

# **The New CCDC 2 – 2020 Stipulated Price Standard Contract Form**

**February 3, 2021**

**10:00 – 11:30 AM**

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# Introductions

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Presenter and Panel Moderator:  
**Michael Atkinson**

Panelists:  
**Mark Mulholland**  
**Michael Assal**



**Michael Atkinson, LLB**  
Past CCA President



**Mark Mulholland**  
AVP of BGIS  
Chair of CCDC



**Michael Assal**  
Taplen Construction  
CCDC Committee

Program:

- Presentation on what has changed in CCDC 2 and what has not.
- Panel Discussion & Questions - How might the new CCDC2 impact industry practices and other contracts, (e.g. subcontract agreements)

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# Overview of Changes

## MAIN CHANGES

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1. Introduction of a new contract milestone called ***Ready-for-Takeover*** which has, as one of its pre-requisites, the attainment of *Substantial Performance of the Work*.
2. New provisions enabling the *Owner* to take **early occupancy** of the *Work* or a portion thereof.
3. Relocation of certain provisions in the new **CCDC Division 01 General Requirements**, (i.e. the specifications).
4. Changes to acknowledge the potential existence of mandatory **payment and adjudication legislation** and to ensure conformity with such legislation, including changes to the payment application process and the contractual payment terms.

# Overview of Changes (cont'd.)

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## SPECIFIC CHANGES

1. New and revised **Definitions**.
2. Changes to the hierarchy of the *Contract Documents* and clarifying the intent and purpose of the *Contractor's* review of the *Contract Documents*.
3. Modifications to the **role of the Consultant**.
4. Greater detail and clarity regarding eligible **reimbursable costs for Change Directives**.
5. Changes to the **delay provisions** in GC 6.5 (GC 6.5.2)
6. Changes clarifying the content of **default notices** and the role of the *Consultant* under GC 7.1

# Overview of Changes (cont'd.)

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9. **Insurance requirements.** Changes to the limits and duration of required insurance policies.

10. **Indemnification and Waiver of Claims provisions.** Changes to “trigger dates” and to bring more clarity.

11. **Cash Allowances.** Re-allocation among *Cash Allowances* permitted.

12. **Construction Safety.** NEW provision (GC 9.4). Responsibilities clarified.

13. **Taxes and Duties** GC 10.1. Changes intended to clarify application of provision to the post-bid introduction of **new** taxes and custom duties.

# *Ready-for-Takeover*

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## What is “Ready-for-Takeover”

***Ready-for-Takeover* is attained when ALL of the following pre-requisites have been met (NEW GC 12.1.1):**

1. The *Consultant* has certified (or verified) the *Substantial Performance of the Work*;
2. Evidence of compliance with the requirements for occupancy or an occupancy permit obtained;
3. Final cleaning and waste removal has occurred;
4. Operations and maintenance manuals required for immediate operations and maintenance have been delivered to the *Owner*;
5. A copy of the as-built drawings completed to date is made available;
6. Startup, testing required for immediate occupancy;
7. Ability to secure access to the *Work* has been provided to the *Owner*; and
8. Demonstration and training is scheduled by the *Contractor* acting reasonably.

# *Ready-for-Takeover* (cont'd.)

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## Why the need for *Ready-for-Takeover*?

Addresses the misalignment between *Substantial Performance of the Work* and the specific project requirements of the *Owner* regarding such things as schedule (*Contract Time*), occupancy, warranty, etc.

It was being perceived by owners as the only milestone with which to also deal with occupancy and other project requirements.

Led to numerous Supplementary Conditions which could delay certification of *Substantial Performance of the Work* and holdback release.



# *Ready-for-Takeover* (cont'd.)

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What *Ready-for-Takeover* is NOT.

- **NOT** a substitute for *Substantial Performance of the Work*.
- **NOT** a milestone that triggers holdback release.
- **NOT** certified by the *Consultant*.

What *Ready-for-Takeover* IS:

- a new, additional milestone in the *Contract*.
- a milestone that includes the attainment of *Substantial Performance of the Work* among other pre-requisites.
- verified and confirmed by the *Consultant*.
- the new *Contract Time* milestone date.
- the new general warranty start date.
- the new duration for certain required insurance coverages.
- the new “trigger” date for the mutual waivers and indemnity obligations.

# *Ready-for-Takeover* (cont'd.)

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## Other Considerations: The Process and the Role of the *Consultant*

When the *Contractor* considers that the *Work* is *Ready-for-Takeover* the *Contractor* shall deliver a comprehensive list of items to be completed together with a written application for *Ready-for-Takeover* for review by the *Consultant*. (GC 12.1.3)

The *Consultant* will then review the *Work* to verify the validity of the application and no later than 10 calendar days after receipt of the application advise that it is not or confirm the date of *Ready-for-Takeover*. (GC 12.1.4)

*Ready-for-Takeover* shall not be delayed for conditions reasonably beyond the control of the *Contractor*. (GC 12.1.2)

# Early Occupation by Owner

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## GC 12.2 Early Occupancy by the Owner

New provision enables the *Owner* to take early occupancy of a portion or the entirety of the *Work* only as agreed by the *Contractor*, which agreement shall not be unreasonably withheld. (GC 12.2.1)

The *Owner* must have the approval of the authorities having jurisdiction.

Where the *Owner* takes early occupancy:

- The part occupied shall be deemed to have been taken over.
- The Contractor shall cease to be liable for the care of such part.
- The warranty for such part shall start.

If early occupancy is the entire *Work*, it shall be deemed to have achieved *Ready-for-Takeover*.

# Provisions Relocated in CCDC Division 01

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The following provisions in the 2008 edition of CCDC 2 have been removed from CCDC 2 and relocated in CCDC Division 01:

- Definition of the word *Provide*.
- Documents available at the site. Former GC 3.9.
- Shop Drawings (partially). Former GC 3.10.
- Use of the Work. Former GC 3.11.
- Cutting and Remedial Work (partially). Former GC 3.12.
- Cleanup (partially). Former GC 3.13.
- Contract Security. Former GC 11.2.

# Provisions Remaining in CCDC 2

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## Shop Drawings (GC 3.8) provisions remaining in CCDC 2 2020:

The *Contractor* shall provide *Shop Drawings*:

- as required by the *Contract Documents*.
- in accordance with an agreed schedule, or in its absence, in an orderly sequence and sufficiently in advance as to cause no delay.

The *Contractor* shall review all *Shop Drawings* to:

- determine and verify applicable field measurements, etc.
- check and coordinate each *Shop Drawing* with *Contract* requirements.
- for conformity to the design concept and for general arrangement only.

The *Contractor* shall expressly advise the *Consultant* in writing of any deviations. The *Consultant* shall indicate the acceptance or rejection expressly in writing.

The *Consultant's* review shall not relieve the *Contractor* of responsibility for errors or omissions or for meeting *Contract Documents* requirements.

# Provisions Remaining in CCDC 2 (cont'd.)

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## **Cutting and Remedial** (GC 3.2.6) provisions remaining in CCDC 2 2020:

GC 3.2.6 Should the *Owner*, the *Consultant*, *Other Contractors* or anyone employed by them directly or indirectly be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 CHANGE ORDER and GC 6.3 – Change DIRECTIVE.

# Payment & Adjudication Legislation

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New Definition of *Payment Legislation* in CCDC 2.

Payment process in new CCDC 2 shall be in compliance with *Payment Legislation*.

Nothing in CCDC 2 to affect the rights of the parties to resolve any dispute by adjudication.

## **Changes to Payment Provisions**

Applications for payment now must be submitted monthly to BOTH the *Consultant* and the *Owner* simultaneously.

To be accompanied by evidence of compliance with workers' compensation legislation.

Second and subsequent monthly payment applications to also include completed statutory declaration form CCDC 9A.

# Payment Provisions in New CCDC 2

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## Changes to Payment Provisions (cont'd.)

Certification remains a condition precedent to payment.

Owner now has **28 days** from the date of receipt of the application for payment to pay rather than the former 20 days from the date of the end of the payment period or the receipt of the application, whichever is the later.

Holdback now becomes due and payable no later than **10 Working Days** following expiration of the holdback period. Previously, it was the first calendar following the expiry of the holdback period. (GC 5.4.3)

The CCDC stepped dispute resolution process in GC 8 has not changed but CCDC 2 now recognizes adjudication as an available interim dispute resolution process.



# New Definitions

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The following new Definitions are introduced in CCDC 2 2020:

***Other Contractors*** means a contractor, other than the *Contractor* or a *Subcontractor*, engaged by the *Owner* for the *Project*.

***Payment Legislation*** means such legislation in effect at the *Place of Work* which governs payment under construction contracts.

***Ready-for-Takeover*** shall have been attained when the conditions set out in paragraph 12.1.1. of GC 12.1 – READY-FOR-TAKEOVER have been met, as verified by the *Consultant* pursuant to paragraph 12.1.4.2. of GC 12.1 – READY-FOR-TAKEOVER.

# Revised Definitions

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The Definition of the word “*Provide*” has been relocated to Division 01.

*Substantial Performance of The Work.* *Substantial Performance of the Work* is as defined in the lien legislation applicable to the *Place of the Work*.

The following has been removed:

If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the Consultant.

What is the Definition of *Substantial Performance of the Work* if lien legislation does not apply to the *Place of the Work* such as a project on federal lands or where the applicable legislation does not have such a definition as in the case of the Province of Quebec?

Should be addressed in such cases.

# Contract Documents

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## Contract Documents

Revisions made to the hierarchy of *Contract Documents* for the purposes of resolving conflicts between them.

- (GC 1.1.5.4) “amended or later dated documents shall govern over earlier documents of the same type.”
- (GC 1.1.5.5) “noted materials and annotations shall govern over graphic indications.”

Revisions also made to clarify the purpose of the *Contractor’s* review of the *Contract Documents*.

(NEW GC 1.1.2) The *Contract Documents* are complementary, and what is required by one shall be binding as if required by all. Performance by the *Contractor* shall be required only to the extent consistent with the *Contract Documents*.

(NEW GC 1.1.3) The *Contractor* shall review the *Contract Documents* for the purpose of facilitating co-ordination and execution of the *Work* by the *Contractor*.

(GC 1.1.4 REVISED) The *Contractor* is not responsible for errors, omissions or inconsistencies in the *Contract Documents*.

# Role of the Consultant

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References to the *Consultant* making “determinations” changed to “findings”, except when it comes to certification procedures.

Changes to GC 7.1 regarding *Contractor* default for non-performance and the *Owner*’s rights in such circumstances. GC 7.1.2 now states that there must be a written statement from the *Consultant* providing the details of such neglect. Previously, the *Consultant*’s statement simply had to state that sufficient cause existed to justify such action.

DELETED GC 2.2.4 stating that the *Consultant* will inform the *Owner* of the date of receipt of *Contractor*’s applications for payment. This because GC 5.2 APPLICATIONS FOR PAYMENT, paragraph 5.2.1, now requires the *Contractor* to submit monthly applications for payment to BOTH the *Consultant* and the *Owner* simultaneously.

DELETED the last line of GC 2.2.6 stating that the *Consultant* will not be responsible for acts or omissions of the *Contractor*. Previous wording had no real impact since the *Consultant* is not a party to this Contract.

GC 2.2.15 (formerly 2.2.16) has been modified to state that the *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* and to verify that *Ready-for-Takeover* has been attained.

# Change Directives

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## Reimbursable Cost for Change Directive

Revisions made to General Condition dealing with *Change Directives* to clarify eligible reimbursable costs for *Change Directives*. Limits eligible costs to direct costs.

(GC 6.3.7) The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following in as much as it contributes directly to the implementation of the *Change Directive*:

- Labour
- *Products, Construction Equipment and Temporary Work*
- Subcontract (with pricing mechanism approved by *the Owner*)
- Others

# Change Directives

## Reimbursable Cost for Change Directive (cont'd.)

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### Labour

- Rates that are listed in the schedule or as agreed, including wages, benefits, compensation, contributions, assessments, or taxes incurred for:
  - (1) Trade labour in the direct employ of the *Contractor*.
  - (2) *Contractor's* personnel stationed at the field office.
  - (3) *Contractor's* personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment.
  - (4) *Contractor's* personnel engaged in a technical capacity, or other personnel identified in the *Contract*.

### *Products, Construction, Equipment and Temporary Work*

- All *Products* including cost of transportation.
- In the absence of agreed rates, cost less salvage value of *Construction Equipment, Temporary Work* and tools, exclusive of hand tools under \$1,000 owned by the *Contractor*.
- Rental cost of *Construction Equipment, Temporary Work* and tools, exclusive of hand tools under \$1,000.
- Cost of all equipment and services required for the *Contractor's* field office.

# Change Directives

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## Reimbursable Cost for Change Directive (cont'd.)

Others:

- .8 deposits lost provided they are not caused negligent acts or omissions of the *Contractor*.
- .13 losses and expenses sustained by the *Contractor* for matters which are the subject of insurance when such losses and expenses are not recoverable.
- .17 legal costs, incurred by the *Contractor*, provided that they are not:
  - (1) relating to a dispute between the *Owner* and the *Contractor* unless such costs are part of a settlement or awarded by arbitration or court,
  - (2) the result of the negligent acts or omissions of the *Contractor*, or
  - (3) the result of a breach of this *Contract* by the *Contractor*.
- .18 cost of auditing when requested by the *Owner*.
- .19 cost of *Project* specific information technology in accordance with the method determined by the parties.

# Delays

GC 6.5.2 has been revised as follows:

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“If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed, engaged by the *Contractor* directly or indirectly, resulting in the failure of the *Contractor* to attain *Ready-for-Takeover* by the date stipulated in Article A-1 of the Agreement – THE WORK, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.”

What happens if the date of *Ready-for-Takeover* can be and is attained by the date initially stipulated in Article A-1 (i.e. the *Contract Time*)?



# GC 7.1 Default

Changes to GC 7.1 regarding *Contractor* default for non-performance and the *Owner's* rights in such circumstances.

GC 7.1.2 now states that there must be a written statement from the *Consultant* providing the details of such neglect\* and that the **default notice from the Owner** to the *Contractor* is to contain “. . . particulars of the default including references to applicable provisions of the Contract, that the Contractor is in default of the Contractor's contractual obligations\*\*”.

\*Replaces a statement from Consultant that simply states that sufficient cause exists to justify such action.

\*\*Provides for mandatory content for the *Owner's Notice in Writing to Contractor* advising of default.

# Insurance

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In the new CCDC 2:

- General liability completed operations coverage to be in place one year from the date of *Ready-for-Takeover* instead of from the date of *Substantial Performance of the Work*.
- Property Insurance to be in place until 10 days after the date of *Ready-for-Takeover* instead of from the date of *Substantial Performance of the Work*.

In CCDC 41 – CCDC Insurance Requirements. For general, auto and manned aircraft/watercraft liability insurance, minimum limits increased to \$10 million from \$5 million per occurrence

New unmanned aerial vehicle (e.g. drones) and Contractor's Pollution liability insurance requirements introduced with minimum limits of \$5 million.

# Indemnification and Waiver

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The “trigger date” for the mutual indemnity obligations has been changed to the date of *Ready-for-Takeover* instead of the date for *Substantial Performance of the Work*.

The 6-year exception is now from the date of *Ready-for-Takeover* rather than from the date of *Substantial Performance of the Work*.

The obligation to indemnify the other party is now limited to direct loss and direct damage.

The “trigger date” for the mutual waivers is now the date of *Ready-for-Takeover* rather than the date of *Substantial Performance of the Work*.

# Cash Allowances

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Cash Allowances. GC 4.1.

Revised to permit the *Consultant* to use unexpended amounts from other Cash Allowances to cover any shortfall in a particular cash allowance.

# Construction Safety

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## NEW General Condition GC 9.4 Construction Safety

Revisions intended to distinguish between liability and responsibility for construction safety at the *Place of the Work*.

(GC 9.4.1) Subject to paragraph 3.2.2.2 of GC 3.2 –CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the work.

The *Owner* and the *Contractor* shall comply with all health and safety precautions and programs established at the *Place of the Work*.

(GC 3.2.2.2) When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall . . . assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*.

Nothing in the Contract shall affect the determination of liability under the applicable health and safety legislation.

# Taxes and Duties

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## GC 10.1 Taxes and Duties

GC 10.1.2 has been revised by eliminating the words “such included” taxes and duties to clarify that the provision is intended to cover the introduction of any new taxes or duties subsequent to bid closing that would not have been included in the *Contract Price* and were not in effect at the time of bid closing.

### 2008 Version

#### GC 10.1 Taxes and Duties

10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Contractor* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

10.1.2 Any increase or decrease in costs to the *Contractor* due to changes in **such included** taxes and duties after the time of the bid closing shall increase or decrease the *Contract Price* accordingly.

# What Has Not Changed?

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Nothing in the new document specifically to deal with COVID-19 or pandemics.  
Current wording in CCDC 2 considered sufficient. SEE:

**GC 6.5.2** - If *Contractor* delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and provided such order was not issued as the result of an act or fault of the *Contractor*, *Contractor* entitled to *Contract Time* adjustment and reimbursement for reasonable costs incurred by the *Contractor* as the result of such delay. (SUBJECT TO EARLIER COMMENTS REGARDING FAILURE TO ATTAIN READY-FOR-TAKEOVER)

**GC 6.5.3.4** - If the *Contractor is* delayed by: “. . . any cause beyond the *Contractor’s* control other than one resulting from a default or breach of *Contract* by the *Contractor*, then the *Contract Time* shall be extended but the *Contractor* shall not be entitled to payment for costs incurred by such delays unless they result from actions by the *Owner* or the *Consultant*.”

Note also that **GC 10.2.7** which provides that either party may submit a claim for a change in *Contract Price* if subsequent to the time of bid closing changes are made to applicable laws, ordinances, rules, regulations or codes of authorities having jurisdiction which affect the cost of the *Work*.

# PANEL DISCUSSION & QUESTIONS?

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