



**ADDENDUM NO. 1**

**Project No: PTC 2021-01-E**

March 23, 2021

**Project: WINDOW REPLACEMENTS**

**ORION CO-OPERATIVE HOUSING CORPORATION,  
95 CONSTELLATION PLACE (OFF DACEY ROAD)**

**LA CO-OPERATIVE D'HABITATION LA CHAUMIERE INC,  
101 LACHAUMIERE PLACE**

**SAULT STE. MARIE, ONTARIO**

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The following additions, deletions, and amendments are hereby made a part of the drawings and specifications of the above project.

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**The tender documents are hereby amended to replace Supplementary Conditions attached to Tender documents issued March 9, 2021 with the revised attached:**

**PTC 2021-01-E Supplementary Conditions**

**Liza Chikoski, A.Sc.T.**

Infrastructure & Asset Manager

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**Housing | Social Services**

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## Schedule B – Form of Contract

The Canadian Construction Documents Committee's CCDC 2 – 2008 – Stipulated Price Contract is hereby incorporated by reference in this Schedule B – FORM OF CONTRACT. The Supplemental Conditions attached hereto shall form part of the Contract, and shall supplement and amend the CCDC 2 – 2008 – Stipulated Price Contract as set forth therein.

## CCDC 2 SUPPLEMENTAL CONDITIONS

These Supplemental Conditions supplement, void, or amend, and shall be read in conjunction with, the Agreement, the Definitions, and the General Conditions of the CCDC 2 – 2008 Stipulated Price Contract, between the *Owner* and the *Contractor*. Unless otherwise defined herein, all capitalized and italicized terms used in these Supplemental Conditions shall have the meaning ascribed thereto in the Definitions.

## DEFINITIONS

**SC 1.1** To the definition of "Owner" **ADD** the following sentence: "Owner" is also referred to herein as "SSMHC".

**SC 1.2** **ADD** the following definitions:

### Affiliate

Affiliate means for any *Person*, any other *Person* who *Controls*, is *Controlled* by, or is under common *Control* with the first *Person*.

### Building

Building means any construction, erection, complex, or other installation on the *Building Lands* at, in, or upon which the Work is being performed, and includes any installation of industrial, mechanical, electrical, or other equipment on the *Building* or the *Building Lands* as well as the *Building Lands*

### Building Lands

Building Lands means the lands upon which the *Building* is situated and the certificates of title associated thereto.

### Claims

Claim or Claims means losses, damages, costs, expenses, liabilities, *Claims*, demands, actions, causes of action, proceedings, judgments, and other amounts (including legal fees and disbursements, on a solicitor and his own client basis).

### Control

Control (including the terms "Controls" and "Controlled") means the possession, directly or indirectly, of the power to direct and manage or cause the direction and management of a *Person*, whether through the ability to exercise voting power, by contract, or otherwise.

### Lien

Lien includes any *Lien* contemplated by the *Lien Statute* and any legal action or suit commenced with respect to any such *Lien*, and any other builders' or construction *Lien*.

### **Lien Period**

Lien Period means the period or periods of time specified by the *Lien Statute* during which a *Lien* claimant must preserve and perfect, or otherwise make, a claim for *Lien*.

### **Lien Statute**

Lien Statute means the *Construction Act*, R.S.O 1990 c. c-30 for projects in Ontario and any additional or substitute *Lien* legislation applicable to the *Place of the Work* and the term "the *Lien* legislation applicable to the *Place of the Work*" wherever it appears in the *Contract Documents* refers to and means the *Lien Statute*.

### **Other Liens**

Other Liens means any mechanics', garagemens', or solicitors' *Lien* and any mortgage, writ of execution, attachment, charge, Security Interest (as such term is defined in the *Personal Property Security Act* applicable to the *Place of the Work*), pledge, deed of trust, encumbrance, or other financial *Lien* or charge of any kind or nature whatsoever relating to the *Contractor*, the *Work*, the construction equipment, the *Temporary Work*, the *Products*, or the labour associated therewith, or supplying, transportation, or fabrication of the materials associated therewith that is or are registered or filed against the *Owner*, the *Building*, or against the *Owner's* interest therein, any *Claim* of quantum meruit or unjust enrichment, whether or not with respect to the *Work*, the *Construction Equipment*, the *Temporary Work*, the *Products*, or the labour associated therewith, or supplying, transportation, or fabrication of the materials associated therewith that is filed or advanced against the *Owner*, but excluding any *Lien* as defined in these *Supplemental Conditions*.

### **Person**

Person, according to the context, includes any individual, legal *Person*, corporation, firm, partnership, trust or other entity, any group of *Persons*, corporations, firms, partnerships or other entities, or any combination thereof, and includes any trustee, trustee-in-bankruptcy, receiver, receiver manager, monitor, agent for a secured creditor, or other entity acting in a similar capacity.

### **Progress Meetings**

Progress Meetings shall have the meaning ascribed thereto in SC 2.3.8 (below)

### **Proper Invoice**

An application for payment in GC 5.2 shall only be considered a Proper Invoice for the purpose of the prompt payment and adjudication provisions of the *Lien Statute* if the application for payment contains the following information and documentation:

- a. The *Contractor's* name and address;
- b. The date of the proper invoice and the period during which the services or materials were supplied;
- c. The *Contract* number;
- d. A description of the services or materials that were supplied, in the form of an updated Schedule of Values (per GCs 5.2.4 to GC 5.2.6), which Schedule of Values shall contain a detailed description, with reference to any Contemplated Change Notice number, of any items being claimed against the Cash Allowance;

- e. The amount payable for the services or materials that were supplied, and the payment terms, including a breakdown of any items being claimed against the Cash Allowance;
- f. The name, title, telephone number, and mailing address of the person to whom payment is to be sent;
- g. An updated schedule as required by GC 3.5.1.2 and SCC 5.2.7;
- h. A valid and current Workplace Safety & Insurance Board Clearance Certificate as required by SCC 5.2.7;
- i. A sworn statutory declaration confirming that all employees, sub-contractors, and suppliers that have completed work or supplied materials to the Project have been paid in full out of all prior payments made by SSMHC to the *Contractor* as required by SCC 5.2.7 (for every progress payment application after the first).

## **GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT**

### **GC 1.1 CONTRACT DOCUMENTS**

**DELETE** paragraph 1.1.7.1 and **SUBSTITUTE** the following:

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

- The Agreement between *Owner* and *Contractor*, which includes the Request for Tender Package
- the *Definitions*
- these *Supplemental Conditions*
- the *General Conditions*
- *Specifications*
- the *Drawings*
- *CCDC 40 Rules for Mediation*
- *CCDC 41 Insurance Requirements.*"

### **GC 1.4 ASSIGNMENT**

**DELETE** paragraph 1.4.1 and **SUBSTITUTE** the following:

"1.4.1 Except for the retaining by the *Contractor* of *Subcontractors*, the *Contractor* shall not assign, pledge, or in any other way transfer the *Contract* or a portion thereof without the *Owner's* written consent, which consent may not be unreasonably withheld. The *Contractor*, when requesting the *Owner's* consent to any such assignment, pledge, or transfer, shall provide evidence satisfactory to the *Owner* of the ability of the proposed assignee, pledgee, or transferee to complete the *Contract* in respect of its technical and financial competence, its workforce, and its equipment along with any other information requested by the *Owner.*"

**ADD** the following paragraph:

"1.4.2 The *Owner*, acting reasonably, may assign or otherwise transfer the *Contract* with the consent of the *Contractor*, which consent shall not be conditioned or unreasonably withheld or delayed, provided however, the *Owner* may assign or otherwise transfer the *Contract* without the consent of the *Contractor* if such transfer or assignment:

.1 is incidental to a merger, amalgamation, or consolidation with or involving the *Owner* or the assets or shares of the *Owner*;

.2 is incidental to the sale or other transfer of all or a portion of the *Owner's* interest in or to the *Building*; or

.3 is to an *Affiliate* of the *Owner*,

and provided the assignee or other transferee assumes all of the obligations of the *Owner* under the *Contract*, upon such assumption, the assignor or transferor shall be released of all its obligations under the *Contract* after the date such assignment or transfer is or becomes effective."

## GC 2.2 ROLE OF THE CONSULTANT

In paragraph 2.2.3, **AMEND** the second sentence by adding the following phrase to the end of the sentence: "upon the request of the *Contractor*."

## GC 2.3 REVIEW AND INSPECTION OF THE WORK

**ADD** the following paragraph:

"2.3.8 The *Contractor* shall schedule and administer regular bi-weekly project progress meetings throughout the progress of the *Work* ("**Progress Meetings**"). Meeting dates and locations shall be coordinated with the *Owner* and the *Consultant*. The *Consultant* will record and distribute meeting minutes within 5 business days of each such meeting."

## C 2.4 DEFECTIVE WORK

**ADD** the following subparagraphs to paragraph 2.4.1:

“.1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*."

.2 The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner*."

**ADD** the following to the end of 2.4.3: "... prior to any adjudication hearing taking place."

**ADD** the following paragraphs:

"2.4.4 Any defective *Work* corrected pursuant to this GC 2.4 shall be covered by warranties provided pursuant to GC 12.3, provided such warranties in respect of the corrected defective *Work* shall continue for the longer of the duration of the warranty period provided under GC 12.3, and one year from the date such corrective *Work* is completed.

2.4.5 Neither acceptance of the *Work* by the *Consultant* or the *Owner* nor any failure by the *Consultant* or the *Owner* to identify, observe, or warn of defective *Work* shall relieve the *Contractor* from the sole responsibility for rectifying such defect or deficiency at the *Contractor's* sole cost and expense."

### GC 3.1 CONTROL OF THE WORK

**ADD** the following paragraph:

“3.1.3 Prior to commencing individual procurement, fabrication, and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly, and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or contradictions exist, or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected *Work*.”

### GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

**ADD** the following subparagraphs to paragraph 3.2.3:

“.4 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the *Work* of other *Contractors* or *Owner's* own forces.”

### GC 3.4 DOCUMENT REVIEW

**ADD** the following paragraph:

“3.4.2 Notwithstanding paragraph 3.4.1, errors, inconsistencies, or omissions in the *Contract Documents* which could have been identified and accounted for by the *Contractor* when pricing the *Work*, as determined by the *Owner* exercising reasonable discretion, shall not entitle the *Contractor* to a *Change Order* or any adjustment to the *Contract Price* or *Contract Time*.”

### GC 3.5 CONSTRUCTION SCHEDULE

In paragraph 3.5.1.1; **DELETE** the words: “prior to the first application for payment” and **REPLACE** them with “within 5 days after the letter of award.”

**ADD** the following paragraphs:

“3.5.2 Once approved, the construction schedule shall not be altered without written approval from the *Owner* and the *Consultant*. The *Owner* reserves the right to require more frequent schedule updates, if the *Owner* determines, in its reasonable discretion, that the *Contractor* does not appear to be capable of achieving *Substantial Performance* of the *Work* within the *Contract Time*.

3.5.3 Upon becoming aware of any acts or conditions which may affect the *Contractor's* ability to maintain the construction schedule in accordance with the *Contract Time*, the *Contractor* shall promptly notify the *Owner* and the *Consultant* of such facts or conditions, which facts and conditions shall be fully disclosed and discussed at the subsequent *Progress Meeting*.

3.5.4 The *Owner* or the *Consultant* may direct the *Contractor* to suspend *Work* that causes disruption to the *Owner's* operations at the *Project* or the *Work* of other *Contractors* or other third parties at the *Place of the Work*, pending development and implementation of solutions acceptable to the *Owner* that allow the *Work* to proceed.

3.5.5 Time is of the essence herein in respect of the *Contract Time* and completion of the *Work*.”

### GC 3.6 SUPERVISION

At the end of paragraph 3.6.1, **ADD** the words: “and, unless such change is required due to the representative’s death, injury, emergency, or change in employment status with the *Contractor*, only with *Owner’s* prior written consent.”

### GC 3.8 LABOUR AND PRODUCTS

**ADD** the following paragraphs:

“3.8.4 The *Owner* shall acquire a property interest in and title to the materials or supplies that comprise the *Work* at the earlier of:

- .1 payment for such materials or supplies; or
- .2 delivery of any such materials or supplies to the *Place of Work*.

At the time of such transfer of title, the *Contractor* shall be the lawful *Owner* of such materials or supplies and have the legal right to convey and transfer such title.

3.8.5 The *Contractor* and its *Subcontractors*, and its and their employees, agents, and sub-*Subcontractors* of any tier, shall carry valid photo identification at all times when at the *Place of the Work*.”

### GC 3.10 SHOP DRAWINGS

**ADD** the following paragraphs:

“3.10.13 The *Contractor* shall accurately and neatly record in the *Shop Drawings* deviations from the *Contract Documents* caused by changes ordered by the *Owner* through the *Consultant*.

3.10.14 The *Contractor* shall record on the *Shop Drawings* locations of concealed components of mechanical and electrical services.

3.10.15 The *Contractor* shall maintain in new condition and make available for inspection on site by the *Consultant* an up-to-date copy of the *Shop Drawings*.

3.10.16 Upon completion of *Work* and prior to the *Contractor’s* submission of the application for final payment, the *Contractor* shall submit final, complete, and accurate *Shop Drawings* to the *Consultant*. Unless otherwise agreed by the *Owner* in writing, such *Shop Drawings* shall be prepared digitally using computer aided drafting software and issued to the *Consultant* in paper copy and on CD-ROM or USB with the following drawing file formats: AutoCAD v.2004, DXF, PDF or TIFF.

3.10.17 The *Contractor* shall pay for all costs and expenses associated with preparation, maintenance, and submission of *Shop Drawings*.”

### GC 4.1 CASH ALLOWANCES

**DELETE** paragraph 4.1.4 in its entirety and **SUBSTITUTE** the following paragraph:

“4.1.4 Where costs under a cash allowance exceed the amount of the allowance, the *Contractor* shall be compensated for any excess incurred and substantiated, but not an amount for overhead and profit on the excess as set out in the *Contract Documents* except where there is a Change to the Scope of *Work*.”

**DELETE** paragraph 4.1.5 in its entirety and **SUBSTITUTE** the following paragraph:

“4.1.5 The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the *Contract Price by Change Order*.”

**Delete** paragraph 4.1.7 in its entirety and **SUBSTITUTE** the following paragraph:

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

**ADD** the following paragraph:

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

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

**DELETE** paragraphs 5.1.1. and 5.1.2.

### **GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT**

In paragraph 5.2.1, **DELETE** the word “may” and replace it with the word “shall” such that applications for payment shall be made monthly and add to the end of the sentence “and shall be made in the form of a *Proper Invoice*”.

In paragraph 5.2.2, **DELETE** “Applications for payment” and replace it with “*Proper Invoices*”.

In paragraph 5.2.3, **DELETE** the words: “*Work performed and Products delivered to the Place of the Work*” and **SUBSTITUTE** with: “*Work performed and Products incorporated into the Work*.”

In paragraph 5.2.6, after “application for payment” **ADD** “as one of the mandatory conditions for the application to be considered a *Proper Invoice*.”

**DELETE** paragraph 5.2.7 and **SUBSTITUTE** with:

“5.2.7 The *Contractor* shall submit with each application:

- .1 a statutory declaration by the *Contractor* on a copyright sealed form CCDC Document 9A-2001 (for every application after the first);
- .2 an updated construction schedule; and
- .3 a current Workplace Safety & Insurance Board Clearance Certificate.”

### **GC 5.3 PROGRESS PAYMENT**

In paragraph 5.2.2, **DELETE** “10 calendar days” and **SUBSTITUTE** “7 calendar days”.

**DELETE** paragraph 5.3.1.3 and **SUBSTITUTE** “the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 28 calendar days from receipt by the *Consultant* of the application for payment, provided that the application for payment is in the form of a *Proper Invoice*.”



#### GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

**ADD** the following paragraph:

“5.4.4 Within seven (7) business days following receipt of the *Certificate of Substantial Performance* from the *Owner*, the *Contractor* shall provide the *Owner* with acceptable evidence of publication of the *Certificate of Substantial Performance* in a recognized construction trade newspaper including the name of the newspaper and the date of publication.”

#### GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

In paragraph 5.5.1.1, after the words “holdback amount”, **ADD** “which application for payment shall be in the form of a *Proper Invoice*”.

In paragraph 5.5.2, after the words “application for payment” **ADD** “in the form of a *Proper Invoice*”.

**DELETE** paragraph 5.5.3 in its entirety.

**DELETE** the first sentence in paragraph 5.5.4 and **SUBSTITUTE** the following: “In Ontario, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable pursuant to the *Lien Statute*”

**DELETE** paragraph 5.5.5 in its entirety.

#### GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

**DELETE** paragraph 5.6.1 and **ADD** the following in its place the following:

“5.6.1 If the *Contract Price* is greater than \$10,000,000 (or as otherwise prescribed in the *Lien Statute*), and if the time stated in Article A-1 paragraph 1.3 is either greater than one year and/or provides for the *Work* to be completed in phases, the *Contractor* may apply for either annual or phased release of the holdback amount, respectively, provided that the conditions for payment of holdback on an annual or phased basis set out in the *Lien Statute* are met. The holdback amount retained annually or on a phased basis shall be paid to the *Contractor* by the *Owner* within twenty eight (28) days of the *Owner* receiving a certificate from the *Consultant* certifying the holdback amount to be released, which is to be obtained at the *Contractor’s* request, and together with a *Proper Invoice*. Alternatively, if holdback security was posted, the *Contractor* may request return of the holdback security and substitution of security in a lesser amount on an annual or phased basis, in accordance with the conditions set out herein. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the *Lien Statute*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.”

**DELETE** paragraph 5.6.2 in its entirety.

#### GC 5.7 FINAL PAYMENT

In paragraph 5.7.1, after the words “When the *Contractor* considers that the *Work* is completed” **ADD** the words “and after all (i) manufacturer’s warranties, (ii) operations and maintenance manuals pertaining to any equipment incorporated in the *Work*, and (iii) the names, addresses, telephone numbers and contact *Persons* of all *Subcontractors* and *Suppliers* have been provided to the *Owner* in a new, good quality, three-ring, hard covered binder, with contents organized into applicable categories of *Work*, or such other form satisfactory to the *Owner*, and when all *Lien Periods* have expired,” and after the words “application for final payment” **ADD** “in the form of a *Proper Invoice*.”

In the second line of paragraph 5.7.4, **DELETE** everything after “the *Owner* shall” and **ADD** “no later than 28 days after receipt of the *Contractor’s* application for final payment in the form of a *Proper Invoice* – and subject to any Notice of Non-Payment being issued by the *Owner* – pay the *Contractor* as provided in Article A-5 of the Agreement – PAYMENT”.

**ADD GC 5.10 LIENS AND OTHER LIENS**, as follows:

“5.10.1 The *Contractor* shall strictly comply with all applicable duties, responsibilities and obligations as set out in the applicable *Lien Statute*.

5.10.2 The *Contractor* shall, and shall take all reasonable steps to, ensure that all accounts for *Products*, subcontracts, sub-subcontracts, and *Construction Equipment* associated with or related to the *Work* are paid in a timely manner and in accordance with the *Lien Statute* so as to ensure that no *Lien* attaches to or is registered or filed against the *Owner*, the *Building*, or the *Owner’s* interest in or to the *Building*.

5.10.3 The *Contractor* shall ensure that *Other Liens* do not attach to, nor are advanced, registered, or filed against the *Owner*, the *Building*, or the *Owner’s* interest in or to the *Building*.

5.10.4 If:

.1 *Other Liens* attach to, or are advanced, registered, or filed against the *Owner*, the *Building*, or the *Owner’s* interest in or to the *Building*; or

.2 provided the *Owner* has made all payments to the *Contractor* as and when due in accordance with the *Contract Documents* including these Supplementary Conditions, a *Lien* is advanced, attached to, or registered or filed against the *Owner*, the *Building*, or the *Owner’s* interest in or to the *Building*, the *Contractor* shall discharge such *Lien* or *Other Lien*, as applicable, at the *Contractor’s* sole expense within seven (7) days after notice from the *Owner* (or sooner if the *Lien* or *Other Lien* is delaying or affecting a financing, sale, or transfer of all or part of the *Building* or any interest therein), failing which the *Owner* may, at the *Owner’s* option, discharge the *Lien* or *Other Lien* by any means whatsoever, including by payment of monies into court or, in the case of *Other Liens* only, directly to the *Other Lien* claimant or by taking such other action as the *Owner*, in the *Owner’s* sole discretion, deems to be expedient or advisable to effect the immediate discharge of the *Lien* or *Other Lien* whether or not the validity of such *Lien* or *Other Lien* is admitted or denied by the *Contractor* or any other *Person*. Any monies or expenses paid or costs incurred by the *Owner* pursuant to this GC 5.10.4, including legal fees and disbursements on a solicitor and its own client basis and the monies paid into court as security for costs shall be paid by the *Contractor* to the *Owner* within five (5) days of the issuance of an invoice therefor by the *Owner*, and the *Owner* may, at its option, deduct all or a portion of such monies, costs, and expenses from the *Contract Price* or any payment on account of the *Contract Price*.

5.10.5 Notwithstanding any provision to the contrary in the *Contract Documents*, in no event shall the *Owner* be required to make payment to the *Contractor* of any kind whatsoever when *Liens* or *Other Liens* are registered or filed against the *Owner*, the *Building*, or against the *Owner’s* interest therein.”

## **GC 6.2 CHANGE ORDER**

**ADD** the following paragraph:

“6.2.3 The *Contractor* shall present adjustments to the *Contract Price* based on the following:

.1 For the *Work* done by the *Contractor’s* forces, a maximum of 15% total for overhead and profit shall be allowed.

.2 *Subcontractors* shall submit their accounts to the *Contractor* using 10% maximum total mark-up for overhead and profit.

.3 The *Contractor* shall be allowed 10% total for overhead and profit on accounts submitted to him by the *Subcontractors*.

.4 A charge of 5% for the *Contractor's* or *Subcontractor's* administration on charges involving credits shall be allowed.

.5 The percentages in subparagraphs 6.2.3.1 to 6.2.3.4 inclusive above shall only apply to changes not exceeding \$10,000.00 in net value of each *Change Order*. For adjustments greater than this amount, the overhead and profit should be a maximum of 10% total for the *Work* done by the *Contractor's* forces and a maximum of 5% on accounts submitted to the *Contractor* by the *Subcontractors*."

### GC 6.3 CHANGE DIRECTIVE

**DELETE** subparagraph 6.3.6.3 and **SUBSTITUTE** with the following: "The *Contractor's* fee for *Work* performed pursuant to a *Change Directive* shall be based on the amounts identified within paragraph 6.2.3 of the net increase in the *Contractor's* cost resulting from such *Change Directive*."

At paragraphs 6.3.7.5 and 6.3.7.6, reference to "tools", "*Construction Equipment*" and "hand tools" shall include only such items that have a new purchase value greater than \$500.

### GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

**ADD** the following paragraph:

"6.4.5 The *Contractor* confirms that, prior to bidding the *Project*, it carefully investigated the *Place of the Work* and applied to that investigation the degree of care and skill described in paragraph 3.4.1, given the amount of time provided between the issue of the bid documents and the actual closing of bids, the degree of access provided to the *Contractor* prior to submission of bid, and the sufficiency and completeness of the information provided by the *Owner*. The *Contractor* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation undertaken prior to the submission of the bid"

### GC 6.5 DELAYS

**ADD** the following to the end of paragraph 6.5.4: "A *Notice in Writing of Claim* with respect to any delay shall indicate the reasons for such delay, the best estimate of the *Contractor* as to the duration of the delay, and the likely effect on the *Contract Time* and *Contract Price*, if applicable. Upon cessation of the circumstances giving rise to the delay, the *Contractor* shall give the *Owner* and *Consultant Notice in Writing* of such cessation."

**ADD** the following paragraphs:

"6.5.6 The *Contractor* shall not be entitled to any compensation or time extensions for any delays caused in whole or in part by the *Contractor's* failure to perform its obligation in accordance with the Contract, or for delay caused by concurrent events to the extent any such event is caused in whole or in part by the *Contractor's* failure to perform its obligations in accordance with the Contract.

6.5.7 In the event of delay in the performance of any portion of the *Work* contemplated by this GC 6.5, the *Contractor* shall use commercially reasonable efforts to rearrange and reschedule the *Work* so as to minimize the ultimate delay in completion of the *Work*. The *Contractor* shall be responsible for the care, maintenance, and protection of the *Work* in the event of any shutdown, provided the *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* in undertaking such care, maintenance, and protection.

6.5.8 If the *Work* should be behind schedule for a reason other than as described in paragraphs 6.5.1 to 6.5.3 (inclusive), or if any of the *Subcontractors* or *Suppliers* delay the progress of any portion of the *Work* necessary to complete the *Work* in accordance with the *Contract Time*, the *Contractor* shall not be relieved of its obligations under the *Contract Documents* and shall use its best efforts to bring the *Work* back in accordance with the *Contract Time*. The *Contractor* shall provide any additional personnel, supervision, co-ordination, and expediting, including overtime by its own personnel, and/or shall direct such measures to be undertaken by its *Subcontractors* and/or *Suppliers*, as may be required to achieve this end.”

#### **GC 7.1 OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK, OR TERMINATE THE CONTRACT**

**ADD** the following sentence to the end of paragraph 7.1.1: “If, in the opinion of the *Owner*, the *Contractor* fails to satisfactorily carry out the obligations and duties of an employer and/or constructor as required under applicable Occupational Health and Safety legislation, the *Owner* reserves the right to terminate the Contract by giving the *Contractor Notice in Writing* to that effect.”

**ADD** the following subparagraphs to paragraph 7.1.4:

.3 Subject to GC 6.5, if such default arises from the *Contractor’s* failure to maintain the progress necessary to comply with the *Contract Time* and the construction schedule, the *Owner* may, after consultation with the *Contractor* and the *Consultant*, order that the *Contractor* take such actions as the *Consultant* deems necessary to maintain the progress required to achieve the *Contract Time* and construction schedule, which actions may include, but will not be limited to, the supply of additional labour, the provision of additional hours of *Work*, or the furnishing of additional Temporary *Work* or *Construction Equipment*, all at *Contractor’s* sole cost and expense.”

#### **GC 7.2 CONTRACTOR’S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT**

**DELETE** subparagraph 7.2.3.1 in its entirety.

In paragraph 7.2.3.4, **DELETE** in the first and second lines the words "except for GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER".

### **PART 8 – DISPUTE RESOLUTION**

The remedies available to the Parties in Part 8 – DISPUTE RESOLUTION are in addition to those set out in Part II.1 of the *Lien Statute*.

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

In subparagraph 9.1.1.1, after the words “errors in the *Contract Documents*” **ADD** the words “which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.4.1”

**ADD** the following sentence at the end of paragraph 9.1.2: “In addition, the *Contractor* shall call all utilities companies for service locates prior to commencing the *Work*. If the *Contractor* fails or refuses to do so, the *Contractor* will be responsible for all costs and expenses arising from any disrupted service and all required remedial measures to reinstate the existing service.”

In paragraph 9.1.3, after the words “Should the *Contractor*” **ADD** the words “or any *Person* for whom the *Contractor* is responsible at law (including any *Subcontractors* or *Suppliers*),”

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

**ADD** the following new paragraphs:

“9.2.10 Notwithstanding anything to the contrary in this GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES, the *Contractor* hereby represents and warrants that it is fully aware that some of SSMHC’s properties contain asbestos, and that it has taken all reasonable measures, including consultation with the *Owner*, to fully appraise itself of existing conditions prior to beginning any *Work* at the *Place of the Work*. The *Contractor* shall use the appropriate and industry standard practices for dealing with asbestos and asbestos containing materials (ACM) in accordance with O.Reg. 278/05 of the Ontario Occupational Health and Safety Act.

9.2.11 Where, in the performance of *Work*, it is necessary for the *Contractor* to disturb ACM, or to conduct *Work* in close proximity to ACM that may be disturbed, the *Contractor* shall ensure that its personnel and *Subcontractors* engaged in such *Work* have received complete and proper training and instruction in accordance with O.Reg 278/05. Upon completion of any *Work* in an area containing ACM, the *Contractor* shall advise the *Owner* of the names and pertinent information of all workers that performed the *Work* and those who may have had contact with the ACM.

9.2.12 The *Contractor* shall provide and post copies of all Workplace Hazardous Material Information System (WHMIS), Material Safety Data Sheets (MSDS) for *controlled Products* brought into the *Place of the Work*.

9.2.13 The *Contractor* will provide copies of any and all reports, directions, or other documents issued to the *Contractor* or *Subcontractors* by federal, provincial, or municipal health and safety inspectors, as well as copies of any or all incident/accident reports, to the *Owner* immediately after they are issued and/or received by the *Contractor*.”

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

At GC 9.4, **ADD** the following new paragraphs:

“9.4.2 No comments, suggestions, or instructions from the *Owner* or the *Consultant* may be relied upon or assumed to reduce or replace the *Contractor’s* responsibility for construction safety.

9.4.3 The *Contractor* shall indemnify and hold harmless the *Owner* and the *Consultant*, and their agents and employees, from and against *Claims*, demands, losses, costs, damages, fines, penalties, fees, expenses, actions, suits, or proceedings by third parties, including legal fees, charges, and disbursements as between solicitor and his own client, that arise out of, or are attributed to, the *Contractor’s* failure to comply with rules, regulations, and practices required by the applicable health and safety legislation and all safety precautions and programs implemented, or required to be implemented, in connection with the performance of the *Work*.

9.4.4 The *Contractor* shall submit a Notice of *Project* as defined in, and in accordance with, the *Occupational Health and Safety Act* (Ontario) and regulations promulgated thereunder.”

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

**ADD** the following at the end of paragraph 10.1.2: “The *Contractor* shall provide a detailed breakdown of additional taxes and duties if requested by the *Owner* in a form satisfactory to the *Owner*. Profit and overhead shall not be included in the increase or decrease in costs incurred by the *Contractor* due to changes in the aforementioned taxes and duties. Where an exemption or recovery of governmental sales tax, customs duties, or excise taxes is applicable to the Contract, the parties hereby agree to cooperate with each other to obtain such exemptions. Refunds that are properly due to the *Owner* and have been recovered by the *Contractor* shall be promptly refunded to the *Owner*.”

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

**DELETE** paragraph 10.2.2 and **SUBSTITUTE** with the following "The *Owner* shall pay for permanent easements and rights of servitude. The *Contractor* will be responsible for covering all costs and applying for all building permits, electrical permits, and any other permits, licenses, or certificates necessary for the performance of the *Work* which were in force at the date of bid closing. *Contractor* is to provide proof of permits to *Owner*."

## **GC 10.4 WORKERS' COMPENSATION**

**ADD** the following paragraphs:

"10.4.3 The *Contractor* acknowledges, represents, warrants, and agrees that:

1. the *Contractor* is an independent *Contractor* and neither the *Contractor* nor its employees, agents, *Suppliers*, or *Subcontractors* shall be considered or deemed agents, employees, or workers of the *Owner* for any purpose, including applicable workers' compensation and income tax legislation, nor shall they share in benefits provided, or required to be provided, by the *Owner* to the *Owner's* employees; and

2. it is solely responsible for any and all payments required to be made and the performance of all their obligations respecting workers' compensation insurance, withholding taxes, payroll taxes, and such similar payments and obligations relating to the *Work* performed by the *Contractor* and its employees, agents, *Suppliers*, and *Subcontractors*. If and to the extent that the *Contractor* is deemed by law to be an employee of the *Owner*, for the purposes of employee benefit plan coverage and the extent permitted by law, the *Contractor* hereby waives participation in any employee benefit plans of the *Owner*. The *Contractor* shall indemnify and hold harmless the *Owner* from and against any *Claims* resulting from such failure by the *Contractor*."

10.4.4 The *Contractor* shall produce a valid W.S.I.B. Certificate of Clearance Form at the commencement of the *Work*, and updated copies as renewed."

## **GC 11.1 INSURANCE**

At GC 11.1.1.1, after "in the name of the *Contractor*", add the words "with a policy limit of not less than \$5,000,000 per occurrence".

**Delete GC 11.1.3 in its entirety and replace it with the following:**

11.1.3 The *Contractor* shall be responsible for paying any deductible amounts under the policies of insurance maintained by the *Contractor* or the *Owner*.

**ADD the following new paragraphs to the end of GC 11.1:**

### **11.1.9 Waiver of Rights regarding property damage**

The *Contractor* hereby waives all rights of recourse against the *Owner* in respect of loss or damage to the *Contractor's* owned, leased or hired property. The *Contractor* shall also include a provision in its contracts requiring all Sub-contractors to waive all rights of recourse against the *Owner* in respect of loss or damage to the owned, leased or hired property of the *Contractor's* and Sub-contractors.

### **11.1.10 General Provisions Regarding Contractor's Insurance (11.1.3 OTHER INSURANCE)**

.1 Each policy of insurance maintained by the *Contractor* shall provide that 60 days' prior written notice be given to the *Owner* before any policy is suspended, materially detrimentally altered or cancelled.

.2 Each policy of insurance maintained by the *Contractor* (other than automobile collision insurance, the contractors' equipment insurance and errors and omissions insurance) shall name the *Owner* as additional insureds and/or loss payees as applicable.

.3 All policies taken out by the *Contractor* shall contain a waiver of subrogation rights which the insurers may have against the *Owner* whether the damage is caused by the act, omission or negligence of any of such persons.

.4 In the event that a claim is made on another project that could jeopardize the coverage available for the Project, the *Contractor* shall provide prompt notice of such claim to the *Owner*.

.5 Prior to the *Commencement of the Work* and upon placement, renewal, amendment or extension of all or a part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage and, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.

#### **11.1.11 Project Specific Insurance by Owner**

For new build construction projects with a Contract Price greater than \$2,000,000, Owner shall purchase and maintain the following types of insurance policies issued by insurance companies licensed to carry on business in Canada:

##### **.1 "All Risks" Builders' Risk and Boiler & Machinery Insurance Coverage**

This policy shall cover "All Risks" of direct physical loss or damage to the Project, including the perils of earthquake and flood, subject to customary exclusions. It shall cover all property forming part of the Project, including goods and materials to be incorporated in the Project while at the Project site or while in off-site storage or transit thereto, anywhere within Canada and the Continental U.S.A., on or over land, or inland and coastal waters. It shall not provide coverage for contractors' equipment other than scaffolding, formwork, fences, shoring, hoarding, falsework, tarpaulins and temporary buildings in connection with the construction operations.

It shall be written in the joint names of the Owner, Development Manager, Construction Manager, Contractor, Sub-Contractors of any tier, Architects, Engineers, Consultants, and Sub-Consultants engaged on the Project, excluding any such entities whose only function is to supply and/or transport materials, machinery or supplies to the Project site and who do not perform any installation or construction work at the Project site.

It shall provide for a limit of coverage not less than the estimated final completed value of the Project, with a specified sub-limit for property in off-site storage and specified sub-limit for transit risk based on the maximum value of any one shipment. It may also contain other sub-limits usual to this type of insurance. It shall contain a waiver of the Insurer's subrogation rights against all Insureds and their officers, employees, servants, and agents, with the exception of architects, engineers, manufacturers and consultants for their errors or omissions in professional services, and it shall provide that, in the event of loss or damage, payment shall be made to the Owner as their respective interests may appear on their own behalf and as trustees for the benefit of any and all Insureds.

Each claim under this insurance policy shall be subject to a maximum deductible of \$10,000 except for the earthquake, flood, water damage and DE4/LEG 2 losses which shall be subject to higher maximum deductibles.

This policy shall be maintained continuously from commencement of the Work until all construction, erection, installation and testing has been completed and the Project has been finally accepted by the Owner.

## **.2 Wrap-Up Liability Policy**

This policy shall cover the risks of liability for bodily injury, including death and for property damage arising from the activities at the Project site, subject to customary exclusions. It shall be written in the joint names of the Owner, Development Manager, Construction Manager, Contractor, Sub-Contractors of any tier, Architects, Engineers, Consultants, and Sub-Consultants engaged on the Project, excluding any such entities whose only function is to supply and/or transport materials, machinery or supplies to the Project site and who do not perform any installation or construction work at the Project site. It shall provide for a Limit of Liability not less than \$10,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, and a deductible of not more than \$10,000 per occurrence.

This policy shall include the following coverage features:

- a. Premises and Operations Liability;
- b. Owners' and Contractors' Protective Liability;
- c. Products and Completed Operations Liability;
- d. Blanket Contractual Liability;
- e. Cross Liability and Severability of Interests Clause;
- f. Contingent Employer's Liability;
- g. Personal Injury Liability;
- h. "Occurrence" basis coverage for Bodily Injury and Property Damage;
- i. "Broad Form" Property Damage coverage, including "Broad Form" Completed Operations coverage;
- j. "Broad Form" Loss of Use of Property coverage;
- k. Coverage for shoring, blasting, excavating, underpinning, demolition, pile driving, caisson work, grading, tunnelling, and all work below ground surface;
- l. Non-Owned Automobile Liability insurance, including third party liability arising from use and operation of hired vehicles.
- m. Sudden and Accidental limited pollution coverage – IBC 2313 Form 240 hour detection and reporting.

A Wrap-Up Liability Policy will also be taken out by the owner for major renovation projects with a Contract Price of greater than \$2,000,000.

This insurance shall be maintained continuously from commencement of the Work until all construction, erection, installation and testing has been completed and the Project has been finally accepted by the Owner. The Completed Operations coverage shall be for not less than 24 Months after acceptance of the Project by the Owner.



### **.3 Supplementary Insurance**

The Owner does not represent that the project-specific insurance policies described in this Article 11.1.2 will be sufficient to protect the Contractor or any other Insured Parties against all of their responsibilities under this Contract. The Contractor and any other Insured Parties may obtain such additional insurance as they may consider necessary at their own expense.

### **.4 Administration and Co-operation**

The Contractor shall co-operate, and cause each Sub-contractor of any tier, Consultant and Sub-consultant to co-operate with the Owner in the administration of the project-specific insurance policies described in this Article 11.1.2, including promptly notifying the Owner of any claim or event or circumstance that may result in a claim. The Contractor will comply, and cause each Sub-contractor of any tier, Consultants and Sub-consultants to comply, with reasonable written procedures issued by the Owner from time to time relative to the administration of the insurance program for the Project.

### **.5 Project-Specific Insurance Premiums to be excluded from Contracts and Sub-Contracts**

In consideration of the fact that the Owner shall provide and pay for the project-specific insurance policies described in this Article 11.1.2, the Contractor shall confirm and require all Sub-Contractors and Consultants to confirm that their Contract Prices do not include any allowance for insurance premiums, whether payable by the Contractor, Sub-contractors, Consultants or Sub-consultants, in respect of risks covered by such insurance policies provided by the Owner, and declare the amounts of insurance premiums which have been deducted from their Tender prices in respect of such insurance policies normally purchased and maintained by them.

For greater clarity, such premium deductions should be made for the following types of insurance normally carried by Contractors and Sub-contractors:

- (a) Commercial General Liability insurance covering all operations (except for the cost of off-site and post completed operations coverage);
- (b) Builder's Risk insurance and/or Installation Floater insurance covering all projects on a blanket basis or on a project-specific basis;

### **.6 Additional Insurance**

The Contractor shall purchase and maintain any additional insurance which it is required to carry by law or which it considers necessary to cover risks not otherwise covered by insurance specified in this section.

The Contractor shall also purchase and maintain, and cause each Sub-contractor of any tier, Consultant and Sub-consultant to purchase and maintain, such other insurance, or amendments to the foregoing policies, as the Owner may reasonably require and direct.

## **GC 11.2 CONTRACT SECURITY**

**ADD** the following paragraph:

"11.2.3 If any change pursuant to Part 6 – CHANGES IN THE WORK results in an increase in the *Contract Price*, the contract security furnished by the *Contractor* shall be increased, supplemented, or confirmed, as applicable, upon written request of the *Owner* and at the *Contractor's* sole cost and expense."

## **GC 12.1 INDEMNIFICATION**

In subparagraph 12.1.2.2, **DELETE** "\$2,000,000" and **SUBSTITUTE** with "\$5,000,000".

### GC 12.3 WARRANTY

In paragraph 12.3.1, **DELETE** "one year" and **SUBSTITUTE** with "two years."

In paragraph 12.3.6, **DELETE** "one year" and **SUBSTITUTE** with "two years."

**ADD GC 13 ADDITIONAL CONDITIONS**, as follows:

#### **"GC 13.1 AGENT**

13.1.1 The *Owner* and the *Contractor* acknowledge and agree that nothing in this Contract is to be construed as authorizing the *Contractor* or any other third party or *Subcontractor* to contract for or incur any obligation on behalf of or to act as the agent for the *Owner* or the *Owner* of any part of the *Building*.

#### **GC 13.2 CONSEQUENTIAL LOSS**

13.2.1 Notwithstanding anything to the contrary contained in this Contract, neither party will be liable to the other party for any *Claims* (excluding third party *Claims*) of an indirect or consequential nature (including loss of revenue, loss of profits, loss of production, loss of earnings, loss of contract, and loss of the use of any property owned, operated, leased, or used by the *Contractor*) which arises for any reason, howsoever and whensoever caused, and whether arising in contract, negligence or other tort liability, strict liability, or otherwise, even if advised of the possibility thereof.

#### **GC 13.3 CONFIDENTIALITY**

13.3.1 Except as otherwise permitted herein, any information pertaining to the *Work* or the *Owner* including, without limitation, reports, documents, data, studies, surveys, drawings, maps, models, photographs, or other materials related to the *Work* prepared or assembled by the *Contractor*, its *Subcontractors*, *Suppliers*, or agents and any information pertaining to the business, finances, planning, administration, or processes of *Owner* or other confidential information which the *Contractor* now has or which may come into its possession in the course of the *Work*, whether supplied by the *Owner* or generated by the *Contractor*, a *Subcontractor*, or a *Supplier* as part of the *Work*, shall be held in strict confidence by the *Contractor* and the *Contractor* shall not use the same, except in connection with this Contract, or divulge the same to others without prior consent of *Owner*, save and except information which:

- .1 at the time of disclosure, is in the public domain through no act or omission of the *Contractor*;
- .2 the *Contractor* can show was in its possession at the time of disclosure and was not acquired directly or indirectly from *Owner*; and
- .3 is furnished or made known to the *Contractor* by third parties as a matter of right with no obligation of confidentiality to *Owner*.

13.3.2 The *Contractor* agrees to prevent disclosure of such information by its directors, employees, related entities, agents, and *Subcontractors* or *Suppliers* (and their respective directors, employees, related entities, and agents); and for such purposes agrees that each of such *Persons* who has or will have access to any such information shall be bound by contract with the *Owner* to observe the secrecy of such information and to refrain from disclosing such information to third parties pursuant to the requirements of this section. In the event that the *Contractor* is legally required to disclose any such confidential information, the *Contractor* shall provide notice of such requirement to the *Owner* and shall only disclose that portion of such confidential information which it is legally required to disclose. The confidentiality covenants set out in this section shall survive the termination or completion of the Contract for a period of five (5) years.

13.3.3 No media or publicity release respecting the *Work* or this Contract shall be permitted without the *Owner's* prior written approval. The *Contractor* shall not use or permit the use of the *Owner's* name or any

trade name, trademark, or logo of the *Owner* for any purpose whatsoever except with the prior written consent of the *Owner*, acting in its discretion.”