

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT is made as of the 30th day of May, 2008

B E T W E E N:

2164980 ONTARIO INC., a corporation incorporated
under the laws of the Province of Ontario

(“Project Co”)

- and -

BONDFIELD CONSTRUCTION COMPANY LIMITED,
a corporation incorporated under the laws of the Province of Ontario

(“Contractor”)

WHEREAS:

A. Pursuant to an amended and restated project agreement dated as of the 30th day of May, 2008 between Project Co and Owner (such agreement, together with all amendments, supplements and modifications thereto and restatements or replacements thereof, being hereinafter called the “**Project Agreement**”), Project Co has agreed to perform the Construction Work.

B. Pursuant to the Project Agreement, Project Co has agreed to enter into this Construction Contract with Contractor, pursuant to which Contractor has agreed to perform the Construction Work.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) This Construction Contract shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement, applied *mutatis mutandis* and unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Project Agreement. For greater certainty, the Definitions and Interpretation shall be read or construed so as to conform to Sections 1.1(b) and (c) below.
- (b) The provisions of the Project Agreement relating to the Construction Work (as set out in the definition of “Construction Work”) are incorporated by reference *mutatis*

mutandis into this Construction Contract. In the event of any conflict or inconsistency between the provisions of this Construction Contract and the Project Agreement, the provisions of this Construction Contract shall govern and prevail. For greater certainty, the provisions of this Construction Contract relating to payment shall be interpreted and operate independently from the comparable provisions in the Project Agreement. Notwithstanding the foregoing, and for greater certainty, Contractor covenants and agrees to comply with the provisions of Section 6.1 (provided the term “Project Documents”, as used in Section 6.1, shall not include the Lending Agreements, Schedule 5 – Form of Lender’s Direct Agreement or Schedule 22 – Form of Performance Guarantee of Construction Contractor and Section 6.2 (provided that the term “Implementing Agreements”, as used in Section 6.2, shall be read as “sub-subcontracts”). For further certainty, Section 9.4(a), Article 18, Article 28, Article 36, Sections 38.3(a) and (b), Section 38.4 and Schedule 14 of the Project Agreement and such provisions are hereby incorporated by reference *mutatis mutandis* into this Construction Contract. Provided further that the term “Implementing Agreements” in Section 25.1(a)(xiii) shall be read as “Construction Contract”.

- (c) Without limiting the application of Section 1.1(a) and notwithstanding Section 1.1(b), any definition or principle of interpretation set out in Schedule 1 to the Project Agreement, or any provision of any Contract Document (other than this Construction Contract), to the contrary, the following provisions of the Project Agreement shall not apply to this Construction Contract and Contractor shall have no obligation with respect thereto, whether related to performance, compliance, observance or otherwise:
- (i) Recitals
 - (ii) Article 2
 - (iii) Sections 4.2, 4.3, 4.4, 4.9 and 4.11
 - (iv) Sections 6.3 and 6.4
 - (v) Article 7
 - (vi) Section 25.1(a)(iii)
 - (vii) Sections 38.3(c) and (d)
 - (viii) Article 41
 - (ix) Schedule 3 – Completion Documents
 - (x) Schedule 4 – Project Co Information
 - (xi) Schedule 5- Form of Lender’s Direct Agreement

- (xii) Schedule 8 – Financial Model and Financial Information
 - (xiii) Schedule 15 – Bid Bond
 - (xiv) Schedule 18 – Payments and Holdbacks
 - (xv) Schedule 22 – Form of Performance Guarantee of Construction Guarantor
 - (xvi) Schedule 23 – Form of Assignable Subcontract Agreement for Construction Contract
 - (xvii) Schedule 24 – Form of Trust Account Acknowledgement Agreement.
- (d) Where used herein, the phrase “the Project Agreement applied *mutatis mutandis*”, “incorporated by reference *mutatis mutandis*” and derivatives thereof, means that the applicable provisions of the Project Agreement shall be read and construed with all appropriate changes, including substituting references in the Project Agreement, where the context permits, as follows:
- (i) the Owner with Project Co, except for those references in the Project Agreement to Owner as a public hospital, in respect of which, the term “Owner” shall remain “Owner”;
 - (ii) Project Co with Contractor; and
 - (iii) the Project Agreement with the Construction Contract.

2. CONSTRUCTION WORK

2.1 Construction Work

- (a) Subject to the provisions of Article 1 and the provisions of this Construction Contract, Contractor shall perform all of the Construction Work in compliance with this Construction Contract and in such a manner so as not to cause Project Co to be in breach of its obligations to Owner pursuant to the Project Agreement in respect of the Construction Work.
- (b) For greater certainty, Contractor shall not be obligated by this Construction Contract for any covenant, agreement, undertaking or obligation of Project Co related to the Financing or the Cost of the Financing, including any obligations of Project Co under Section 6.4(a) of the Project Agreement, each of which are hereby expressly excluded from the scope of this Construction Contract.

3. GUARANTEED PRICE AND ADJUSTMENTS

3.1 Guaranteed Price and Adjustments

- (a) The Guaranteed Price hereunder, excluding Value Added Tax, shall be the Guaranteed Price under the Project Agreement less the Cost of the Financing as set out in Schedule 8 to the Project Agreement.
- (b) The Guaranteed Price hereunder will not be subject to adjustment despite changes in the Construction Work, unless such changes in the Construction Work constitute a Change in the Scope of the Construction Work. The parties further agree that the Guaranteed Price hereunder will only be adjusted where the Contract Documents specifically and expressly refer to an adjustment to the Guaranteed Price hereunder, and no claim for an adjustment to the Guaranteed Price hereunder on any legal or equitable basis outside of this specific and express right to an adjustment of the Guaranteed Price hereunder set out in the Contract Documents will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price hereunder must be provided for in a Change Order under Schedule 11 – Change Procedure, of the Project Agreement, which Schedule has been incorporated herein pursuant to Section 1.1(b) hereof.
- (c) The provisions of Section 3.2 of the Project Agreement shall apply *mutatis mutandis* and without duplication to this Construction Contract, with the intent that only the cash allowances permitted under the Project Agreement (including expenditures, excesses, deficits and surpluses) shall be permitted hereunder.

4. PAYMENTS

4.1 Base Progress Payments, Additional Owner Payments and Other Payments

All payments required to be made by Project Co to Contractor hereunder, including Base Progress Payments, Additional Owner Payments, the Certified Cost to Complete, the Substantial Completion Holdback, the Owner Holdback and any Legislative Holdbacks with respect thereto, shall be paid by Project Co to Contractor, together with applicable Value Added Tax, in accordance with the provisions of Appendix 1 to this Construction Contract and the applicable provisions of the Project Agreement applied *mutatis mutandis*. All provisions in the Project Agreement respecting such payments, including provisions with respect to the calculation, determination and payment thereof and the set-off, withholding and deduction therefrom, shall apply *mutatis mutandis* to this Construction Contract with the intent that payment of such amounts *under the Project Agreement* shall be deemed to be full satisfaction of any corresponding payment obligations to Contractor under this Construction Contract.

4.2 Value Added Tax

All payments to be made by Project Co to Contractor shall also include applicable Value Added Tax.

4.3 No Other Entitlement

Contractor shall not be entitled to any payments or compensation under or in connection with this Construction Contract, except for payments made under Section 4.1.

5. CHANGES

The Construction Work, the Guaranteed Price hereunder and the Contract Time, as such terms are applied and interpreted for the purposes of this Construction Contract, are subject to change, adjustment or variation only in accordance with the provisions of the Project Agreement. For greater certainty, Contractor shall not be entitled to any adjustment or variation to the Construction Work, the Guaranteed Price hereunder or the Contract Time except if and to the extent allowed to Project Co pursuant to the provisions of the Project Agreement.

6. CONSULTANT

Contractor acknowledges the appointment and role of the Consultant pursuant to the Project Agreement and agrees to be bound by the decisions, directions and instructions of the Consultant pursuant to those provisions of the Project Agreement incorporated herein, as such decisions, directions and instructions apply to the performance of the Construction Work by Contractor.

7. CROSS DEFAULT

A Project Co Construction Event of Default shall constitute a default by Contractor under the Construction Contract, provided that, for greater certainty, if the Contractor has received a copy of the notice of default provided to Project Co in accordance with Article 41 of the Project Agreement, Contractor shall not be entitled to any notice of or time period to remedy such Project Co Construction Event of Default.

8. LIMITS ON LIABILITY

For greater certainty, the limits on liability set out in Article 34 of the Project Agreement shall apply *mutatis mutandis* to this Construction Contract, provided that when the term “Work” is used in Section 34.2(a)(i)(A) of the Project Agreement the term “Construction Work” shall be substituted therefore.

9. BONDS

Contractor shall obtain and deliver to Project Co the Bonds on or before the Financial Close Target Date and shall provide satisfactory evidence with respect thereto to Project Co on or before the Financial Close Target Date. Each Bond shall be properly executed by a Surety or by an agent or an attorney in fact for the Surety, in which latter case, Contractor is required to submit with such Bond a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to Project Co to evidence the authority of the Agent or attorney in fact.

10.4 Change of Address

Either Party to this Construction Contract may, from time to time, change any of its contact information set forth in Section 10.1 or 10.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

10.5 Deemed Receipt of Notices

- (a) Subject to Sections 10.5(b), 10.5(c) and 10.5(d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

10.6 Miscellaneous

For greater certainty, and without limiting the application of the applicable sections of the Project Agreement which are applied to this Construction Contract mutatis mutandis, as aforesaid, this Construction Contract is to be governed and interpreted on a basis consistent with the provisions of Article 42 of the Project Agreement. Without limiting the generality of the foregoing:

- (a) the Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Construction Contract (and without limiting the foregoing, Contractor will at any time, and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by Project

Co in order to cure any defect in the execution and/or delivery of this Construction Contract); and

- (b) this Construction Contract shall enure to the benefit of the Parties hereto and their respective permitted successors and assigns and be binding upon the parties hereto and their respective successors and assigns.

11. CONTRACT CANCELLATION FEE

Contractor acknowledges and agrees that there will be no cost associated with the cancellation of this Construction Contract for the purposes of the calculation of the Default Termination Payment and the Non-Default Termination Sum under the provisions of Schedule 12 – Compensation on Termination, of the Project Agreement, other than cancellation charges and other costs associated with the termination of any commitments relating to the Construction Work under this Construction Contract that Contractor makes, enters into or incurs in respect of any such work and that are otherwise payable pursuant to the provisions of Schedule 12 – Compensation on Termination, of the Project Agreement.

[SIGNATURE PAGES IMMEDIATELY TO FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Construction Contract as of the date first above written.

2164980 ONTARIO INC.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation

APPENDIX 1 TO SCHEDULE 6
PAYMENTS AND HOLDBACKS

1. APPLICATIONS FOR PAYMENT

- 1.1 Applications for payment on account may be made monthly as the Construction Work progress.
- 1.2 Project Co and Contractor agree that for the purpose of calculating payment hereunder and for the amount of any Legislative Holdback under the Construction Contract such determination shall be based only upon the Cost of the Work.
- 1.3 Application for payment by Contractor shall be dated the last day of the agreed monthly payment period and the amount claimed shall be based on the value, proportionate to the Cost of the Work, of the Construction Work performed forming part of the Cost of the Work including Products delivered to the Site at that date. The application for payment shall also include and separately state the value of the Construction Work performed with respect to Change Orders or Change Directives the payment of which Project Co is responsible for and which are included within Additional Owner Payments. Applications for payment shall be made to the Consultant and to the Lender's Consultant at the same time. The Lender's Consultant shall be responsible for verifying the application for payment to the Lender.
- 1.4 Contractor shall submit to the Consultant and the Lender's Consultant, at least 14 days before the first application for payment, a schedule of values for the parts of the Construction Work so as to facilitate a valuation of applications for payment.
- 1.5 The schedule of values shall be made out in such form, broken down in such detail and supported by such evidence as Project Co and the Consultant and the Lender's Consultant may reasonably direct and when accepted by the Consultant and the Lender's Consultant and Project Co, shall be used as the basis for applications for payment, unless it is found to be in error.
- 1.6 Claims for Products delivered to the Site but not yet incorporated into the Construction Work shall be supported by such evidence as the Consultant may reasonably require to establish the value and delivery of the Products.
- 1.7 Contractor shall submit to Project Co, the Consultant and the Lender's Consultant a statement based on the schedule of values, a Workplace Safety & Insurance Board Certificate of Clearance, the updated Construction Schedule provided under Section 18.1(e) of the Project Agreement and an updated cash flow with each application for payment.
- 1.8 With the second and all subsequent applications for payment, except the final payment and release of holdback applications, Contractor shall submit a Statutory Declaration on CCDC Form 9A.

2. PROGRESS PAYMENTS

- 2.1** The Consultant will issue to Project Co, no later than 10 Business Days after the receipt of an application for payment from Contractor submitted in accordance with Section 1 of this Appendix 1, a certificate addressed to Project Co of the progress of the Construction Work in relation to the schedule of values, a copy of which shall be provided to Contractor and the Lender's Consultant. Contemporaneously, the Consultant will issue a certificate for payment to Project Co of Additional Owner Payments payable by Project Co with respect to the application for payment from Contractor in the amount applied for or in such other amount as the Consultant determines to be properly due. If the Consultant requires amendments to the application, the Consultant will promptly notify Contractor in writing giving reasons for the amendment. The Lender's Consultant will be responsible, no later than 5 Business Days from receipt of the certificate of the progress of the Construction Work in relation to the schedule of values from the Consultant, for issuing certificates for payment to Lender and Contractor respecting Base Progress Payments. Project Co and the Consultant shall not be responsible for any delay in issuing a certificate for payment in respect of or for payment of Base Progress Payments on account of the activities of the Lender's Consultant and/or the Lender.
- 2.2** Payment to Contractor on account of Base Progress Payments and monthly progress payments with respect to Additional Owner Payments shall be made no later than 10 Business Days after the date of a certificate for payment issued by the Lender's Consultant or the Consultant, as the case may be.
- 2.3** Applications for progress payments will continue to be provided to the Lender's Consultant so long as any amount that has been held back by Project Co pursuant to the Construction Contract for the Construction Work completed prior to the Substantial Completion Date remains unpaid.
- 2.4** Notwithstanding the time periods provided regarding the approval and certification of payment by the Consultant or the Lender's Consultant in Section 2.1 of this Appendix 1 and for payment in Section 2.2 of this Appendix 1, respectively, the total period of time between receipt of the application for payment by Contractor and payment by Project Co shall be no more than 25 Business Days, except with respect to any amount held back from such payment by Project Co in accordance with the Construction Contract.

2.5 Construction Liens

- .1 Notwithstanding anything else in this Appendix 1 – Payments and Holdbacks, in the event a claim for a construction lien is registered against the Site arising from the performance of the Construction Work, and unless Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, or Project Co receives any written notice of lien arising from the performance of the Construction Work, Project Co shall be entitled to withhold such portion of any payment otherwise due to Contractor in an amount Project Co reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by Project

Co in connection therewith, including such amount on account of costs of the lien claimant such that Project Co may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the *Construction Lien Act* (Ontario), until such time as such claim has been dealt with as provided below.

- .2 In the event that a written notice of a construction lien arising from the performance of the Construction Work is received by Project Co, and unless Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Owner acting reasonably, Contractor shall, within 30 days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the *Construction Lien Act* (Ontario).
- .3 If a construction lien arising from the performance of the Construction Work is registered against the Site, and unless Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, Contractor shall, within 30 days, at its sole expense, vacate or discharge the lien from title to the Site. If the lien is merely vacated, Contractor shall, if requested, undertake Project Co's defence of any subsequent action commenced in respect of the lien at Contractor's expense.
- .4 If Contractor fails or refuses to vacate or discharge a construction lien or written notice of lien arising from the performance of the Construction Work within the time prescribed above, and unless Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, Project Co shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by Project Co in doing so (including legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of Contractor, and Project Co may deduct such amounts from the amounts otherwise due or owing to Contractor.
- .5 Without limiting any of the foregoing, Contractor shall satisfy all judgments and pay all costs resulting from any construction liens arising from the performance of the Construction Work or any actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against Project Co by any person that provided services or materials to the Site which constituted part of the Construction Work.
- .6 The provisions of Sections 2.5.1 through 2.5.5 inclusive, of this Appendix 1, do not apply to construction liens (i) filed by Contractor which are claimed as a result of any default of Project Co to make payments to Contractor in accordance with the terms of the Construction Contract or (ii) filed by any Owner Party, including for greater certainty Owner's own forces or Owner's other contractors, which are claimed as a result of work in relation to the Project.

3. PAYMENT OF HOLDBACK UPON SUBSTANTIAL COMPLETION

3.1 After the issuance by the Consultant of the certificate of substantial performance of the Construction Work under Section 16.1(c) of the Project Agreement and the certificate of Substantial Completion of the Construction Work under Section 16.1(e) of the Project Agreement, Contractor shall:

- .1 submit an application for payment of the holdback amount;
- .2 submit a written request for release of holdback including a declaration that no written notices of lien arising from the performance of the Construction Work have been received by it;
- .3 submit a Statutory Declaration CCDC 9A; and
- .4 submit an original Workplace Safety & Insurance Board Certificate of Clearance.

3.2 After the later of (i) the receipt of the documents set out in Section 3.1 of this Appendix 1, and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the *Construction Lien Act* (Ontario), the Consultant shall issue a certificate for payment of the holdback amount.

3.3 Prior to the date of the release of the holdback, Contractor shall have removed from the Site all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion or to correct any remaining Minor Deficiencies.

3.4 Subject to the provisions of Section 2.5 of this Appendix 1 and the removal of claims for lien preserved or perfected pursuant to the *Construction Lien Act* (Ontario) arising from the performance of the Construction Work, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the second Business Day following the receipt of the certificate for payment of the holdback amount pursuant to Section 3.2 of this Appendix 1.

4. COMPLETION

4.1 Contractor shall provide As-Built Drawings and Specifications, Record Documents, spare parts and shop drawings as soon as possible and in any event within 30 days of the Substantial Completion Date.

4.2 Save and except with Project Co's prior written approval, Contractor shall complete all Minor Deficiencies and assign and provide all of the Project Deliverables that remain outstanding no later than 120 days from the date when Substantial Completion of the Construction Work is certified, unless the reasons for any delay are acceptable to Project Co or the delay is caused by Project Co.

5. FINAL PAYMENT

5.1 When Contractor considers that the Construction Work is completed, Contractor shall submit an application for final payment. Contractor's application for final payment and release of finishing construction lien holdback, shall include the following documentation:

- .1 Contractor's written request for release of holdback, including a declaration that no written notices of lien arising from the performance of the Construction Work have been received by it;
- .2 Contractor's Statutory Declaration CCDC 9A;
- .3 Contractor's Workplace Safety and Insurance Board Certificate of Clearance; and
- .4 a written statement that the Construction Work has been performed to the requirements of the Contract Documents, itemizing approved changes in the Construction Work, the Consultant's written instructions, and modifications required by Governmental Authorities.

5.2 The Consultant will, no later than 10 days after the receipt of an application from Contractor for final payment, complete its review of the Construction Work to verify the validity of the application, and no later than the 3rd Business Day after completing the review, will notify Contractor whether the application is valid or give reasons why it is not valid.

5.3 When the Consultant finds Contractor's application for final payment valid, the Consultant will issue a final certificate for payment.

5.4 Subject to the other requirements of this Construction Contract, the unpaid balance of the Guaranteed Price hereunder shall become payable to Contractor on the later of:

- .1 the 2nd Business Day following the expiration of all liens pursuant to the *Construction Lien Act* (Ontario); and
- .2 the 2nd Business Day following the issuance of the Consultant's final certificate for payment,

subject to Project Co's right under the Construction Contract to withhold payment from the unpaid balance of the Guaranteed Price hereunder including for any amounts required pursuant to Section 6 of this Appendix 1, and any sums required to satisfy any lien or trust claims arising from the Construction Work.

6. WITHHOLDING OF PAYMENT

6.1 If because of climatic or other conditions reasonably beyond the control of Contractor, there are items of work that cannot be performed, payment in full for that portion of the Construction Work which has been performed, as certified by the Consultant, shall not be withheld or delayed by Project Co on account thereof, but Project Co may withhold, until the remaining portion of the Construction Work is finished, only such amount that the

Consultant determines is sufficient and reasonable to cover the cost of performing such remaining Construction Work.

7. NON-CONFORMING WORKS

7.1 No payment by Project Co under the Construction Contract nor partial or entire use or occupancy of the Construction Work by Project Co shall constitute an acceptance of any portion of the Construction Work or Products which are not in accordance with the requirements of the Contract Documents.