

**CCA-CSC-RAIC DOCUMENT 14 -2000**

**DESIGN-BUILD STIPULATED PRICE CONTRACT**

**BETWEEN**

**OWNER**

**AND**

**DESIGN-BUILDER**

**DAWSON CITY**

**WASTE WATER TREATMENT PLANT**

**SUPPLEMENTARY CONDITIONS**

\_\_\_\_\_, 2009

**Dawson City Waste Water Treatment Plant**  
**SUPPLEMENTARY CONDITIONS**  
to  
**CCA-CSC-RAIC DOCUMENT 14 -2000**  
**DESIGN-BUILD STIPULATED PRICE CONTRACT**

**between:**

**Yukon Territorial Government** (*the “Owner”*)

**AND**

\_\_\_\_\_ (*the “Design-Builder”*).

**GENERAL**

The Articles of Agreement, the Definitions and the General Conditions of the Design-Build Stipulated Price Contract, CCA-CSC-RAIC Document 14-2000 which form part of the Contract for **the Dawson City Waste Water Treatment Plant Project, Dawson City, Yukon**, are hereby amended as follows:

**AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER**

**ARTICLE A-3 CONTRACT DOCUMENTS**

**Add** the following *Contract Documents* as sub-bullets after “*Owner’s Statement of Requirements*” in section 3.1:

- Specifications
- Design and Construction Requirements”

**Add** the following *Contract Documents* to the end of the list of documents in section 3.1:

- “- Supplementary Conditions to the CCA 14 Design-Build Contract
- those portions of the *Design-Builder’s* Proposal as selected by the Owner.”

**ARTICLE A-5 PAYMENT**

**Replace** subsection 5.1 as follows:

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- 5.1 “Subject to the provisions of the *Contract Documents* and subject to a holdback of ten percent (10%), the *Owner* shall:
- “.1 make progress payments to the *Design-Builder* on account of the *Contract Price* when due, in the amount determined by the *Owner* after consideration of the recommendation of the *Payment Certifier*, together with such *Value Added Taxes* as may be applicable to such payment;
  - .2 withhold ten percent (10%) from each progress payment;
  - .3 upon *Substantial Performance of the Work*, retain a holdback of five percent (5%) of the *Contract Price* from the date that *Substantial Performance of the Work* has been certified by the *Owner* until successful *Acceptance Testing* of the *Work* for a period of one (1) year and pay to the *Design-Builder* the remainder of the ten percent (10%) holdback then owing;
  - .4 upon successful completion of *Acceptance Testing*, retain a holdback of one half of one percent (0.5%) of the *Contract Price* until the end of the warranty period and pay to the *Design-Builder* the remainder of the five percent (5%) holdback then owing;
  - .5 upon the expiry of the warranty period, pay to the *Design-Builder* the balance of the one half of one percent (0.5%) holdback then owing;
  - .6 Release of the holdbacks pursuant to paragraphs 5.1.3, 5.1.4 and 5.1.5 are subject to the *Design-Builder* providing a statutory declaration, in a form approved by the *Owner*, that all *Subcontractors* and *Suppliers* have been paid amounts due to them by the *Design-Builder*. If the *Owner* has received a claim or claims from a *Supplier* or *Subcontractor* pursuant to Part IV of the Contract Regulations, the *Owner* may retain out of the holdback any amount necessary to satisfy such claims.
  - .7 At the sole discretion of the *Owner*, the *Design-Builder* may provide a bond or an irrevocable letter of credit in place of the holdbacks identified above provided such security is in a form satisfactory to the *Owner*.”

**Replace** section 5.3.1 with the following:

- “.1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at one and a half percent (1.5%) per annum above the Bank of Canada rate on such unpaid amounts shall also become due and payable, compounded on a monthly basis, commencing 30 days after the date that the party receives the invoice and continuing until payment. The bank rate shall be a rate established by the Bank of Canada as the minimum rate which the Bank of Canada makes short term advances to the chartered banks.”

**ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES**

**Replace** the reference to “5 Working Days” in section 6.1 with “10 Working Days”.

**Add:**

“6.2 Notices in writing may be provided by electronic means so long as written acknowledgement of receipt is obtained, and shall be deemed to be received on the date such acknowledgement is provided.”

**DEFINITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT**

**Replace** Definition 13 “Owner’s Statement of Requirements” with the following:

*“Owner’s Statement of Requirements* consists of the site information, specifications and design and construction requirements as described in sections 2 and 3 and relevant appendices of the Request for Proposals issued by the *Owner* for the *Project* and any amendments thereto agreed upon between the parties.”

**Replace** Definition 14 “Payment Certifier” with the following:

*“Payment Certifier* is the independent person designated as such by the *Owner* to the *Design-Builder*.”

**Replace** Definition 20 “Substantial Performance of the Work” with the following:

*“Substantial Performance of the Work* shall have been achieved when the *Work* is ready for use and will be used for the purpose intended and has been so certified in accordance with the *Contract*.”

**Add:**

**“25. Acceptance Testing**

*Acceptance Testing* is the one year period of time commencing upon certification of *Substantial Performance of the Work* during which the *Design-Builder* will ensure that the *Work* has been properly performed in accordance with the *Owner’s Statement of Requirements* and specifications for the *Project* and, upon successful performance of the *Acceptance Testing*, the two (2) year warranty period will commence.

**26. Person**

A *person* is an individual, partnership, association, firm or body corporate.”

## GENERAL CONDITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT

### GC 1.1 CONTRACT DOCUMENTS

**Delete** GC 1.1.3.

**Add** the following at the end of the list of documents in GC 1.1.10.1:

“- those portions of the *Design-Builder's* Proposal as selected by the *Owner*.”

**Replace** GC 1.1.11 with the following:

“Copyright for the design and drawings prepared by or on behalf of the *Design-Builder* belongs to the *Owner*.”

**Delete** GC 1.1.12 and 1.1.13.

**Replace** GC 1.1.14 with the following:

“The *Design-Builder* may retain copies, including reproducible copies of plans, sketches, drawings, graphic representations, and specifications for information and reference in connection with the *Design-Builder's* design and construction of the *Work*.”

**Delete** GC 1.1.15 and 1.1.16.

### GC 2.1 CONSULTANT

**Delete** paragraphs .14 and .15 of GC 2.1.1.

**Replace** paragraphs .11, .12, .13, .18 and .19 of GC 2.1.1 as follows:

- “.11 the preparation of any proposed *Change Order* or *Change Directive* as set out in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE for the review and *acceptance* by the *Payment Certifier* and approval by the *Owner*;
- .12: the estimation of amounts owing to the *Design-Builder* based on the *Consultant's* observations and evaluation of the *Design-Builder's* applications for payment;
- .13 the issuance of a statement for inclusion in applications for payment in which the *Consultant* states that, in the opinion of the *Consultant*, the value proportionate to the amount of the *Contract*, for *Work* performed and *Products* delivered to the *Place of the Work*;
- .18 the issuance of a statement in which the *Consultant* states, in the opinion of the *Consultant*, the date that the *Design-Builder* has achieved *Substantial Performance of the Work* and states that the list of items to be completed or corrected by the *Design-Builder* is valid;

- .19 the issuance of a statement in which the *Consultant* states, in the opinion of the *Consultant*, that the *Design-Builder* has successfully completed *Acceptance Testing* of the *Work*;
- .20 the issuance of a statement by the *Consultant* that, in the opinion of the *Consultant*, the *Design-Builder's* application for final payment is proper and a that the *Design-Builder* is entitled to issue a certificate for payment."

**Delete** paragraph 2.1.5 and replace it with the following:

- "2.1.5 The *Owner* shall be entitled to maintain an action for professional negligence against the *Consultant* in respect of any professional errors or omissions in respect of the performance of the *Design Services* or arising in connection with the *Construction Documents*, and shall also be entitled to make a claim against the *Design-Builder* under the *Contract*."

## **GC 2.2 OWNER'S REPRESENTATIVE**

**Add:**

- "2.2.5 The *Payment Certifier* shall interpret, in the first instance, the requirements of the *Construction Documents* and the making of findings as to the performance thereunder by both the *Owner* and the *Design-Builder* without showing partiality to either the *Owner* or the *Design-Builder*, and in no event incurring liability for the result of such interpretations or findings rendered in good faith in such capacity.
- 2.2.6 The *Payment Certifier* shall interpret and make findings, in the first instance, of claims, disputes, and other matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents*."

## **GC 2.4 DEFECTIVE WORK**

**Amend** GC 2.4.1 by adding after "*Consultant*" in the second line "or *Payment Certifier*".

**Add:**

## **"GC 2.5 STANDARD OF CARE**

- 2.5.1 Throughout the provision of services under this *Contract*, the *Design-Builder* shall exhibit the degree of care, skill and judgment displayed by experienced and competent design-builders undertaking work of a similar nature."

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

**Add** the following to GC 3.1:

- 3.1.5 The *Design-Builder* shall commence the *Work* within twenty-one (21) days after receiving a "Notice to Proceed" from the *Owner's* representative. The *Design-Builder* will not commence the *Work* until the *Contract* has been executed, all

required insurance certificates and bonds are submitted to and accepted by the *Owner*, and the *Design-Builder* has received the “Notice to Proceed”.

### **GC 3.3 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

**Delete** paragraphs .1 and .2 of GC 3.3.2 in its entirety and substitute “intentionally left blank”.

**Delete** paragraph .2 of GC 3.3.3 and replace it with the following:

“.2 coordinate and schedule the activities and work of other contractors and *Owners’* own forces with the *Work* of the *Design-Builder* and connect as specified or shown in the *Contract Documents*;”

**Add** a new paragraph .5 to GC 3.3.3:

“.5 Subject to paragraph 3.5.2, for the *Owner’s* own forces and for other contractors involved in the *Project*, until the date of *Substantial Performance of the Work*, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation of the *Place of the Work*.”

### **GC 3.5 CONSTRUCTION SAFETY**

**Amend** GC 3.5.1 by deleting the first line including the comma and by starting the second line with the word “The...”.

**Add:**

“3.5.2 The *Design-Builder* is responsible for all occupational health and safety at the *Place of the Work* in accordance with the *Workers Compensation Act* and the *Occupational Health and Safety Act* and shall be deemed to be the “Principal Contractor” for the purposes of all occupational health and safety regulations from the effective date of this *Contract* until such time as the *Owner* delivers to the *Design-Builder* written notice that another contractor has been appointed “Principal Contractor”. Without limiting the generality of the foregoing, should the *Design-Builder* receive an order from the Workers Compensation Health and Safety Board, it shall immediately provide a copy of such order to the *Consultant*, to the *Payment Certifier* and to the *Owner* and shall immediately take steps to comply with the requirements of such order.”

### **GC 3.10 SHOP DRAWINGS**

**Amend** GC 3.10.5 by adding the following sentence at the end of the paragraph:

“Provided the *Design-Builder* complies with these requirements, the *Owner* undertakes to have a review of the shop drawings carried out with reasonable promptness.”

**Amend** GC 3.10.6 by adding the following sentence at the end of that paragraph:

“If the *Design-Builder* considers any annotations made by the *Owner* on the shop drawings to constitute a change in the *Work*, the *Design-Builder* shall

notify the *Owner* of its intention to seek an appropriate adjustment in the *Contract Price* or the *Contract Time* or both, and any change shall\* be processed in accordance with PART 6 – CHANGES IN THE WORK.”

**GC 4.1 CASH ALLOWANCES**

**Amend** GC 4.1.4 by adding “...on the excess” following the word “profit” in line 2.

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

**Delete** GC 5.1.

**GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT**

**Delete** GC 5.2.5 and replace it with the following:

“5.2.5 The *Design-Builder* shall include with each application for payment:

- .1 a statement based on the schedule of values;
- .2 a statement from the *Consultant* for each application for payment in which the *Consultant* states that, in the opinion of the *Consultant*, that application properly sets out the value, proportionate to the amount of the *Contract*, for *Work* performed and *Products* delivered to the *Place of the Work*;
- .3 except for the first application for payment, a statutory declaration, in a form approved by the *Owner*, stating that all workers, *Subcontractors* and *Suppliers* have been paid amounts due to them by the *Design-Builder*. If the *Owner* has received a claim or claims from a *Supplier* or *Subcontractor* pursuant to Part IV of the Contract Regulations, the *Owner* may retain out of the payment any amount necessary to satisfy such claims.”

**Amend** GC 5.2.6 by adding the following at the end of that paragraph:

“No amount claimed shall include *Products* delivered to the *Place of the Work* unless the *Products* are free and clear of all security interests, liens and other claims of third parties. Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Design-Builder* notwithstanding that payment is made by the *Owner* and title has passed to the *Owner*.”

**Add:**

“5.2.7 Where the *Design-Builder* has received an order as described in paragraph 3.5.2, it shall submit, along with its application for payment, a confirmation that a copy of any order received was delivered to the *Consultant*, to the *Payment Certifier* and to the *Owner* and a report on the steps taken by the *Design-Builder*, since receipt of such order, to comply with the order. The *Design-Builder* shall continue to report on any order which it has received, with successive applications for payment, until such time as it is able to report

that it has fully complied with such order to the satisfaction of the authorities having jurisdiction.

- 5.2.8 The *Design-Builder* shall prepare and maintain current as-built drawings which shall consist of the *Contract Documents*, showing amendments to the *Contract Documents*, which current as-built or record drawings shall be maintained by the *Design-Builder* and made available to the *Payment Certifier* for review with each application for payment. The *Payment Certifier* reserves the right to retain a reasonable amount from any payment to the *Design-Builder* for the value of the as-built drawings not presented for review.”

### **GC 5.3 PROGRESS PAYMENT**

**Delete** GC 5.3.1 and replace with the following:

- “5.3.1 Upon receipt of an application for payment including the statement of the *Consultant*, the *Payment Certifier* will consider the application, the statement of the *Consultant* and other information in order to make a recommendation to the *Owner* regarding the proper amount of the payment. Upon receipt of the recommendation from the *Payment Certifier* the *Owner* will promptly determine the amount of the payment and, if the *Owner* amends the application for payment from the *Design-Builder*, the *Owner* will promptly notify the *Design-Builder* in writing giving reasons for the amendment.”

**Replace** GC 5.3.2 with the following:

“The *Owner* shall make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 15 days after the *Owner* receives the recommendation of the *Payment Certifier*.”

### **GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK**

**Amend** GC 5.4.1 by adding the following sentence at the end of that paragraph:

“The *Payment Certifier* will review the list provided by the *Design-Builder* and will establish a final list of incomplete and deficient work including an estimated value of every deficient and incomplete item of work on the list.”

**Amend** GC 5.4.2 by deleting the last sentence in that paragraph.

**Delete** GC 5.4.3 and replace with the following:

- “5.4.3 The *Payment Certifier* will review the *Work*, the statement from the *Consultant*, the application for *Substantial Performance of the Work* and the list of items to be completed or corrected from the *Design-Builder* within ten (10) days of receipt of the *Design-Builder*’s application and list and will make a recommendation to the *Owner*, no later than seven (7) days after reviewing the *Work* as to whether *Substantial Performance of the Work* has been achieved and the date of *Substantial Performance of the Work*, if applicable. The *Owner* will consider the *Design-Builder*’s application for *Substantial Performance of the Work*, the statement of the *Consultant* and the

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recommendation of the *Payment Certifier* in making a determination as to whether *Substantial Performance of the Work* has been achieved and, if so, the date of *Substantial Performance of the Work*. The *Owner* will issue a certificate for *Substantial Performance of the Work* showing the date the *Owner* determines that *Substantial Performance of the Work* was achieved.”

**Add:**

“5.4.5 Prior to submitting its application for *Substantial Performance of the Work*, (or its application for *Acceptance Testing* if so required by the *Contract Documents* or by the *Payment Certifier*) the *Design-Builder* shall submit to the *Payment Certifier* all:

- .1 guarantees,
- .2 warranties,
- .3 certificates,
- .4 testing and balancing reports,
- .5 distribution system diagrams,
- .6 spare parts,
- .7 maintenance manuals,

and other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Payment Certifier* that the *Work* has been substantially performed in conformance with the requirements of municipal, government and utilities authorities having jurisdiction.

5.4.6 Where the *Design-Builder* is unable to deliver the documents and materials described in paragraph 5.4.5, then, provided that none of the missing documents and materials interferes, in a material way, with the use and occupancy of the *Project*, failure to deliver shall not be grounds for the *Payment Certifier* to refuse to recommend certification by the *Owner* of *Substantial Performance of the Work*. Any documents or materials not delivered in accordance with paragraph 5.4.5 shall be delivered as provided in GC 5.4A or GC 5.7.

5.4.7 The *Owner* may deduct from any amounts due to the *Design-Builder* under the *Contract*, the costs associated with the *Payment Certifier* and *Owner's* representatives being called upon to perform more than one review of the *Work* for the purpose of determining whether *Substantial Performance of the Work* has been achieved, when in the opinion of the *Payment Certifier*, the *Work* was not substantially complete.”

**Add** the following GC to the General Conditions:

**“GC 5.4A ACCEPTANCE TESTING**

5.4A.1 Upon certification of *Substantial Performance of the Work*, the *Design-Builder* shall perform all necessary testing and commissioning of mechanical and building systems and *Products* as required by the *Contract Documents* for the period of one (1) year. The *Design-Builder* will then undertake *Acceptance Testing* in accordance with the *Contract Documents*.

5.4A.2 The *Design-Builder* shall include with the application for certification of *Acceptance Testing*:

- .1 a statement from the *Consultant* in which the *Consultant* states that, in the opinion of the *Consultant*, that the *Work* has been fully and properly commissioned and that the requirements of the *Contract Documents* with respect to *Acceptance Testing* have been fully and properly performed;
- .2 a statutory declaration, in a form approved by the *Owner*, stating that all workers, *Subcontractors* and *Suppliers* have been paid amounts due to them by the *Design-Builder*. If the *Owner* has received a claim or claims from a *Supplier* or *Subcontractor* pursuant to Part IV of the Contract Regulations, the *Owner* may retain out of any holdback then due any amount necessary to satisfy such claims;
- .3 any other information, materials, documents, tests and reports as required by the *Contract Documents* or as reasonably requested by the *Payment Certifier*.

5.4A.3 The *Payment Certifier* will review the *Work*, the statement from the *Consultant*, the application for certification of *Acceptance Testing* within ten (10) days of receipt of the *Design-Builder's* application and will make a recommendation to the *Owner*, no later than seven (7) days after reviewing the *Work* as to whether *Acceptance Testing* has been fully and properly performed. The *Owner* will consider the *Design-Builder's* application for certification of *Acceptance Testing*, the statement of the *Consultant* and the recommendation of the *Payment Certifier* in making a determination as to whether *Acceptance Testing* has been fully and properly performed. The *Owner* will issue a certificate for *Acceptance Testing* showing the date the *Owner* determines that *Acceptance Testing* was fully and properly performed.”

**Amend** the title of GC 5.5 to read:

**GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK AND ACCEPTANCE TESTING**

**Delete** GC 5.5.3.

**Amend** GC 5.5.4 for the Common Law Provinces by deleting the last sentence in that paragraph and adding:

“The *Owner* may retain out of the holdback amount: any claims pursuant to Part IV of the Contract Regulations, plus any sums required by law to satisfy any liens against the *Work* or holdback, plus an amount determined by the *Payment Certifier* equal to two (2) times the value of the estimated work still to be satisfactory performed or replaced as specified on the list of deficient and incomplete work. This paragraph shall not be interpreted or construed to in any way negate, reduce, diminish or abrogate any right of setoff or claim which the *Owner* may have pursuant to the *Contract*, at law or in equity to the holdback amount, arising as a result of, or in relation to, the *Work*.”

**Add:**

- “5.5.5 The holdback amount less the amount of the holdback required for the period prior to the *Design-Builder* achieving *Acceptance Testing* as set out in A-5 – PAYMENT shall be due and payable 30 calendar days after the date of *Substantial Performance of the Work*. If the *Owner* has received a claim or claims from a *Supplier* or *Subcontractor* pursuant to Part IV of the Contract Regulations, the *Owner* may retain out of the holdback due upon *Substantial Performance of the Work* any amount necessary to satisfy such claims.
- 5.5.6 The holdback amount that was retained after *Substantial Performance of the Work* and pending certification of *Acceptance Testing*, less the amount of the holdback required for the warranty prior as out in A-5 – PAYMENT shall be due and payable thirty (30) calendar days after the date of certification of *Acceptance Testing*. If the *Owner* has received a claim or claims from a *Supplier* or *Subcontractor* pursuant to Part IV of the Contract Regulations, the *Owner* may retain out of the holdback due upon certification of *Acceptance Testing* any amount necessary to satisfy such claims.
- 5.5.7 The remaining holdback amount retained during the warranty period shall be due and payable thirty (30) calendar days after the date of expiry of the warranty period subject to any deduction for:
- .1 an amount determined by the *Payment Certifier* equal to two (2) times the value of any estimated warranty work still to be satisfactory performed as determined by the *Payment Certifier*; and
  2. the amount necessary to satisfy any claim or claims from a *Supplier* or *Subcontractor* pursuant to Part IV of the Contract Regulations.”

**GC 5.7 FINAL PAYMENT**

**Delete** GC 5.7.1 and replace with the following:

- “5.7.1 When the *Design-Builder* considers that the *Work* is finally completed except for warranty obligations, the *Design-Builder* shall submit an application of final payment and a statement from the *Consultant* in which the *Consultant* states that, in the opinion of the *Consultant*, that the application properly sets

out the value of final payment for *Work* performed and *Products* delivered to the *Place of the Work*.”

**Delete** GC 5.7.2 and replace with the following:

“5.7.2 The *Payment Certifier* will review the *Work* to verify the validity of the *Design-Builder’s* application for final payment upon receipt of the application and the *Consultant’s* statement. The *Payment Certifier* will review the *Work* within ten (10) days of receipt of the *Design-Builder’s* application and will make a recommendation to the *Owner*, no later than seven (7) days after reviewing the *Work* regarding the issuance by the *Owner* of the certificate for final payment and the amount of such payment. The *Owner* will consider the application for final payment, the statement of the *Consultant* and the recommendation of the *Payment Certifier* in determining whether to issue a certificate for final payment and, if a certificate will be issued, the amount of such final payment that the *Owner* determines to be properly due. If the *Owner* issues the certificate for final payment in an amount different that the amount applied for by the *Design-Builder*, the *Owner* will notify the *Design-Builder* in writing giving reasons for the amendment.”

**Add:**

“5.7.4 Notwithstanding paragraph 5.7.3, where in the review of the *Work* performed pursuant to paragraph 5.7.2, items of *Work* are identified as incomplete or deficient, the *Owner* may withhold the amount the *Payment Certifier* estimates is the cost of completing or making good such *Work*, multiplied by two (2).”

## **GC 6.1 CHANGES**

**Add:**

“6.1.7 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* or the *Contract Time* or both shall be barred unless there is strict compliance with this Part 6, except where the *Design-Builder* has received some other form of written or electronic direction from the *Owner* or the *Owner’s* representative agreeing to a change in the *Work* in which event the value of the change in the *Work* will be determined pursuant to GC 6.2 or GC 6.3.”

## **GC 6.2 CHANGE ORDER**

**Add:**

“6.2.4 The value of a change in the *Work* shall be determined by the parties acting reasonably based on full access to all financial records, data and schedule information prepared or maintained by the *Design-Builder* respecting the *Project*.”

### GC 6.3 CHANGE DIRECTIVE

**Amend** GC 6.3.3 by adding the following sentences to the end of that paragraph:

“If a change in the *Work* results in a net increase in the *Contract Price*, an allowance for overhead in profit shall be included, such overhead and profit to comply with paragraph 6.2.4. If a change in the *Work* results in a net decrease in the *Contract Price*, the amount of the credit shall be net cost, without deduction for overhead or profit. When both additions and deletions covering related work or substitutions are involved in a change in the *Work*, the allowance for overhead and profit shall be calculated on the basis of the net increase, if any, with respect to that change in the *Work*. All such activities will be conducted on the basis of ongoing provision by the *Design-Builder* to the *Owner* of full access to all financial records, data and schedule information prepared or maintained by the *Design-Builder* respecting the *Project*.”

### GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

**Amend** GC 6.4.2 by deleting the last sentence and adding the following sentence:

“If, after considering the finding of the *Consultant* or other consultants, the *Owner* determines that the conditions differ materially and this would cause an increase or decrease in the *Design-Builder’s* cost or time to perform the *Work*, the *Owner* shall issue appropriate instructions for a change in the *Work* as provided in GC 6.1 – CHANGES, GC 6.2 – CHANGE ORDER, and GC 6.3 – CHANGE DIRECTIVE.”

### GC 6.5 DELAYS

**Amend** GC 6.5.1 by deleting all of the words in the fourth line following the word “for” and substituting the following:

“... reasonable direct costs incurred as a result of such delay including overhead and profit as provided in this *Contract*.”

**Amend** GC 6.5.3 in line 3 by placing a comma following the word “carriers” and by adding the words, “abnormally adverse weather conditions...”

### GC 7.2 DESIGN-BUILDER’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

**Delete** paragraph .1 of GC 7.2.3.

**Delete** paragraph .2 of GC 7.2.3 and replace it with the following:

".2 the *Owner* fails to make payment into the *Project* account when due the amount as determined by the *Owner* upon receipt of a recommendation by the *Payment Certifier* or as awarded by arbitration or a court, except where the *Owner* has a bona fide claim for set off;"

**Add** to the end of GC 7.2.4 the following:

“If a default of the *Owner* described in paragraph 7.2.3.4 cannot be corrected within the five (5) *Working Days*, the *Owner* shall be deemed to have cured the default if it:

- .1 commences correction of the default within the specified time; and,
- .2 provides the *Design-Builder* with a schedule for such correction acceptable to the *Design-Builder*, acting reasonably; and,
- .3 corrects the default in accordance with such schedule.”

**Amend** paragraph 7.2.5 by deleting the word “damages” in line 3 and substituting the words “direct damages”, and by deleting the period at the end of the paragraph and replacing it with a comma and then adding the following words: “but not any special, indirect or consequential losses, including loss of profit.”

## **PART 8 NEGOTIATION, MEDIATION, AND ARBITRATION**

**Delete** GC 8.1 - AUTHORITY OF THE CONSULTANT including its subsections 8.1.1 and 8.1.2, and replace with the following:

### **“GC 8.1 AUTHORITY OF THE PAYMENT CERTIFIER**

8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, collectively referred to as disputes, which are not resolved in the first instance by findings of the *Payment Certifier* in accordance with the Supplementary Conditions in GC 2.2 – OWNER’S REPRESENTATIVE, shall be settled in accordance with the requirements of Part 8 of the General Conditions – NEGOTIATION, MEDIATION AND ARBITRATION.

8.1.2 If a dispute is not resolved promptly, the *Payment Certifier* shall give such written instructions as in the *Payment Certifier’s* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The *Design-Builder* shall act immediately according to such instructions, it being understood that by so doing the *Design-Builder* will not jeopardize any claim the *Design-Builder* may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay to the *Design-Builder* costs incurred by the *Design-Builder* in carrying out such instructions which the *Design-Builder* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.”

**Amend** GC 8.2.2 by replacing the word “*Consultant*” in line 1 and line 4 with the words “*Payment Certifier*” and deleting “under GC 2.1 – CONSULTANT” in the first line.

**Add:**

“8.2.9 In the event that necessary parties to a mediation or arbitration are not legally bound by the provisions of GC 8.2 “NEGOTIATION, MEDIATION, AND ARBITRATION” and such parties refuse or fail to participate in the mediation or arbitration, then the *Owner* or *Design-Builder* may refer the unresolved dispute to the courts or, by mutual agreement, to any form of dispute resolution including mediation or arbitration with the understanding that the other necessary parties will not be bound by such resolutions.”

**GC 9.3 TOXIC HAZARDOUS SUBSTANCES AND MATERIAL**

**Amend** paragraph .3 of GC 9.3.5 by deleting the word “and” at the end of that subparagraph.

**Amend** paragraph .4 of GC 9.3.5 by substituting a comma for the period now found after the word “writing” and by adding the word “and”.

**Add** a new paragraph .5 to GC 9.3.5 as follows:

“5 In addition to the steps described in subparagraph 9.3.5.3, take any further steps it deems necessary to mitigate or stabilize any conditions resulting from encountering toxic or hazardous substances or materials.”

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

**Amend** GC 10.2 by adding the following:

“10.2.6The *Design-Builder* will notify, obtain inspections and approvals from, and co-operate with, other organizations involved or affected by the *Work*, including without limitation telephone, light and power, gas, railway companies and government agencies.”

**GC 11.1 INSURANCE**

**Delete** GC 11.1.1 to GC 11.1.9 and replace with the following:

“11.1.1The parties agree that the insurance requirements for the *Project* are set out in Appendix “A” to the Supplementary Conditions to this *Contract*.”

**GC 11.2 BONDS**

**Replace** GC 11.2.1 with:

“11.2.1The *Design-Builder* shall, within fourteen (14) days of the award date of the *Contract*, provide to the *Owner*, *Contract* security by way of a labour and material payment bond in the amount of at least 50% of the *Contract Price* and a Performance Bond in at least 100% of the *Contract Price* each in the form described in 11.2.2.”

**Add:**

“11.2.3 The *Design-Builder* shall post at the *Place of the Work* a notice that a labour and material payment bond is in force together with the name and address of the surety, definition of those persons protected under the bond, and an outline of the procedure for submitting a claim under the bond.”

**GC 12.1 INDEMNIFICATION**

**Delete** GC 12.1.1 and replace with:

“12.1.1 The *Design-Builder* shall indemnify and hold harmless the *Owner*, the *Payment Certifier*, the *Owner's* representative and their agents, representatives and employees from and against all claims, demands, losses, costs, damages, actions, suits or proceedings (hereinafter called "claims") by whomsoever made, due to the acts or omissions of the *Design-Builder*, the *Consultant* or their agents, representatives or employees in the performance of the *Contract* provided such claims are made in writing within a period of six (6) years from the date of *Acceptance Testing*.”

**Delete** GC 12.1.2.

**Delete** GC 12.1.3 and replace with:

“12.1.3 The *Owner* shall indemnify and hold harmless the *Design-Builder* and the *Consultant*, and their agents and employees, from and against claims arising out of the *Design-Builder's* performance of the *Work*, which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work* or a negligent act or omission or wilful default of the *Owner* or the *Owner's* representative in the performance of the *Contract*, their agents and employees or any other person in respect of those acts the *Owner* may be liable, provided such claims are made in writing within a period of two (2) years from the date of *Substantial Performance of the Work*.”

**GC 12.2 WAIVER OF CLAIMS**

**Amend** paragraph .4 of GC 12.2.1 (Common Law Version) by deleting the last sentence which begins with the words “As used herein ...” and replacing that sentence with:

“As used herein, “substantial defects or deficiencies” means a defect or deficiency in the *Work* that, in the reasonable opinion of the *Payment Certifier*, is a material defect or deficiency in the *Work*.”

**GC 12.3 WARRANTY**

**Replace** GC 12.3.1 with the following:

“The warranty period with regard to the *Contract* is two (2) years from the date of successful *Acceptance Testing* as certified in accordance with this *Contract* or such other periods specified in the *Contract Documents* for certain portions of the *Work* or *Products*.”

**Delete** the portion of GC 12.3.2 following the words “*Work*” and replace it with:

“... has been performed in a good and workmanlike manner and in accordance with the *Contract Documents*.”

**Add** the following to GC 12.3:

“12.3.9 Any defective item of equipment necessitating substantial repairs or replacement within the warranty period shall be subject to a further warranty period of one (1) year from the time of repairing or replacement of same. The cost associated with the extended warranty shall be borne by the *Design-Builder*.”

## **OTHER PROVISIONS**

**Add** the following Part to the General Conditions:

### **“PART 13 – OTHER PROVISIONS**

#### **13.1 FINANCIAL PROTECTION FOR SUBCONTRACTORS**

13.1.1 The Government of Yukon is not subject to the Builders Lien Act. However, Part IV of the Contract Regulation (O.I.C. 1998/179) provides Financial Protection for Subcontractors. For purposes of Part IV of the Contract Regulation, the *Contract* is a contract for a public work.

#### **13.2 GOODS AND SERVICES TAX**

13.2.1 The Government of Yukon is not subject to the Goods and Services Tax (GST) or any other value-added taxes. Any references to GST or value-added taxes in the *Contract Documents* shall be of no effect and should be disregarded.

13.2.2 The *Design-Builder* may apply directly to Canada Revenue Agency for input tax credits for any GST paid on goods or materials purchased in the course of providing the services under the *Contract*.

#### **13.3 APPLICATIONS FOR PAYMENT**

13.3.1 Payment by the *Owner* to the *Design-Builder* is expressly subject to Section 24(2) of the *Yukon Financial Administration Act*:

*“It is a term of every contract that money that becomes due under the contract is not payable unless a provision of this or another Act authorizes the payment to be made in the fiscal year when the payment falls due.”*

#### **13.4 RECORD DRAWINGS**

13.4.1 The *Design-Builder* shall keep one set of *Construction Documents* at the *Place of the Work* at all times during construction.

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- 13.4.2 As the *Work* progresses, the *Design-Builder* shall record, in a neat and legible manner on a set of the *Construction Documents*, all changes in the *Work*. The following information shall be recorded by the *Design-Builder* for each change:
- i) full description of the change
  - ii) date of the change
  - iii) authority for the change
- 13.4.2 Upon certification of *Acceptance Testing* of the *Work*, this amended set of the *Construction Documents* shall be forwarded to the *Owner's* representative for incorporation in a set of "record" drawings for the *Project*."

## **APPENDIX A**

### **INSURANCE REQUIREMENTS**

#### **1. Wrap-Up Liability Insurance**

Wrap – Up Liability Insurance will be purchased by the Design-Builder, with limits of not less than \$5,000,000.00 per occurrence, covering all parties involved in the Work. Completed operations liability coverage will be maintained continuously from the commencement of the Work until six years after Substantial Performance of the Work.

#### **2. Project Professional Errors and Omissions Insurance**

The Design-Builder will carry Project Professional Errors and Omissions Insurance with limits of \$5,000,000.00 per occurrence and will ensure that the Consultant and all professionals engaged in the performance of the Work are covered. The Design-Builder, Consultant or other professionals found to be at fault will be responsible for any deductible amount. Project Professional Errors and Omissions Insurance coverage will be maintained continuously from the commencement of the Work until six years after Substantial Performance of the Work.

#### **3. All Risks Builder's Risk Insurance**

All Risks Builder's Risk insurance will be purchased by the Design-Builder for the full value of the Contract Price. The "All Risks Builders' Risk" Insurance coverage will name the Owner and the Owner's representative as additional insureds. The Builder's Risk Insurance shall contain a waiver of subrogation as against the Owner and the Owner's representative. Claims shall be paid to the Owner or Design-Builder as their respective interests may appear.

#### **4. Automobile Liability Insurance**

The Design-Builder will maintain Standard Form Automobile Liability Insurance in respect of licensed vehicles as required by Statute. Such insurance shall have limits of not less than \$ 1,000,000.00 inclusive per occurrence for bodily injury, death, and damage to property, covering all licensed vehicles owned or leased by the Design-Builder. Where the policy has been 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.

#### **5. Duration of Insurance Policy**

Unless otherwise stipulated, the duration of each insurance policy will be from the date of commencement of the Work until the date that the certificate of final payment is issued.

**6. Insurance Does Not Limit Responsibility**

Furnishing by the Owner of any insurance will in no way relieve or limit any responsibility or obligation imposed by the Contract Documents on the Design-Builder or any Subcontractor of any tier.

**7. Certificates of Insurance**

- (a) Immediately following notification of the award of Contract and prior to the commencement of the Work, the Design-Builder will give the Owner a certificate of insurance completed by a duly authorized representative of their insurer (or at the option of the Owner anytime a certified copy of each policy issued by the Insurer) 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 policy(ies) of insurance without 30 days advance written notice to the Owner. The Owner and the Owner's representative will always be named as an additional insured wherever legally permissible.
- (b) 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.
- (c) 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.
- (d) The Owner will have the right, but not the obligation, of prohibiting the Design-Builder or any subcontractor from entering the Place of the Work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Owner.
- (e) If any of the coverage is required to remain in force beyond ten (10) days after final completion of the Work an additional certificate evidencing continuation of such coverage will be submitted with the Design-Builder's final invoice.

**8. Insurance Primary**

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

**9. No Reduction or Limit of obligation**

By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Design-Builder. Additional insurance effected or procured by the Design-Builder will not reduce or limit 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 the Contract.

**10. Waiver of Subrogation**

The Design-Builder will require all insurance policies in any way related to the work and secured and maintained by the Design-Builder to include clauses stating each underwriter will waive all rights of recovery, under subrogation or otherwise, against the Owner and the Owner's representative (except in the case of the Owner or Owner's representative events of actual or alleged design related acts, errors and omissions), and all tiers of contractors or consultants engaged by them. The Design-Builder will require of contractors, by appropriate written agreements, similar waivers each in favour of all parties enumerated in this section.

**11. Cross Liability & Severability of Interests**

The Design-Builder supplied insurance policies will contain a cross liability and severability of interests clause.

**12. Jurisdiction**

All required insurance policies will be placed with insurers licensed to underwrite insurance in the Yukon.