

SUPPLEMENTARY CONDITIONS

The Ontario Association of Architects Standard Form of Contract for Architect's Services, Document 600, 2008 consisting of the Agreement, Definitions, General Conditions Parts 1 to 12 inclusive, and Schedules governing same is hereby made part of these Contract Documents, with the following amendments, additions and modifications:

These Supplementary Conditions have been developed by Ontario Realty Corporation, in collaboration with the Strategic Opportunities Committee (SOC) which represents the formalized liaison between Ontario Realty Corporation and the design, engineering and construction industry.

The Ontario Association of Architects Standard Form of Contract for Architect's Services, Document 600, 2008 is hereby adapted for use by and reflects the agreed terms and conditions between the client and *Prime Consultants*.

All references in the Ontario Association of Architects Standard Form of Contract for Architect's Services, Document 600, 2008 to the "*Architect*" shall be replaced with "*Prime Consultant*".

All references in this contract to the "client" shall refer to the entity identified in A2, which entity may be Ontario Realty Corporation, acting as agent for Her Majesty the Queen in Right of Ontario or a PMSP retained by Ontario Realty Corporation under Master Services Agreements dated December 16, 2008, but all rights, benefits, or entitlements reserved to the "client" under the terms of this contract shall equally accrue to and be jointly or severally enforceable by Ontario Realty Corporation, Her Majesty the Queen in Right of Ontario, and the client.

AGREEMENT

ARTICLE A-7 – PRIME CONSULTANT'S SERVICES

Delete the words "the following schedule(s) affixed to this contract _____," and replace with "Schedule "A" affixed to this contract."

ARTICLE A-8 – CLIENT'S INFORMATION

Delete the words "the following schedule(s) affixed to this contract _____," and replace with "Schedule "B" affixed to this contract."

ARTICLE A-9 – CONSULTANTS ENGAGED

Delete A-9 entirely and substitute the following:

The *Prime Consultant* and the client will engage *Consultants* as listed in Schedule “C” affixed to this contract. The *Prime Consultant* shall coordinate the services of all of the *Consultants* listed in Schedule “C” affixed to this contract. The *Prime Consultant* and client shall each notify the other in writing of any proposed change of *Consultant* and shall not make such change without the prior written consent of the client, which consent shall not be unreasonably withheld.

ARTICLE A-10 – PRIME CONSULTANT’S FEES

Delete A-10 entirely and substitute the following:

For the *Prime Consultant’s* services as outlined in Schedule “A” identified in Article A-7, the fee shall be computed as outlined in Schedule “D” affixed to this contract.

ARTICLE -11 – ADMINISTRATIVE CHARGE

Delete A11 entirely.

ARTICLE -12 – AUTOMOBILE TRAVEL COSTS

Delete A-12 entirely and substitute the following:

A-12 The rate for calculating automobile travel costs shall be the rate specified in the then current travel directive issued by the Government of Ontario, but such rate shall only be paid for the portion of travel distances greater than 20 kilometres per one-way trip.

ARTICLE -13 – RETAINER FEE

Delete A13 in its entirety.

ARTICLE -14 - INVOICES

Amend A14 by deleting the phrase “upon receipt” and substituting therefore the phrase “within 45 days following the approval”.

ARTICLE -15 - INTEREST

Amend A15 by deleting the phrase “of _____% per annum, commencing _____ days after the date that the *Prime Consultant* submits the invoice” and substitute the with the following words: “established from time to time by the Minister of Finance (Ontario) commencing 30 calendar days after the date when the payment became due until payment is made.

ARTICLE A-18 – CONFLICT OF INTEREST

Delete A18 entirely and substitute the following:

- 18.1 The *Prime Consultant*, all of the *Consultants*, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the client) with the provision of the professional services pursuant to this contract. The *Prime Consultant* acknowledges and agrees that a conflict of interest includes the use of confidential information where the client has not specifically authorized such use.
- 18.2 The *Prime Consultant* shall disclose to the client, in writing, without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Consultant* that is directly or indirectly affiliated with or related to the *Prime Consultant*.
- 18.3 The *Prime Consultant* covenants and agrees that it will not knowingly hire or retain the services of any employee or previous employee of the Ontario Realty Corporation or the Ontario Public Service where to do so constitutes a breach by such employee or previous employee of the *Public Service of Ontario Act* and its Regulations as they may be amended from time to time.
- 18.4 A breach of this Article by the *Prime Consultant*, any of the *Consultants*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the client to terminate this contract, in addition to any other rights and remedies that the client has in this contract, in law, or in equity.

ARTICLE A-19 - CONFIDENTIALITY

Add new Article A-19- **CONFIDENTIALITY** as follows:

- 19.1 The *Prime Consultant* agrees that it shall, both during or following the term of this contract, maintain the confidentiality and security of all confidential information and personal information, and that it shall not

directly or indirectly disclose, destroy, exploit, or use any confidential information or personal information, except where required by law, without first obtaining the written consent of the client. The *Prime Consultant* may disclose confidential information provided to the *Prime Consultant* by the client to any *Consultant*, if the *Prime Consultant* discloses only such information as is necessary to fulfill the purposes of this contract and the *Prime Consultant* has included a commensurate confidentiality provision in its contract with the *Consultant*.

- 19.2 The *Prime Consultant* acknowledges that it will comply with all requirements of the *Personal Information Protection and Electronic Documents Act*. The *Prime Consultant* acknowledges that the Ontario Realty Corporation and Her Majesty the Queen in Right of Ontario are bound by the provisions of the *Freedom of Information and Protection of Privacy Act* (“*FIPPA*”). The *Prime Consultant* further acknowledges that Ontario Realty Corporation and Her Majesty the Queen in Right of Ontario may be required to disclose any or all of the confidential information and personal information in the event that it is compelled to do so by law, through a request under *FIPPA*, or by the rules of any applicable regulatory authority.
- 19.3 For the purposes of this Article, personal information has the same definition as in subsection 2(1) of *FIPPA* and includes an individual’s name, address, age, date of birth, sex, and religion, whether recorded in printed form, on film, by electronic means, or otherwise and disclosed to the *Prime Consultant*, and confidential information means all the information or material of Ontario Realty Corporation and Her Majesty the Queen in Right of Ontario that is of a proprietary or confidential nature, whether it is identified as proprietary or confidential or not, including but not limited to information and material of every kind and description (such as drawings and move-lists) which is communicated to or comes into the possession or control of the *Prime Consultant* at any time, but confidential information shall not include information that:
- .1 is or becomes generally available to the public without fault or breach on the part of the *Prime Consultant*, including without limitation breach of any duty of confidentiality owed by the *Prime Consultant* to the client or to any third party, but only after that information becomes generally available to the public;
 - .2 the *Prime Consultant* can demonstrate to have been rightfully obtained by the *Prime Consultant* from a third party who had the right to transfer or disclose it to the *Prime Consultant* free of any obligation of confidence;

- .3 the *Prime Consultant* can demonstrate to have been rightfully known to or in the possession of the *Prime Consultant* at the time of disclosure, free of any obligation of confidence; or
- .4 is independently developed by the *Prime Consultant* without use of any confidential information.

DEFINITIONS

Revise definition of “*General review*” so it reads as follows:

GENERAL REVIEW

General review means review during visits to the place of work (and where applicable, at locations where building components are fabricated for use at the project site) at intervals appropriate to the stage of the construction that the *Prime Consultant* in its professional discretion, considers necessary to become familiar with the progress and quality of the Work and to determine that the construction, enlargement or alteration is in general conformity with the design governing the construction enlargement or alteration and reporting thereon.

Add the following definitions:

PRIME CONSULTANT

Prime Consultant means the individual or entity engaged by the client and identified as such in the Agreement. The *Prime Consultant* includes the holder of a certificate of practice issued by the Ontario Association of Architects under the *Architects Act*; the holder of a certificate of authorization issued by Professional Engineers of Ontario under the *Professional Engineers Act*, and an individual who is registered with the Association of Registered Interior Designers of Ontario, or an entity that operates under the direction of an individual who is registered with the Association of Registered Interior Designers of Ontario.

RECORD DRAWINGS

Record drawings means the drawings that are prepared by the *Prime Consultant* by revising the editable CAD files prepared to current ORC standards to reflect changes from the construction drawings made during construction based on:

- content of as built drawings prepared by the contractor; and

- changes in response to site instructions, change orders, change directives and other direction given by the *Prime Consultant*.

GENERAL CONDITIONS

1.1 Where a General Condition or paragraph of the General Conditions of the Contract for *Prime Consultant's* Services is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

GC 1 CLIENT'S RESPONSIBILITIES

- .1 Delete the third sentence of GC1.1
- .2 Delete GC 1.2.5 entirely
- .3 Delete GC 1.2.8 entirely
- .4 Delete GC 1.3.2 entirely
- .5 Delete GC 1.3.3 entirely

GC 2.2 PRIME CONSULTANT'S RESPONSIBILITIES

- .1 Delete GC 2.2 entirely and substitute new GC 2.2:
 - 2.2 The *Prime Consultant* shall maintain and keep accurate Project records (which means all tangible records, documents, computer printouts, electronic information, books, plans, Construction Documents, accounts, *Record drawings* or other information relating to the Work) in its office in Ontario in accordance with requirements of law, but in any event for not less than 6 years from Substantial Performance of the Work or until all claims have been settled. During this time, the *Prime Consultant* shall allow the client and Ontario Realty Corporation access to the Project records during normal business hours upon the giving of reasonable notice. The *Prime Consultant* shall include equivalent provisions to those provided herein in each consulting contract and shall require the *Consultants* to incorporate them into every level of contract thereunder for any part of the Work.

GC 3 CONSTRUCTION BUDGET AND CONSTRUCTION COSTS

- .1 Delete the word “three” in the first line of GC 3.2 and replace it with the word “six”.

GC 4.2 CERTIFICATE FOR PAYMENT

- .1 Add the following to the end of GC 4.2:

“However, the *Prime Consultant* shall not issue a certificate of payment unless and until the contractor has submitted a fully completed application for payment as set out in the construction contract.”

GC 5.4 COPYRIGHT AND USE OF DOCUMENTS

- .1 Delete the words “including all fees and expenses of suspension or termination”, and add to the end of the sentence “, except any amounts in dispute between the parties.”
- .2 Add a new GC 5.6 to GC 5.9 as follows:
 - 5.6 The *Prime Consultant* consents to the right of the client to enlarge, alter or demolish the building, or in any other way alter the design without such work violating the moral rights of the *Prime Consultant*. Acting in good faith, the client may, but shall not be obliged to, in cases of significant restoration, alteration or addition, consult with the *Prime Consultant* as to how best retain the integrity of the *Prime Consultant's* work while providing for the new work.
 - 5.7 The *Prime Consultant* and its *Consultants* shall make all best efforts to avoid inclusion of designs, processes and equipment infringing applicable patents in the Project. In the event designs or equipment employed or provided are later claimed or found to be infringing, the *Prime Consultant* and its *Consultants* shall resolve any such situations at no cost to the client, except where there has not been an infringement of a patent.
 - 5.8 Unless otherwise agreed to in writing, in advance, any process or design developed by the *Prime Consultant* and its *Consultants* specifically for inclusion in the Project shall be the property of the client and any patents sought for same shall be applied for and

taken out in the client's name, responsibility, and expense. The *Prime Consultant* shall co-operate with the client in obtaining these patents.

- 5.9 The *Prime Consultant* consents to the right of the client to reuse the editable CAD files prepared to current ORC standards developed by the *Prime Consultant* and its *Consultants*, for future renovations. Any such reuse by the client will be at the client's sole risk, without liability to the *Prime Consultant*.

GC 6.1 PROJECT IDENTIFICATION

- .1 Delete GC 6.1 entirely and substitute new GC 6.1:

For large building Projects only, the *Prime Consultant* may request the client's permission, which permission may be granted or denied in the client's sole discretion, to sign the building that is erected by inscription, or otherwise, on a permanent, suitable and reasonably visible part of the building.

GC 7 LIABILITY OF THE PRIME CONSULTANT

- .1 Delete GC 7.1 entirely and substitute new GC 7.1:

- 7.1 The *Prime Consultant* hereby agrees to put in effect and maintain for the duration of this contract, at its own cost and expense, with insurance companies licensed to do business in the Province of Ontario, all the necessary and appropriate insurance that a prudent person in the business of the *Prime Consultant* would maintain, including, but not limited to, the following:

- .1 Commercial General Liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than five million (\$5,000,000) dollars per occurrence, which policy is to include:
 - .1 contractual liability coverage;
 - .2 cross-liability clause; and
 - .3 employer's liability coverage.

Such coverage shall continue and remain in full force and effect throughout the warranty period of the Project.

.2 Professional Liability Insurance for errors and omissions in the performance or failure to perform the professional services, in the amount of:

.1 not less than two hundred and fifty thousand (\$250,000) dollars per occurrence and not less than one million (\$1,000,000) in the aggregate, if the *Prime Consultant's* fee is less than twenty-five thousand (\$25,000) dollars;

.2 not less than five hundred thousand (\$500,000) dollars per occurrence and not less than two million (\$2,000,000) in the aggregate, if the *Prime Consultant's* fee is between twenty-five thousand (\$25,000) dollars and one hundred thousand (\$100,000) dollars;

.3 not less than one million (\$1,000,000) dollars per occurrence and not less than two million (\$2,000,000) in the aggregate, if the *Prime Consultant's* fee is greater than one hundred thousand (\$100,000) dollars and up to one million (\$1,000,000) dollars;

.4 not less than two million (\$2,000,000) dollars per occurrence and in the aggregate, if the *Prime Consultant's* fee is greater than one million (\$1,000,000) dollars;

or as otherwise set out in the tender call documents.

.3 With the exception of Professional Liability insurance coverage, all applicable coverage required under this contract shall include the client, which for greater certainty includes Ontario Realty Corporation and Her Majesty the Queen in Right of Ontario, as an additional insured with respect to liability arising in the course of performance of the *Prime Consultant's* obligations under, or otherwise in connection with, this contract and shall provide for thirty (30) day written notice of cancellation, termination, or material change to the client. The *Prime Consultant* shall provide the client with proof of the insurance required by this contract in the form of valid certificates of insurance that reference this contract and confirm the required coverage, on or before the commencement of this contract, and renewal replacements upon renewal of such

insurance. Upon the request of the client, a copy of each insurance policy shall be made available to it. The *Prime Consultant* shall strictly require that each of its *Consultants* complies with the insurance requirements set out in this contract by obtaining similar types of insurance as the *Prime Consultant* and providing the *Prime Consultant* with proof of the acquisition and maintenance of such insurance.

.2 Delete the first sentence of GC 7.2.

.3 Delete GC 7.4.2 entirely and replace with:

“be responsible for acts or omissions of the contractor, subcontractors, suppliers or any other persons performing any of the Work, but however, will notify the client in a timely manner, in writing, of any such acts or omissions the *Prime Consultant* observes during any site or *General reviews* and/or site meetings.”

.4 Add the following at the end of GC 7.4.4:

“except to the extent that the *Prime Consultant* has specified a procedure for removal of toxic or hazardous substances or materials in the Construction Documents, or a hazardous procedure.”

.5 Delete GC 7.5 entirely and replace with:

7.5 The client and the *Prime Consultant* agree that both parties may engage *Consultants* under other contracts. Where either party engages a *Consultant*, that party shall be responsible for the contract with its *Consultant*. Nothing in this clause shall derogate from the *Prime Consultant*'s duty to coordinate all *Consultants*.

.6 Delete GC 7.6 entirely

.7 Add new GC 7.8, GC 7.9 and 7.10 as follows:

7.8 The *Prime Consultant* agrees that the client and its directors, officers, employees, and appointees shall not be liable for any injury (including death) or damage suffered by a director, officer, employee, agent, independent contractor or *Consultant* of the *Prime Consultant*, or for the loss of or damage to the property of the *Prime Consultant* or of its *Consultant*, or their respective directors, officers, agents, employees, or independent contractors in any manner based upon, occasioned by or in any way attributable to the professional services, unless the injury, loss or damage is caused by the negligence of a director, officer employee

or appointee of the client while acting within the scope of his or her employment.

7.9 The *Prime Consultant* shall indemnify and hold harmless the client, Ontario Realty Corporation, Her Majesty the Queen in right of Ontario, and their respective agents, appointees, directors, officers and employees from and against claims, demands, losses, expenses, costs, damages, actions, suits or proceedings that arise out of or are attributable to the *Prime Consultant's* performance of the Contract. Nothing in this paragraph 7.9 shall limit any claim that Ontario Realty Corporation, Her Majesty the Queen in right of Ontario, or the client may have under the insurance coverage to be provided under General Condition 7.1 - INSURANCE.

7.10 The *Prime Consultant* shall not be liable for any damages arising out of the client's reuse of editable CAD files developed by the *Prime Consultant* as contemplated under GC 5.9.

GC 8 **SUSPENSION AND TERMINATION**

.1 Delete GC 8.1, and replace with:

8.1 The client may suspend the provision of services by the *Prime Consultant* under this contract at any time for any reason and without cause upon giving the *Prime Consultant* written notice to that effect.

In such event, the *Prime Consultant* shall be entitled to be paid for all services performed to the date of suspension and be compensated for all actual costs incurred arising from the suspension, and such other damages as the *Prime Consultant* may have sustained as a result of the suspension, but in no event shall the *Prime Consultant's* actual costs continue to accrue during suspension, and in no event shall the *Prime Consultant* be entitled to be compensated for any indirect, special, or consequential damages incurred.

In the event that the suspension continues for more than 180 calendar days, the contract shall be deemed to be terminated and the provisions of GC 8.10 shall apply.

.2 Delete the word "forty-five" in GC 8.2 and substitute with the word "ninety".

.3 Add the word "permitted" following the fifth word of the first sentence of GC 8.6. In the third sentence of GC 8.6, delete the words "thirty days of the date that the invoice for suspension of services is submitted" and

substitute with the words “forty-five days following the approval of invoices.”

.4 Delete GC 8.7 entirely

.5 Add the following at the end of GC 8.8.3:

“provided the *Prime Consultant* has completed all professional services called for under this contract, except where prevented by reasons beyond the *Prime Consultant*’s control; or”

.6 Delete GC 8.8.4 entirely.

.7 Delete GC 8.9 entirely.

.8 Delete GC 8.10 and replace with the following:

8.10 The client may terminate the provision of services by the *Prime Consultant* under this contract at any time for any reason and without cause upon giving the *Prime Consultant* written notice to that effect. In such event, the *Prime Consultant* shall be entitled to be paid for all services performed to the date of termination and be compensated for all actual costs incurred arising from the termination, but in no event shall the *Prime Consultant* be entitled to be compensated for any loss of profit on unperformed portions of the Work, or indirect, special, or consequential damages.

.9 Delete GC 8.11, GC 8.12, and GC 8.13 entirely, and replace with the following:

8.11 Upon termination, the *Prime Consultant* shall, in addition to its other obligations under this contract and at law:

.1 at the client’s request, provide the client with a report detailing (i) the current state of the provision of services by the *Prime Consultant* at the date of termination; and (ii) any other information requested by the client pertaining to the provision of the services and performance of this contract;

.2 execute such documentation as may be required by the client to give effect to the termination; and

.3 comply with any other instructions provided by the client, including but not limited to instructions for facilitating the transfer of its obligations to another person or entity.

8.12 If the client terminates the Contract pursuant to GC 8.10 the *Prime Consultant* shall be entitled to be paid the actual costs incurred by the *Prime Consultant* for the services requested and performed pursuant to GC 8.11, as part of the *Prime Consultant's* termination costs.

8.13 Termination shall not relieve the *Prime Consultant* of its obligations arising under this contract relating to the services performed or money paid. In addition to its other rights of holdback or set-off, the client may hold back payment or set-off against any payments owed if the *Prime Consultant* fails to comply with its obligations on termination.

GC 10 **SUCCESSORS AND ASSIGNS**

.1 In GC 10.2, change the words “contract documents” to “*Prime Consultant's* Instruments of Service” and add to end of GC 10.2 “, save and except for the client’s standard specifications and details that are found in substantially all of the client’s projects.”

GC 12 **PAYMENTS TO THE PRIME CONSULTANT**

.1 Delete the first sentence of GC 12.1 and replace with the following three sentences:

“The client will have 10 calendar days after the receipt of an invoice to review and approve or reject that invoice. If an invoice or part thereof is rejected, the client will notify the Prime Consultant of the disputed amount of that invoice and the nature of the dispute within the 10 calendar day period referred to above. Payments for all amounts that are not disputed shall be made in accordance with Article A-14 of this contract.”

.2 Delete GC 12.2 entirely.

.3 Delete GC 12.3 entirely.

.4 Delete GC 12.5 and replace with the following:

12.5 If the scope of the Project or of the *Prime Consultant's* services is changed, the fees shall be adjusted accordingly, subject to the provisions of this paragraph GC 12.5.

For additional services, or when revisions or additions are made by the client to the program of requirements or previously approved documents prepared by the *Prime Consultant*, and such revisions or additions require services beyond those already provided, the fee for such additional services shall be mutually agreed with the

client, in writing, and the *Prime Consultant* shall only provide these additional services if authorized in writing by the client.

Where the client has not requested a change in the manner outlined above but the *Prime Consultant* believes that instructions or directions given by the client constitute additional services, the *Prime Consultant* shall promptly notify the client of the required additional services in writing. The fee for, and authorization to provide the additional services, will be determined in the manner outlined above.

Whenever any fee adjustment is contemplated, the *Prime Consultant* shall provide to the client, within 5 business days, a written quotation for the additional services setting out a detailed description of the additional services, the methodology utilized for calculating the additional fee requested, an amount of adjustment for the contract price if any and the adjustment in the contract time if any for the proposed change in the services. The quotation shall also state on its face that the additional services are beyond the scope of the original scope of work under this contract and have not been caused by any error or omission by the *Prime Consultant* or anyone for whom the *Prime Consultant* is responsible and do not pertain to changes that:

- .1 are required by authorities having jurisdiction at the place of the Project, and that the *Prime Consultant* ought to have reasonably foreseen; or
- .2 relate to coordination issues with or between *Consultants*;

for which no fee adjustment shall be made. The quotation shall also state whether, in the opinion of the *Prime Consultant*, the fees for the additional services were caused by an act or omission of the contractor. The *Prime Consultant's* fees shall be based on the rates set out in the Schedules to this contract.

The client shall approve or reject the *Prime Consultant's* written quotation within 5 business days of receipt of same. If the client rejects the written quotation, the parties will proceed to negotiate the cost of the additional services. Once the client has approved the quoted or negotiated amount, it shall provide the *Prime Consultant* with a written amendment to confirm the additional services and the cost thereof.

If the client directs the *Prime Consultant* to proceed with the additional services prior to the parties agreeing to the corresponding adjustment in the contract price and contract time,

the client shall issue a change directive. Upon receipt of the change directive, the *Prime Consultant* shall proceed promptly with the change in Work.

The adjustment in the contract price for a change carried out by way of change directive shall be determined on the basis of the cost of the *Prime Consultant's* actual expenditures and or any savings attributable to the change directive valued in accordance with the rates set out in the Schedules to this contract.

- .5 In GC 12.6, delete the words “as set forth in article A10 of the agreement or” and add the words “in writing” to the end of the sentence.
- .6 In GC 12.9, delete the words "plus an administrative charge as identified in Article A11 of the agreement."

GC 14 **CONTRACTOR PERFORMANCE**

Add the new GC 14 as follows:

GC14 CONTRACTOR PERFORMANCE

The client employs the performance evaluation criteria outlined in Ontario Realty Corporation's Contractor Performance Assessment Report as amended from time to time (“CPAR”). The client will evaluate the performance of the *Prime Consultant* with respect to the Work in accordance with CPAR.

GC 15 **RECORD DRAWINGS**

Add the new GC 15 as follows:

GC15 RECORD DRAWINGS

The *Prime Consultant* shall prepare *Record drawings* and provide a writable copy of the digital files in addition to a PDF copy of the digital files to the client within 30 days of the date it receives the completed as-built drawings prepared by the contractor.

Unless otherwise agreed in writing, until the completed *Record drawings* are submitted to it, the client will retain an amount from payments to the *Prime Consultant* as follows:

- for Projects where the professional fees are less than \$25,000 the amount retained will be \$2,500;

- for Projects where the professional fees are greater than \$25,000 but less than \$100,000 the amount retained will be \$2,500, or 5% of the fee, whichever is greater; and
- for projects where the professional fees are greater than \$100,000, the amount retained will be \$5,000 or 4% of the fee, whichever is greater.

Unless otherwise agreed in writing, should the *Prime Consultant* fail to produce completed *Record drawings* within 60 days of the date it receives the completed as-built drawings prepared by the contractor, the amount retained will be forfeited to the client for the damages deemed to have been incurred by the client, and not as a penalty.

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