan demonstrating how the recovery of the *Design Services* and *Work* schedule can be achieved; and
- .2 where the variation or slippage in the *Design Services* and *Work* schedule is due to conditions which are or ought to have been under the *Design-Builder's* control, having regard to the *Design-Builder's* standard of care in GC 3.12 – STANDARD OF CARE, the *Design-Builder* shall take appropriate steps, at the *Design-Builder's* own expense, to cause the actual progress of the *Work* to conform to the *Design Services* and *Work* schedule.”

**SC 3.12 GC 3.7 SUPERVISION**

- 3.12.1 Delete GC 3.7 - SUPERVISION in its entirety and replace it with a new GC 3.7, “PROJECT TEAM”, as follows:

**“GC 3.7 PROJECT TEAM**

- 3.7.1 The *Design-Builder* represents that the *Project Team* is experienced and competent to carry out the *Project*. The *Design-Builder* agrees that no member of the *Project Team* will be removed or replaced during the course of the *Work* without the prior express written approval of the *Owner*. Any replacement representative shall be subject to approval of the *Owner*, acting reasonably.
- 3.7.2 The *Design-Builder* shall employ a competent supervisor and necessary assistants who shall devote their full time during the working hours to the *Project* and shall remain at the *Place of the Work* until the completion of the *Work*. The *Design-Builder* shall not remove or replace the supervisor without the prior express written approval of the *Owner*. Any replacement representative shall be subject to approval of the *Owner*, acting reasonably.
- 3.7.3 Should the supervisor or any member of the *Project Team* prove to be unacceptable to the *Owner*, the *Owner* shall give *Notice in Writing* to the *Design-Builder* who shall, within five (5) days of receipt of the *Notice in Writing*, make arrangements to appoint a replacement, subject to approval of the *Owner*, acting reasonably.
- 3.7.4 The supervisor shall represent the *Design-Builder* at the *Place of the Work* and shall have full authority to act on written instructions given by the *Owner*. Notices and instructions given to the supervisor by the *Owner* shall be held to have been received by the *Design-Builder*.”

**SC 3.13 GC 3.8 LABOUR AND PRODUCTS**

- 3.13.1 Delete paragraph 3.8.2 in its entirety and replace it with the following:

- “3.8.2 *Products* provided shall be new, free from defects and free of contaminants and other deleterious materials. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Owner*. All *Products* used and delivered to the *Place of the Work* or intended to be used in the carrying out of this *Contract* shall be free and clear and shall be kept free and clear of all liens, charges and encumbrances whatsoever. All *Products* and materials brought on to the *Place of the Work* by the *Design-Builder* are deemed to be the property of the *Owner*, however, the *Owner* shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever, except where such loss or damage is caused by the *Owner's* negligence. The said *Products* and materials shall be at the sole risk of the *Design-Builder*, and the *Design-Builder* is responsible for the safe on-site storage of *Products* and for their protection (including *Products* which may be supplied by the *Owner*). Such storage shall be managed so as to avoid dangerous conditions or contamination to the *Products* or endanger persons or property.”

- 3.13.2 Amend paragraph 3.8.3 by adding the words “, agents, *Other Consultants*, *Subcontractors* and *Suppliers*” after the word “employees” toward the end of the first line.

- 3.13.3 Add new paragraphs 3.8.4, 3.8.5 and 3.8.6 as follows:

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- “3.8.4 Without in any way limiting the generality of the foregoing, the *Design-Builder* shall prepare and implement job site rules which shall govern *Work* on the *Project*. Such job site rules shall be consistent with the *Design-Builder’s* duties and obligations under the Occupational Health and Safety Act (Ontario) and all related rules, regulations and practices and shall include provisions making the consumption of alcohol or non-prescription drugs on the *Project* the subject of disciplinary proceedings and/or termination of employment. Without in any way limiting the generality of the foregoing, such job site rules shall include provisions respecting smoking which meet all local and provincial ordinances, protect the health and safety of workers, present no risk to the *Work*, and do not jeopardize the insurance coverages described in GC 11.1 – INSURANCE.
- 3.8.5 The *Owner*, acting reasonably, shall have the right to order the *Design-Builder* to remove from the *Project*, without cost to the *Owner*, any representative or employee of the *Design-Builder*, *Consultant*, *Other Consultants*, *Subcontractors* or *Suppliers* who, in the opinion of the *Owner*, is a detriment to the *Project*. Any replacement representative or employee shall be subject to the approval of the *Owner*, acting reasonably.
- 3.8.6 The *Design-Builder* shall provide, when requested by the *Owner*, a list of names and qualifications of all skilled tradespersons employed by the mechanical and electrical *Subcontractors* on the *Project*. The *Design-Builder* shall also provide the names and qualifications of all skilled tradespersons employed by such *other* subcontractors on the *Project* as the *Owner* may request.”

**SC 3.14 GC 3.10 SHOP DRAWINGS**

3.14.1 Add a new paragraphs 3.10.6 and 3.10.7 as follows:

- “3.10.6 Reviewed *Team* shall not authorize a change in the *Contract Price* and/or the *Contract Time*.
- 3.10.7 The *Design-Builder* shall not use the term “by others” on *Team* or other submittals but shall identify the responsible trade, *Subcontractor* or *Supplier* where such work is within the scope of the *Work*.”

**SC 3.15 GC 3.11 NON-CONFORMING AND DEFECTIVE WORK**

3.15.1 Amend paragraph 3.11.2 by

- (a) inserting the words “, at the *Design-Builder’s* sole cost and expense,” after the words “The *Design-Builder* shall” in the first line;
- (b) adding the words “or the *Payment Certifier* or the *Owner’s Advisor*” following the word “*Owner*” in the first line of that paragraph; and

3.15.2 Add a new paragraphs 3.11.5 and 3.11.6 as follows:

- “3.11.5 The *Design-Builder* shall promptly pay the *Owner* all costs, damages and loss incurred by the *Owner* for *Work* destroyed or damaged or for any alterations necessitated by the *Design-Builder’s* removal, replacement or re-execution of defective portions of the *Work*. The *Owner* shall be entitled to set-off all such costs, damages and loss against amounts owing to the *Design-Builder* under this *Contract*.
- 3.11.6 The *Design-Builder* shall forthwith perform, without cost or expense to the *Owner*, any and all such services as are required to correct or remedy any act, error, omission, default, negligence or breach of *Contract* by or attributable to the *Design-Builder* or the *Consultant* or anyone for whom either is in law responsible, in the performance of this *Contract*.”

**SC 3.16 GC 3.12 STANDARD OF CARE**

3.16.1 Add a new GC 3.12, “STANDARD OF CARE” as follows:

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**“GC 3.12 STANDARD OF CARE**

- 3.12.1 In performing this *Contract* the *Design-Builder* shall exercise a standard of care, skill, judgment and diligence that would normally be exercised by an experienced, skilled and prudent design-builder supplying similar services for similar projects. The *Design-Builder* acknowledges and agrees that, throughout this *Contract*, the *Design-Builder's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Design-Builder* shall exercise the same standard of due care, skill, judgment and diligence in its employment of the *Consultant*, *Other Consultants*, and in respect of any *Products*, *Subcontractors*, *Suppliers*, personnel or procedures which it may recommend to the *Owner* or employ on the *Project*.”

**SC 3.17 GC 3.13 DESIGN-BUILDER'S USE OF PERMANENT EQUIPMENT OR SYSTEMS**

- 3.17.1 Add a new GC 3.13, “DESIGN-BUILDER'S USE OF PERMANENT EQUIPMENT OR SYSTEMS” as follows:

**“GC 3.13 DESIGN-BUILDER'S USE OF PERMANENT EQUIPMENT OR SYSTEMS**

- 3.13.1 With the prior written approval of the *Owner*, the *Design-Builder* may make use of elements of the mechanical and electrical systems or equipment comprising a permanent part of the *Work* for the purpose of providing heat or power to the *Project* during the final stages of Construction. In such event, and before the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder* shall clean and make good, to the satisfaction of the *Owner*, such systems and equipment as it had been permitted to use. The *Design-Builder* shall pay any and all costs associated with such use, cleaning and making good, without reimbursement from the *Owner*.”

**SC 3.18 GC 4.2 CONTINGENCY ALLOWANCE**

- 3.18.1 Delete GC 4.2 – CONTINGENCY ALLOWANCE in its entirety.

**SC 3.19 GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

- 3.19.1 Delete GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER in its entirety.

**SC 3.20 GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT**

- 3.20.1 Delete paragraph 5.2.6 in its entirety and replace it with the following:

- “5.2.6 Subject to further information which may be requested by the *Payment Certifier*, all applications for payment shall include and provide at least the following information and documents:
- .1 a statement based on the schedule of values;
  - .2 the Consultant's construction cost progress reports;
  - .3 the Contract Price;
  - .4 additions to or deductions from the Contract Price;
  - .5 the value of Work in place;
  - .6 the balance of the Contract Price available to complete the Work;
  - .7 the amount of lien holdback recommended/required;
  - .8 the amount applied for in this application;
  - .9 a report on all outstanding claims which the Design-Builder has against the Owner, including those for outstanding changes;

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- .10 when submitting the second and succeeding applications for payment, a statutory declaration on form CCDC Document 9A stating that prior payments have been disbursed to the parties entitled, up to and including the latest progress payment received;
- .11 a detailed update on the Design Services and Work schedule highlighting any areas which might endanger any of the major milestone dates stipulated in the Design Services and Work schedule;
- .12 a current WSIB clearance certificate;
- .13 the material required by paragraph 3A.1.1 of GC 3A.1 – DESIGN-BUILDER'S MANAGEMENT OF THE PROJECT."

3.20.2 Amend paragraph 5.2.8 by inserting, after the words "not yet incorporated into the Work", the following:

", provided such *Products* are specific to the *Project* and cannot readily be used elsewhere, may be considered for payment, in whole or in part, on a case-by-case basis and"

### SC 3.21 GC 5.3 PROGRESS PAYMENT

3.21.1 Add new paragraphs 5.3.2 and 5.3.3 as follows:

- "5.3.2 The obligation of the *Payment Certifier* to consider an application for payment will not arise until the *Design-Builder* has submitted an application which complies with paragraph 5.2.6 of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT.
- 5.3.3 The *Owner* shall not make any payment unless the *Design-Builder* provides a current WSIB clearance certificate at the time that payment is made or is to be made."

### SC 3.22 GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

3.22.1 Delete paragraph 5.4.2 in its entirety and replace it with the following.

- "5.4.2 The *Design-Builder's* list and application for *Substantial Performance of the Work* shall include:
  - .1 a statement from the *Consultant* representing to the *Design-Builder* and the *Payment Certifier* the validity of the list; and
  - .2 the *Consultant's* suggested date of *Substantial Performance of the Work* or designated portion of the *Work*."

3.22.2 Add a new paragraph 5.4.6 as follows:

- "5.4.6 The *Design-Builder* acknowledges that the submittals described in this paragraph are critical to the *Owner's* use, occupancy and maintenance of the *Project*, and the *Design-Builder* shall submit such submittals to the *Owner* within 45 days after the date of *Substantial Performance of the Work*:
  - .1 all written guarantees and warranties and certificates;
  - .2 all testing and balancing reports and spare parts;
  - .3 all distribution system diagrams and Team;
  - .4 all maintenance and operating manuals, instructions and materials;
  - .5 as-built Drawings and record Drawings in digital (AutoCAD Map version 2014) and printed (paper and mylar) form;

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.6 any other materials or documents required by the Contract.

The *Owner* shall be at liberty to withhold from amounts otherwise payable to the *Design-Builder* the sum of \$100,000 until the *Design-Builder* has complied with its obligations under this paragraph.”

**SC 3.23 GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

3.23.1 Amend paragraph 5.5.1.1 by adding the following sentence to the end of that paragraph:

“Such application for payment shall further satisfy the requirements of paragraph 5.2.6 of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT.”

3.23.2 Delete paragraph 5.5.2 in its entirety and replace it with the following:

“5.5.2 After the receipt of an application for payment from the *Design-Builder* together with all of the documents listed in paragraph 5.5.1, the *Payment Certifier* will issue a certificate for payment of the holdback amount.”

3.23.3 Delete paragraph 5.5.3 in its entirety.

3.23.4 Amend paragraph 5.5.4 by adding the following sentence to the end of that paragraph:

“However, the *Owner* shall not make any payment unless the *Design-Builder* provides a current WSIB clearance certificate at the time that payment is made or is to be made.”

**SC 3.24 GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK**

3.24.1 Delete paragraph 5.6.1 in its entirety and replace it with the following:

“5.6.1 The *Owner* may pay the *Design-Builder* the holdback retained for subcontract work or the *Products* supplied by a *Supplier* where:

.1 the *Design-Builder* submits to the *Payment Certifier* an application for partial release of holdback which includes the following:

- (1) a description of the scope of *Work* included in the subcontract or the *Products* which were supplied by a *Supplier*;
- (2) an original Declaration of Last Supply executed by the *Subcontractor* or *Supplier* in the form prescribed in subsection 31(5) of the *Construction Act* (Ontario);
- (3) written confirmation from the surety company which issued the bonds required by this *Contract* that it has been notified of the intent to claim partial release of holdback and does not object;
- (4) the *Design-Builder's* written acknowledgement to the *Owner* that the requirements of the *Contract Documents* will not be altered by early release of the holdback of the completed subcontract;
- (5) a current WSIB clearance certificate;
- (6) the *Consultant's* verification that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*; and

.2 the *Payment Certifier* has reviewed the application and has issued a Certificate of Completion of Subcontract as prescribed in subsection 33(1) of the *Construction Act* (Ontario).

The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.”

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**SC 3.25 GC 5.7 FINAL PAYMENT**

3.25.1 Delete paragraph 5.7.1 in its entirety and replace it with the following:

“5.7.1 When the *Design-Builder* has complied with paragraph 5.4.6 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK and considers that the *Work* is completed, the *Design-Builder* shall submit an application for final payment. The application for final payment shall include:

- .1 the *Consultant’s* construction cost progress reports;
- .2 with necessary modifications, the materials and information required by paragraph 5.2.6 of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT.”

3.25.2 Amend paragraph 5.7.2 by adding after “for final payment” in the second line of that paragraph the following words:

“which complies with paragraph 5.7.1.”

3.25.3 Amend paragraph 5.7.4 by adding the following sentence to the end of that paragraph:

“However, the *Owner* shall not make any payment unless the *Design-Builder* provides a current WSIB clearance certificate at the time that payment is made or is to be made.”

**SC 3.26 GC 5.8 DEFERRED WORK**

3.26.1 Add new paragraphs 5.8.2 and 5.8.3 as follows:

“5.8.2 Notwithstanding any provision in the *Contract Documents* to the contrary, the *Owner* may withhold payment on any certificate for payment to the extent required to offset any previous over-payment made to the *Design-Builder* or to the extent as may be necessary to protect the *Owner* from loss or damage as a result of:

- .1 the *Design-Builder’s* failure to perform any of its material obligations or where the *Design-Builder* is otherwise in default under the *Contract Documents* and any such default is continuing;
- .2 defective portions of the *Work* not remedied;
- .3 damage done by the *Design-Builder* to work carried out by other contractors or by *Owner’s* forces;
- .4 claims or reasonable evidence indicating possible commencement of claims for which the *Design-Builder* may be responsible to indemnify the *Owner* pursuant to GC 12.2 – INDEMNIFICATION; or
- .5 the *Design-Builder’s* failure to immediately remove any liens arising from the *Work* or otherwise to satisfy its obligations under GC 13.3 – CONSTRUCTION LIENS AND ACTIONS.

5.8.3 Where the *Owner* has withheld payment to the *Design-Builder* pursuant to the provisions of the *Contract*, the *Owner* shall be entitled to apply the funds withheld toward the cost of any required remedial work, or to damages or losses suffered and for which the *Owner* is entitled to compensation under the *Contract*, provided that the *Owner*, before applying such funds, obtains the written consent of the *Design-Builder* or has given the *Design-Builder* a written notice of its intention to apply such funds and the *Design-Builder*, within five (5) *Working Days* after delivery of such notice, has not made a proposal satisfactory to the *Owner*, acting reasonably, for the rectification of *Work* or for the payment of damages or losses suffered by the *Owner*.”

**SC 3.27 GC 6.1 OWNER’S RIGHT TO MAKE CHANGES**

3.27.1 Add new paragraphs 6.1.3 and 6.1.4 as follows:



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"6.1.3 The requirement that the *Design-Builder* obtain a *Change Order* or a *Change Directive* is of the essence and it is the express intention of the parties that any claims by the *Design-Builder* for a change in the *Contract Price* and/or *Contract Time* shall be barred unless there is strict compliance with PART 6 – CHANGES IN THE CONTRACT. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the *Work*, and no claims that the *Owner* has been unjustly enriched by any alteration or addition to the *Work*, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for additional payment under this *Contract* or a claim for an extension of the *Contract Time* or a claim for an amendment to the *Contract*. Without limiting the generality of the foregoing, under circumstances of expediency the *Design-Builder* may proceed with a change in the *Work* without first obtaining a *Change Order* or a *Change Directive* where it has received from the *Owner* or the *Owner's Advisor* some form of written or e-mail direction agreeing to a change in the *Contract Price*, the *Contract Time* or the *Contract*, in which case such change, and the value of such change, if any, will be determined pursuant to GC 6.2 – CHANGE ORDER.

6.1.4 The Design-Builder agrees that its activities related to:

- .1 co-ordination of the Design Services and the documents and scope; and
- .2 Construction co-ordination, including but not limited to site conditions, site co-ordination, and the co-ordination of Subcontractors and Suppliers and the work of the Owner's forces and/or other contractors, including the matters referred to in paragraphs 2.63 and 3.1.9,

shall not constitute a change in the *Work* and shall not entitle the *Design-Builder* to an adjustment of the *Contract Price* or *Contract Time*."

**SC 3.28 GC 6.2 CHANGE ORDER**

3.28.1 Delete paragraph 6.2.3 in its entirety and replace it with the following:

"6.2.3 The value of a change shall be determined in one or more of the following methods as directed by the *Owner*:

- .1 by estimate and acceptance of a lump sum;
- .2 by unit prices established in the Contract or subsequently agreed upon. Unit prices shall include overhead, profit, and other reasonable charges and shall be the total cost to the *Owner*;
- .3 by actual credits and cost to the *Owner* plus the following mark-ups:
  - (1) where the *Work* is carried out by the *Design-Builder's* own forces: 5%;
  - (2) where the work is carried out by Sub-Contractors:
    - (a) *Subcontractor's* mark-up: 5%; and
    - (b) *Design-Builder's* mark-up: 2.5%;
  - (3) where the work is carried out by the *Consultant* or *Other Consultants*: 2.5%,

The mark-ups are intended to cover all profit, general expenses and overhead costs incurred by the *Design-Builder* in relation to the change. For greater certainty, the following items of cost of the *Design-Builder* in relation to an increase in the *Contract Price* are covered by and are included in the overhead and profit mark-up on changes:

- (3) *Project* management costs;
- (4) head office and personnel costs, small tools and job safety necessary to perform the change;
- (5) estimating, site supervision, preparation of as-built *Drawings* and record *Drawings*, coordination, and administration costs;
- (6) warranty costs.

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- 6.2.4 An adjustment of the *Contract Time* will be considered only where the change in the *Work* affects the critical path of the *Work*. When the change involves an adjustment in the *Contract Time* the *Design-Builder* may include a claim limited to the following:
- .1 wages and benefits paid for site management personnel under applicable collective bargaining agreements or under a salary or wage schedule agreed upon by the *Owner* and the *Design-Builder*;
  - .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers' compensation and Canada Pension Plan, insofar as such costs are based on wages, salaries or other remuneration paid to employees of the *Design-Builder* referred to in paragraph 6.2.4.1;
  - .3 travel and subsistence expenses of the *Design-Builder's* personnel described in paragraph 6.2.4.1;
  - .4 charges for long distance telephone and fax communications, courier services, expressage and petty cash items incurred.
- 6.2.5 The *Design-Builder* shall not be entitled to any additional compensation arising out of changes to the *Work* aside from the amounts determined and agreed to under this GC 6.2 - CHANGE ORDER. In no event shall the *Owner* be liable to the *Design-Builder* for any costs, including indirect, impact and consequential costs, arising out of changes to the *Work* beyond the agreed upon amount of the *Change Order*."

**SC 3.29 GC 6.3 CHANGE DIRECTIVE**

3.29.1 Delete paragraphs 6.3.1, 6.3.4 and 6.3.6 in their entirety and replace them with the following:

- "6.3.1 The *Owner*, through the *Payment Certifier*, may issue a Change Directive to the *Design-Builder* directing it to perform work, including a change in the *Work* or a disputed change in the *Work*, before the *Owner* and the *Design-Builder* have agreed whether or not such work entitles the *Design-Builder* to an adjustment to the *Contract Price* or the *Contract Time*.
- 6.3.4 Upon receipt of a Change Directive the *Design-Builder* shall proceed promptly with the work described therein. Unless some other method of valuing the directed work is agreed, the value will be determined by:
- .1 estimate and acceptance of a lump sum;
  - .2 unit prices established in the *Contract* or subsequently agreed upon. Unit prices shall include overhead, profit, and other reasonable charges and shall be the total cost to the *Owner*;
  - .3 in accordance with paragraph 6.3.7,
- as directed by the *Owner*.
- 6.3.6 Where the parties have agreed the work directed by the Change Directive is a change in the *Work* but have not agreed on the value of the change, the undisputed value of the work performed as the result of a Change Directive is eligible to be included in a progress application."

3.29.2 Amend paragraph 6.3.7 by inserting the words "Subject to paragraph 6.3.7A," at the beginning of that paragraph;

3.29.3 Add a new paragraph 6.3.7A immediately following paragraph 6.3.7, as follows:

- "6.3.7A Without limitation, the following shall not form part of the cost of performing the work attributable to a Change Directive and shall not be recoverable by the *Design-Builder*:
- .1 head office salaries and benefits and all other overhead or general expenses, except only for the salaries, wages and benefits of personnel described in paragraph 6.3.7.1 and the contributions, assessments or taxes referred to in paragraph 6.3.7.2;
  - .2 capital expenses and interest on capital;

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- .3 general clean-up, except where the performance of the work attributable to a Change Directive causes specific additional clean-up requirements;
- .4 wages paid for field supervision of *Subcontractors*;
- .5 wages, salaries, rentals or other expenses that exceed the rates that are standard in the locality of the *Place of the Work* or that are otherwise deemed unreasonable by the *Consultant* or the *Owner*;
- .6 any costs or expenses attributable to the negligence, improper work, deficiencies, or breaches of the *Contract* by the *Design-Builder*, *Consultant*, *Other Consultants*, *Subcontractors* or *Suppliers*; and
- .7 any cost of quality assurance, such as inspection and testing services, or charges levied by authorities, and any legal fees unless any such costs or fees are pre-approved in writing by the *Owner*.”

3.29.4 Delete paragraph 6.3.11 in its entirety and replace with the following:

“6.3.11 If at any time after the start of the work directed by a Change Directive the *Owner* and the *Design-Builder* reach agreement on whether the work directed by the Change Directive is a change in the *Work*, or where the parties have agreed the work directed by the Change Directive is a change in the *Work* and reach agreement on the value of the change, this agreement shall be recorded in a *Change Order* signed by the *Owner* and the *Design-Builder*.”

3.29.5 Delete paragraphs 6.3.12, 6.3.13, 6.3.7.14 and 6.3.7.16 in their entirety.

**SC 3.30 GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

3.30.1 Add a new paragraph 6.4.0 as follows:

“6.4.0 The *Design-Builder* acknowledges and confirms that prior to entering into the *Contract* it carefully and thoroughly investigated and examined the *Place of the Work*, the *Contract Documents*, and any other documents made available by the *Owner*, and applied to such investigations and examinations the degree of care and skill described in GC 3.12 – STANDARD OF CARE. To the extent that such investigations and examinations permitted, the *Design-Builder* has satisfied itself as to the conditions and requirements necessary for the *Design-Builder* to perform the *Work* in accordance with the *Contract Documents* including, but not necessarily limited to, such things as:

- .1 the nature and location of the *Place of the Work*;
- .2 the character and content of the *Work* to be done;
- .3 the availability of equipment, material and facilities needed for the on-time execution and completion of the *Construction*;
- .4 all labour restrictions, including availability of skilled trades, safety hazards, and labour contract negotiations which may have an impact on the execution of the *Construction*;
- .5 the requirement that *Substantial Performance of the Work* of the *Contract* and occupancy of the *Project* must be attained by the date stipulated in paragraph 1.3 of Article A-1 – DESIGN SERVICES AND THE WORK.

If the *Design-Builder* has not conducted the investigations and examinations described in this paragraph 6.4.0, it is deemed to assume all risk of conditions or circumstances now existing or arising in the course of the *Work* which could make the *Work* more expensive or more difficult to perform than was contemplated at the time the *Contract* was executed. No allowances will be made for additional costs and no claims by the *Design-Builder* will be entertained for an adjustment in the *Contract Price* or *Contract Time* in connection with conditions which were reasonably apparent or which could reasonably have been ascertained by such investigations or examinations made prior to the execution of the *Contract*.”

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- 3.30.2 Amend paragraphs 6.4.1.1 and 6.4.1.2 by adding the following words to the end of those paragraphs:

“and which were concealed from discovery notwithstanding the conduct of the investigations and examinations described in paragraph 6.4.0.”

- 3.30.3 Amend paragraph 6.4.2 by inserting the words “and were concealed from discovery notwithstanding the conduct of the investigations and examinations described in paragraph 6.4.0” after the word “Documents” in the second line of that paragraph.

**SC 3.31 GC 6.5 DELAYS**

- 3.31.1 Amend paragraph 6.5.1 by deleting the word “If” at the beginning of that paragraph and replacing it with the following:

“If the Design-Builder believes that an action or omission of the Owner or anyone employed or engaged by the Owner directly or indirectly may, if not corrected, result in the Design-Builder being delayed in the performance of the Work, the Design-Builder shall immediately notify the Owner in writing and shall describe the steps which need to be taken and by whom so as to avoid the potential delay in the Design-Builder’s performance of the Work. If, despite having given the notice referred to in the preceding sentence,”

- 3.31.2 Amend paragraphs 6.5.1 and 6.5.2 by deleting the last sentence in each paragraph and substituting the following in each case:

“Subject to the Design-Builder’s obligation to mitigate costs, the Design-Builder shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, including reasonable costs incurred by the Design-Builder for the care, maintenance, safety, security and protection of the *Project* site, but excluding the costs of the Design-Builder’s head office personnel and overhead costs, and excluding any consequential, indirect or special damages, and excluding any claims for loss of profit or opportunity.”

- 3.31.3 Amend paragraph 6.5.3 by adding the following to the end of that paragraph:

“, in which case, and subject to the Design-Builder’s obligation to mitigate costs, the Design-Builder shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, including reasonable costs incurred by the Design-Builder for the care, maintenance and protection of the *Project* site, but excluding the costs of the Design-Builder’s head office personnel and overhead costs, and excluding any consequential, indirect or special damages, and excluding any claims for loss of profit or opportunity.”

- 3.31.4 Amend paragraph 6.5.4 by adding the following to the end of that paragraph:

“For greater certainty, it is the intention of the parties that an extension for delay will be considered only where such delay affects the critical path of the Project. Without in any way limiting the generality of the foregoing, it is a condition precedent to the Design-Builder’s claim for extension of the Contract Time and for additional remuneration that the notice provisions in this paragraph be strictly adhered to in each instance, except where the event of delay itself reasonably precludes strict adherence to such notice provisions. If the Design-Builder fails to comply with such notice provisions, it shall be deemed to have waived the right to claim for the effects of delay.”

- 3.31.5 Add new paragraphs 6.5.6 through 6.5.9 as follows:

“6.5.6 The Design-Builder shall be responsible for the care, maintenance and protection of the *Project* in the event of any suspension of Construction as a result of a delay described in paragraphs 6.5.1, 6.5.2 or 6.5.3. In the event of such suspension, the Design-Builder shall be reimbursed by the *Owner* for the reasonable costs incurred by the Design-Builder for such care, maintenance and protection, but excluding the costs of the Design-Builder’s head office personnel.

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- 6.5.7 The Design-Builder shall take all reasonable steps to reschedule the *Work* and to minimize the effects of the delay referred to in paragraphs 6.5.1, 6.5.2 and 6.5.3. Where the Design-Builder has failed to take all reasonable steps to avoid or minimize delay and mitigate costs, the extension of the *Contract Time* and/or any amount payable pursuant to paragraph 6.5.1, 6.5.2 and/or 6.5.3 may be reduced accordingly.
- 6.5.8 Should the *Work* be delayed, suspended or closed down as a result of a delay, the Design-Builder shall comply with the directions of the *Consultant* and/or the *Owner* in relation to the care, maintenance, safety, security and protection of the Construction and the *Project* site during such delay, suspension or closure.
- 6.5.9 Where the critical path of the *Project* is affected because of a delay in the performance of the *Work* by an action or omission of the Design-Builder or the *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, the Design-Builder shall take all steps necessary, at its own cost and expense, to cause the actual progress of the *Work* to conform to the *Design Services* and *Work* schedule, and shall reimburse the *Owner* for all reasonable costs incurred by the *Owner* as the result of such delay.”

### SC 3.32 GC 7.1 OWNER'S RIGHT TO SUSPEND THE DESIGN SERVICES OR TERMINATE THE CONTRACT BEFORE THE WORK COMMENCES

3.32.1 Delete paragraph 7.1.1 in its entirety and replace it with the following:

- “7.1.1 The *Owner* may suspend performance of the *Design Services* or the *Work* or terminate the *Contract* at any time for any or no reason by giving written notice to that effect to the Design-Builder. In such event the *Owner* shall pay for the *Work* performed up to the effective date of termination or suspension and, in the event of termination, demobilization costs and such additional costs, if any, directly flowing from and which are a reasonable consequence of the termination, but always excluding the costs of the Design-Builder's head office personnel and overhead costs, and always excluding any consequential, indirect or special damages, and always excluding any claims for loss of profit or opportunity. The *Owner* shall not be liable to the Design-Builder for any other claims, costs or damages whatsoever arising from such suspension or termination of the *Contract*.”

### SC 3.33 GC 7.2 OWNER'S RIGHT TO TERMINATE THE DESIGN-BUILDER'S RIGHT TO CONTINUE WITH THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

3.33.1 Amend paragraph 7.2.2 by adding the following wording to the end of that paragraph:

“, but without affecting in any respect the liability of the Design-Builder in respect of earlier defaults.”

3.33.2 Amend paragraph 7.2.3.1 by inserting the words “and is diligently proceeding with the correction” after the words “as the case may be”.

3.33.3 Amend paragraph 7.2.5.4(2) by inserting after the word “WARRANTY” in the second line the following words:

“and all other costs reasonably incurred by the *Owner* as a result of such termination,”

### SC 3.34 GC 7.3 DESIGN-BUILDER'S RIGHT TO SUSPEND THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

3.34.1 Amend paragraph 7.3.3 by:

- (a) deleting paragraph 7.3.3.1 in its entirety; and
- (b) deleting paragraph 7.3.3.3 in its entirety and replacing it with the following:

“7.3.3.3 the *Owner* fails to pay the Design-Builder, when due, the amounts certified by the *Payment Certifier*, except where the *Owner* has a bona fide claim for set off,”

3.34.2 Add a new paragraph 7.3.4A immediately following paragraph 7.3.4 as follows:

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“7.3.4A If the default cannot be corrected within the five (5) *Working Days* specified in paragraph 7.3.4, the *Owner* shall be deemed to have cured the default if it:

- .1 commences the correction of the default within the specified time; and
- .2 provides the Design-Builder with an acceptable schedule for such correction; and
- .3 completes the correction in accordance with such schedule.”

3.34.3 Delete paragraph 7.3.6 and replace it with the following:

“7.3.6 If the Design-Builder terminates the *Contract* under the conditions set out above, the Design-Builder shall be entitled to be paid for all *Design Services* and *Work* performed to the date of termination. Subject to the Design-Builder’s obligation to mitigate costs, the Design-Builder shall also be entitled to recover the costs directly flowing from and which are a reasonable consequence of the termination, including the costs of demobilization and direct losses sustained on *Products* and *Construction Equipment*, but excluding the costs of the Design-Builder’s head office personnel and overhead costs, and excluding any consequential, indirect or special damages, and excluding any claims for loss of profit or opportunity.

7.3.7 If the Design-Builder suspends the *Design Services* or the *Work* or terminates the *Contract* as provided in this GC 7.3 - DESIGN-BUILDER’S RIGHT TO SUSPEND THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT, the Design-Builder shall ensure the *Place of the Work* is left in a secure and safe condition as required by all authorities having jurisdiction and as required by the *Contract Documents*.”

**SC 3.35 GC 8.1 NEGOTIATION, MEDIATION, AND ARBITRATION**

3.35.1 Amend paragraph 8.1.10 by deleting the first part of the first sentence up to and including the word “immediately”.

3.35.2 Add new paragraphs 8.1.11 and 8.1.12 as follows:

“8.1.11 For purposes of the Rules for Mediation and Arbitration of Construction Disputes CCDC 40, the term “neutral appointing authority”, as used in both the Rules for Mediation and the Rules for Arbitration shall mean the “Appointing Committee” at ADR Chambers presiding at the time notice of the dispute is given pursuant to the *Contract*.

8.1.12 Notwithstanding anything to the contrary in the Rules for Mediation and Arbitration of Construction Disputes CCDC 40, the parties agree that any arbitration of a dispute under this *Contract* shall be conducted before a single arbitrator.”

**SC 3.36 GC 9.1 PROTECTION OF WORK AND PROPERTY**

3.36.1 Amend paragraph 9.1.1.1 by adding the following words to the end of that paragraph:

“which the Design-Builder could not reasonably have discovered applying the degree of care and skill described in GC 3.12 – STANDARD OF CARE.”

3.36.2 Amend paragraph 9.1.3 by adding the following to the end of that paragraph:

“The Design-Builder shall not undertake to repair and/or replace any damage to adjoining property or acknowledge the same was caused or occasioned in whole or in part by the Design-Builder, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed.”

3.36.3 Add new paragraphs 9.1.5 and 9.1.6 as follows:

“ 9.1.5 Without in any way limiting the Design-Builder’s obligations under this GC 9.1, should the Design-Builder, *Consultant*, or any *Other Consultants*, *Subcontractors* or *Suppliers* cause loss or damage to property, including roads, buildings, structures, paving, grass, sod, trees or other

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plantings, whether owned by the *Owner* or others, and whether at the *Place of the Work* or adjoining it, the Design-Builder shall be liable for the cost of making good such damage and for the replacement cost of the grass, sod, trees or other plantings damaged, including the cost of any arborist or *Other Consultant*, and such costs may be deducted by the *Owner* from amounts otherwise owing to the Design-Builder.

- 9.1.6 In the event of an emergency threatening health, life or property, the Design-Builder shall take such action as may be reasonably necessary to save lives and protect persons from injury and, this being done, to take steps to protect and preserve the property. The Design-Builder shall notify the *Owner* of such emergency as promptly as is practical under the circumstances.”

**SC 3.37 GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS**

- 3.37.1 Add a new paragraph 9.2.5.3 as follows:

“9.2.5.3 take any further steps it deems necessary to mitigate or stabilize any conditions resulting from encountering toxic or hazardous substances or materials.”

- 3.37.2 Amend paragraph 9.2.7.2 by adding the following to the end of that paragraph:

“but excluding the costs of the Design-Builder’s head office personnel and overhead costs, and excluding any consequential, indirect or special damages, and excluding any claims for loss of profit or opportunity.”

- 3.37.3 Amend paragraph 9.2.7.4 by inserting the following at the beginning of that paragraph:

“Except where paragraphs 9.2.10 and 9.2.11 apply,”

- 3.37.4 Add new paragraphs 9.2.10 and 9.2.11 as follows:

“9.2.10 If the Design-Builder or any *Subcontractor*, *Supplier*, *Other Consultant*, or any other person for whom the Design-Builder is at law responsible, causes or permits, other than at the *Owner*’s direction:

- .1 any toxic or hazardous substances or materials to be brought to the *Place of the Work*; or
- .2 any toxic or hazardous substances or materials which were already at the *Place of the Work* but which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements, to be dealt with in a manner which does not comply with legal and statutory requirements or which threatens human health and safety or the environment or material damage to the property of the *Owner* or others,

the Design-Builder shall:

- .3 take all reasonable steps, including suspending or stopping the *Work*, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the toxic or hazardous substances or materials, and
- .4 immediately report the circumstances to the *Owner* by telephone, followed by a *Notice in Writing*, and
- .5 take any further steps it deems necessary or which may be reasonably necessary to mitigate or stabilize any conditions resulting from the toxic or hazardous substances or materials.

9.2.11 In the case of any of the circumstances contemplated in paragraph 9.2.10, the Design-Builder shall be responsible, at the Design-Builder’s sole expense, for cleaning up, removing, containing, storing or otherwise dealing with the toxic or hazardous substances or materials in a manner which the authorities having jurisdiction determine. In such circumstances, the Design-Builder shall:

- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substances or materials;

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- .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraphs 9.1.3 and 9.1.5 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
- .3 reimburse the *Owner* for its costs incurred under paragraph 9.2.6; and
- .4 indemnify and hold harmless the *Owner*, the *Payment Certifier*, the *Owner's Advisor*, and their agents and employees from and against all claims, demands, losses, costs, damages actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in GC 12.2 – INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph.”

**SC 3.38 GC 9.3 ARTIFACTS AND FOSSILS**

3.38.1 Delete 9.3.3 in its entirety and replace with 9.3.3 as follows:

- “9.3.3 The *Consultant* will investigate the impact on the *Design Services* or the *Work* of the discoveries identified in paragraph 9.3.1 and shall report to the *Owner* and the Design-Builder. If conditions are found that would cause an increase or decrease in the Design-Builder's cost or time to perform the *Design Services* or the *Work*, the parties shall work cooperatively to minimize and mitigate the impact of such conditions.”

**SC 3.39 GC 9.4 CONSTRUCTION SAFETY**

3.39.1 Amend paragraph 9.4.1 by deleting the first line including the comma and by starting the second line with the word “The”.

3.39.2 Add new paragraphs 9.4.2 and 9.4.3 as follows:

- “9.4.2 The Design-Builder hereby represents and warrants to the *Owner* that appropriate health and construction safety instruction and training have been provided and will be provided to the *Consultant*, *Other Consultants*, the Design-Builder's employees, *Subcontractors*, *Suppliers* and all others attending on the *Project* site. Where applicable, the Design-Builder also undertakes to provide such health and construction safety instruction and training to the *Owner's* representatives, the *Owner's* own forces, and other contractors.
- 9.4.3 The *Owner* undertakes to include in its contracts with other contractors and/or in its instructions to its own forces the requirement that the other contractors or own forces, as the case may be, will comply with directions and instructions from the Design-Builder with respect to coordination of *Work* and with respect to health and construction safety related matters. The text of such *Owner* instruction is attached as Schedule 1.”

**SC 3.40 GC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

3.40.1 Amend paragraph 10.2.5 by inserting the following to the beginning of that paragraph:

“Subject to and only to the extent that the Design-Builder applied the degree of care and skill described in GC 3.12 – STANDARD OF CARE to its review of the *Owner's Statement of Requirements*,”

3.40.2 Amend paragraph 10.2.6 by deleting the words “, and performs work knowing it to be” in the second line and substituting the following:

“or performs work when it knew or ought to have known, having regard to the Design-Builder's standard of care in GC 3.12 – STANDARD OF CARE, that such work is”



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3.40.3 Further amend paragraph 10.2.6 by deleting the words “bear the” in the third line and substituting the words “indemnify and save the *Owner* harmless against any”.

**SC 3.41 GC 10.4 WORKERS’ COMPENSATION**

3.41.1 Amend paragraph 10.4.1 by inserting the words “with all applications for payment” after the words “Substantial Performance of the Work” in the second line of that paragraph.

**SC 3.42 GC 11.1 INSURANCE**

3.42.1 Amend paragraph 11.1.1.2 by adding to the end of the first sentence the following:

“with limits of not less than \$10,000,000 per occurrence and with a property damage deductible of not more than \$10,000.”

3.42.2 Further amend paragraph 11.1.1.2 by adding the following to the end of that paragraph:

“The comprehensive liability policy shall be available to cover:

- .1 off site Project activities not covered by the wrap-up liability policy described in paragraph 11.1.1.10; and
- .2 completed operations liability coverage, such coverage to begin the day after the completed operations coverage under the wrap-up liability policy described in paragraph 11.1.1.10 expires.”

3.42.3 Delete paragraph 11.1.1.3 in its entirety and replace with the following:

“11.1.1.3 Automobile Liability Insurance: The policy covers for bodily injury, death and damage to property with respect to all licensed vehicles owned or leased by the Design-Builder. The policy shall have limits of not less than \$5,000,000 inclusive per occurrence. If the policy is issued pursuant to a government-operated automobile insurance system, the Design-Builder shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the Design-Builder.”

3.42.4 Delete paragraph 11.1.1.4 in its entirety and replace with the following:

“11.1.1.4 Aircraft and Watercraft Liability Insurance: The policy shall be for owned or non- owned aircraft and watercraft used directly or indirectly by the Design-Builder in the Performance of the *Work*, including use of additional premises. The policy shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard.”

3.42.5 Amend paragraph 11.1.1.9 by deleting the figure of “\$1,000,000” in the second line and the figure of “\$2,000,000” in the third line of that paragraph by replacing them with “\$5,000,000” in both cases.

3.42.6 Amend paragraph 11.1.1 by adding paragraph 11.1.1.10 as follows:

“11.1.1.10 Wrap-Up Liability Insurance Policy. The Design-Builder shall provide, maintain and pay for wrap-up liability insurance in the name of the Design-Builder and *Owner* and including as additional insureds the *Consultant*, *Other Consultants*, the *Payment Certifier*, the *Owner’s Advisor* and all *Subcontractors* and include a cross liability clause in favour of all insureds. The policy will provide for a combined single limit of not less than \$25,000,000 for each occurrence involving bodily injury, death or property damage and \$25,000,000 in the aggregate for *Products* and completed operations coverage. The policy will be maintained from commencement of the *Work* until *Substantial Performance of the Work*. The policy will carry a deductible of not more than \$25,000 which will be the responsibility of the Design-Builder. Completed operations coverage will be provided for a period of 24 months following *Substantial Performance of the Work*. The policy shall include the following:

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- .1 sudden and accidental pollution coverage;
- .2 personal injury liability;
- .3 blanket written contractual liability;
- .4 employer's liability and contingent employer's liability;
- .5 broad form occurrence property damage;
- .6 fire-fighting expense liability;
- .7 non-owned automobile liability;
- .8 coverage for hazardous operations, including shoring, blasting, excavating, under pinning, demolition, pile driving and caisson work, work below ground surface, tunneling and grading;
- .9 incidental medical malpractice liability;
- .10 all risks tenant's legal liability."

3.42.7 Delete paragraph 11.1.2 in its entirety and replace with the following:

"11.1.2 Certificates of Insurance

- .1 Before starting the *Work*, the Design-Builder will give the *Owner* a certificate of insurance on a standard CSIO or ACORD form completed by a duly authorized representative of the Design-Builder's insurer(s) certifying that at least the minimum coverage required herein is in effect and that the coverage will not be cancelled, non-renewed, or materially changed by endorsement or through issuance of other policies of insurance without at least 30 days' advance written notice to the *Owner*.
- .2 Failure of the *Owner* to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the *Owner* to identify a deficiency from evidence provided will not be construed as a waiver of the Design-Builder's obligation to maintain such insurance.
- .3 The acceptance of delivery by the *Owner* of any certificate of insurance evidencing the required coverage and limits does not constitute approval or agreement by the *Owner* that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements.
- .4 The *Owner* will have the right, but not the obligation, of prohibiting the Design-Builder or *Consultant* or any *Subcontractor* from entering the *Project* site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the *Owner*.
- .5 If any of the coverage is required to remain in force after final completion, an additional certificate evidencing continuation of such coverage will be submitted with the Design-Builder's final invoice."

3.42.8 Add new paragraphs 11.1.9 through 11.1.12 as follows:

"11.1.9 All coverage required of the Design-Builder will be primary over any other insurance that might be carried by the *Owner*.

11.1.10 By requiring insurance, the *Owner* does not represent that coverage and limits will necessarily be adequate to protect the Design-Builder or the *Consultant*. The insurance effected or procured by the Design-Builder will not reduce or limit the *Consultant's* liability or the Design-Builder's contractual obligation to indemnify and defend the *Owner* for claims or suits which result from or are connected with the performance of this *Contract*.

11.1.11 If the Design-Builder is a joint venture involving two or more entities often excluded in general liability policies, then, each independent entity will satisfy the limits and coverages specified, or the joint venture will be a named insured under each policy specified.

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11.1.12 Except for policies of automobile insurance, all insurance policies in any way related to the *Work* and secured and maintained by the Design-Builder shall include clauses stating each underwriter will waive all rights of recovery, under subrogation or otherwise, against the *Owner*, the *Payment Certifier* and the *Owner's Advisor*."

**SC 3.43 GC 11.2 CONTRACT SECURITY**

3.43.1 Delete paragraph 11.2.1 in its entirety and replace it with the following:

"11.2.1 The Design-Builder shall, prior to commencement of the *Design Services* or the *Work*, provide to the *Owner* a performance bond and a labour and material payment bond, each in the form of the latest edition of CCDC bond forms, and each in the amount of fifty per cent (50%) of the *Contract Price*. All premiums and other costs of the bonds are included in the *Contract Price*."

**SC 3.44 GC 12.2 INDEMNIFICATION**

3.44.1 Delete paragraphs 12.2.1 and 12.2.2 in their entirety and replace them with the following:

"12.2.0 The Design-Builder shall defend, indemnify and hold harmless the *Owner* and its agents, employees, officers, directors, trustees, shareholders, partners and assigns from and against all claims, demands, damages, judgments, orders, losses, expenses, costs including solicitor-client legal fees, actions, suits or proceedings (collectively "Claims") by whomsoever made, brought or prosecuted in any manner, arising out of, resulting from or attributable, directly or indirectly, to the Design-Builder's, the *Consultant's*, *Other Consultants'* or any *Subcontractor's* or any *Supplier's* performance or non-performance of the *Contract*, including Claims arising out of the condition of the *Work*, the *Project* site, adjoining land, driveways, streets or alleys used in connection with the performance of the *Work*. It is expressly understood that the Design-Builder will save harmless the *Owner* from all Claims made by any party other than the Design-Builder itself, financial or otherwise, relating to labour and materials furnished by the Design-Builder or by others for the *Work*.

12.2.1 The *Owner* will notify the Design-Builder of any Claims and will provide the Design-Builder with such reasonable information, authority and assistance as may be requested by the Design-Builder to enable the Design-Builder to perform the obligations set forth in this GC 12.2 – INDEMNIFICATION. A failure to so notify the Design-Builder of a Claim or to give such information, authority and assistance shall discharge the obligations set forth in this GC 12.2 – INDEMNIFICATION only to the extent that the Design-Builder has been prejudiced in the defense of such Claim.

12.2.2 Provided the Design-Builder has complied with the *Contract* in all respects and is not in default of its obligations thereunder, the *Owner* shall indemnify and hold harmless the Design-Builder, its agents and employees from and against Claims arising out of the Design-Builder's performance of the *Contract* which are attributable to a lack of or defect in title to the *Place of the Work*."

3.44.2 Add a new paragraph 12.2.7 as follows:

"12.2.7 Nothing in this GC 12.2 – INDEMNIFICATION shall deprive the *Owner* of any other action, right or remedy otherwise available to the *Owner* at common law or otherwise."

**SC 3.45 GC 12.5 WARRANTY**

3.45.1 Further amend paragraph 12.5.1 by adding the following to the end of that paragraph:

"Where the Design-Builder has been permitted to make use of permanent equipment or systems, as provided in GC 3.13 – DESIGN-BUILDER'S USE OF PERMANENT EQUIPMENT OR SYSTEMS, prior to the issuance of the certificate of *Substantial Performance of the Work*, such permanent equipment or systems shall be subject to the same warranty as described in this GC 12.5 - WARRANTY and shall be judged, for purposes of assessing compliance with the warranty, as though the equipment or systems were new, clean and unused by the Design-Builder, except for normal commissioning and start-up

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activities, prior to the date of *Substantial Performance of the Work*. Notwithstanding the foregoing, if an item of *Work* is not completed at *Substantial Performance of the Work*:

- .1 except for extended warranties, the warranty period for such item of *Work* shall be one (1) year from the date that such item of *Work* is completed and accepted in writing by the *Owner*; and
- .2 in respect of extended warranties, the warranty period for such item of *Work* shall commence on the date that such item of *Work* is completed and accepted in writing by the *Owner*.”

3.45.2 Amend paragraph 12.5.3 by:

- (a) adding the following to the end of that paragraph:

“Approximately 60 days prior to the expiration of the one (1) year warranty period of the *Contract*, the *Design-Builder*, the *Owner*, the *Payment Certifier*, the *Owner’s Advisor* and the *Consultant* shall jointly inspect the *Work* and identify defects and deficiencies which may be observed at that time and not previously reported, and defects and deficiencies previously reported and not corrected.”

3.45.3 Amend paragraph 12.5.4 by adding the following to the end of that paragraph:

“The *Design-Builder* shall be fully responsible for any and all repairs, rectification, re-grading, reinstatement and maintenance of all finished surfaces, surface structures, roads and pavements which may be required due to trench settlements or other deficiencies.”

3.45.4 Add new paragraphs 12.5.9 and 12.5.10 as follows:

“12.5.9 The *Design-Builder* shall assign to the *Owner* all warranties, guarantees or other obligations for *Work*, services or *Products* performed or supplied by any *Subcontractor*, *Supplier*, *Other Consultant* or other person in connection with the *Work*, and such assignment shall be with the consent of the assigning party where required by law or by the terms of that party’s contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the *Owner* under the *Contract Documents*.

12.5.10 The *Design-Builder* shall carry out all remedial and warranty work at a time convenient to the *Owner*. The *Owner* shall provide reasonable access to those portions of the *Project* necessary to carry out such work, subject to the *Owner’s* requirements for own operations. Prior to performing the work, the *Design-Builder* shall provide, for the *Owner’s* review and approval, a proposed schedule for the performance of the remedial and warranty work.”

**SC 3.46** Add new Part 13, “**PART 13 – OTHER PROVISIONS**” as follows:

3.46.1 Add new GC 13.1 through GC 13.5 as follows:

**“PART 13 OTHER PROVISIONS**

**GC 13.1 DAILY REPORTS / DAILY LOGS**

13.1.1 The *Design-Builder* shall cause its supervisor, or such competent person as he or she may delegate, to prepare a daily log or diary reporting on weather conditions, work force of the *Design-Builder*, *Consultant*, *Other Consultants*, *Subcontractors*, *Suppliers* and any other forces on the *Project* site, and also to 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 *Project* site who are not part of the day-to-day work force.

13.1.2 The *Design-Builder* shall also maintain records, either at its head office or at the *Project* site, recording manpower and material resourcing on the *Project*, including records which document the activities of the *Design-Builder*, both as planned and actual.

13.1.3 Upon request of the *Owner*, the *Design-Builder* shall make available for inspection and copying all of the records generated pursuant to this GC 13.1 – DAILY REPORTS/DAILY LOGS, along with any other routine *Project* records ordinarily maintained by the *Design-Builder*.

**GC 13.2 PUBLIC STATEMENTS**

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- 13.2.1 The *Design-Builder* shall not, and shall ensure that each member of the *Project Team* does not, publish, issue or make any statements or news release, electronic or otherwise, concerning the *Contract*, the *Design Services* and the *Work*, or the *Project*, and shall not use the *Owner's* name, logo, etc. without the prior express written consent of the *Owner*.

**GC 13.3 CONSTRUCTION LIENS AND ACTIONS**

- 13.3.1 The *Design-Builder* shall save and keep the *Owner* and the *Project* free from all construction liens and all other liens whatsoever arising out of the *Work*. In the event that any lien is filed or registered against the *Project* or any written notice of lien is received by reason of labour, services, equipment, materials or any work supplied or claimed to have been supplied by or through the *Consultant*, a *Subcontractor* or *Supplier*, and the *Owner* having performed its material obligations under the *Contract*, the *Design-Builder* shall, at its own expense, within ten (10) *Working Days* of receiving *Notice in Writing* in relation to the lien, secure the discharge, release, vacating or withdrawal of such lien or written notice of lien by payment or by giving security or in such other manner as is or may be required or permitted by law, failing which the *Owner* may, but shall not be required, take such steps as it, in its absolute discretion, may deem necessary to release, vacate or discharge the lien.
- 13.3.2 In the event that a lien action or any other action or legal proceeding is commenced, the *Design-Builder* shall take all reasonable steps to remove the *Owner* from such action or legal proceeding and shall indemnify the *Owner* and hold it harmless in such action or legal proceeding.
- 13.3.3 All amounts, including solicitor and own client costs, interest and premium or other bonding costs incurred by the *Owner* in releasing, vacating or discharging any lien and/or defending or otherwise dealing with a lien or an action or legal proceeding, shall be charged to the *Design-Builder* and shall be set off and deducted from any amount owing to the *Design-Builder* and any security or other funds held by the *Owner*.

**GC 13.4 AMENDMENTS TO THE CONTRACT**

- 13.4.1 Except where the *Design-Builder* has received the written or e-mail direction referred to in paragraph 6.1.3 of GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, no alteration or amendment to this *Contract*, no course of conduct or dealing between the parties, and no express or implied acceptance of alterations or amendments to the *Contract* shall be binding unless it is in writing and signed by each party.
- 13.4.2 No waiver by or on behalf of a party of any breach of a provision of this *Contract* shall be binding upon the party unless it is expressed in writing and duly executed by the party or signed by its fully authorized representative, and such a waiver shall not operate as a waiver of any future breach, whether of a like or different character. No waiver shall be inferred from or implied by the conduct of any party.

**GC 13.5 OWNER'S AUDIT OF THE DESIGN-BUILDER'S PERFORMANCE**

- 13.5.1 The *Owner* may arrange for periodic audits of the *Design-Builder's* performance of the *Contract* for the purpose of verifying that the *Design-Builder* is performing the *Design Services* and the *Work* in compliance with the requirements and obligations set out in the *Contract*.
- 13.5.2 The *Design-Builder* shall, at its own cost, co-operate fully and in a timely manner with any reasonable request for an audit by the *Owner* (whether conducted by internal or external auditors), and shall provide such documents or procure the provision of documents relating to the *Contract* and the *Design-Builder's* performance of the *Design Services* and the *Work*.
- 13.5.3 Where an audit determines that the *Design-Builder* has not complied with any requirements or obligations under the *Contract*, the *Design-Builder* shall immediately remedy such non-compliance and shall reimburse the *Owner* for its costs of conducting such audit.
- 13.5.4 Where an audit determines that the *Design-Builder* has complied with all of its requirements under the *Contract*, the cost of conducting such audit shall be assumed by the *Owner*."

**APPENDIX G – SUPPLEMENTARY CONDITIONS**

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**SCHEDULE 1****LANGUAGE FOR OWNER PERSONNEL OR FOR THIRD PARTY CONTRACTORS ENTERING A PROJECT SITE WHERE THE DESIGN-BUILDER HAS ASSUMED OVERALL RESPONSIBILITY – IN CONTRACT – FOR HEALTH AND CONSTRUCTION SAFETY**

The [name of third party contractor or Owner personnel] acknowledges that the work it will perform on behalf of The Corporation of the City of Windsor (the “Owner”) requires it to enter a job site which is under the total control of [name of Design-Builder] (the “Design-Builder”) which has a contract with the Owner. The [third party contractor or Owner personnel] acknowledges that the Design-Builder has assumed overall responsibility for compliance with all aspects of the health and construction safety legislation on the job site including all the responsibilities of the “constructor” under the Occupational Health and Safety Act (Ontario). Further, [third party contractor or Owner personnel] acknowledges that the Design-Builder is also responsible to the Owner to co-ordinate and schedule the activities of our/my work with the work of the Design-Builder.

I/We agree to comply with the Design-Builder’s directions and instructions with respect to health and construction safety and coordination. I/We acknowledge that it will be cause for termination under our contract with the Owner should I/we fail or refuse to accept the direction and instruction of the Design-Builder with respect to matters of health and construction safety or matters related to coordination of work.

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[name of third party contractor or Owner personnel]