

FINANCE AND ADMINISTRATION COMMITTEE – JULY 6 2011

COMMUNICATIONS

Distributed July 5, 2011

Item No.

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| C1 | Mr. Joe Maio, President, Maystar General Contractors Inc., dated June 30, 2011. | 1 |
| C2 | Mr. Joe Maio, President, Maystar General Contractors Inc., dated July 4, 2011. | 1 |
| C3 | Mr. Gino Ruffolo, dated July 4, 2011. | 2 |
| C4 | Memorandum from the Commissioner of Finance/City Treasurer, dated July 5, 2011. | 5 |

Distributed July 6, 2011

- | | | |
|-----------|---|----------|
| C5 | Mr. Antony Niro, dated July 5, 2011. | 8 |
| C6 | Mr. Jake Ortego, Vice President of Construction Consulting Commercial Cost Control Inc., dated July 1, 2011. | 1 |

Please note there may be further Communications.

MAYSTAR

GENERAL CONTRACTORS INC.

71 Buttermilk Avenue
Concord, Ontario
L4K 3X2

Tel: (905) 738-8640
Fax: (905) 738-6281



C	1
Item #	1
Report No.	15
FINANCE + ADMINISTRATION COMMITTEE	
July 6, 2011	

June 30, 2011

Clayton D. Harris
City Manager
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
L6A 1T1

Dear Sir,

Re: Maystar Response to Construction Audit Report for Vaughan

We are writing in response to the Construction Audit Report for Vaughan (the "Report"), which we received on June 28, 2011. As a preliminary note, we confirm that we have not been given the opportunity to provide a detailed review of the Report in its entirety, given that it is our understanding that the Report will be presented to Council on July 6th, 2011. We are prepared to provide a more detailed review at a later date.

We begin by addressing the \$1,061,603.03 identified in Table 2 entitled "Summary of Financial Findings" under the column labelled "Reduction to the GC Contract," and specifically under item 1 "Change Order Errors" wherein the Report recommends that Maystar should be required to provide to The City of Vaughan (the "City") a credit. The Report breaks down the basis for this credit under a number of categories which necessitated this finding.

We take issue with this position, as we advise below. Before proceeding with our evaluation of the components of the proposed credit, enumerated above, however, Maystar would like to clarify certain information included in Table 2. Specifically in section 4 of Table 2 the Report includes a cash allowance of \$615,692.00 suggesting that the auditor discovered this money. Typically, in the construction process, the unused amount of the cash allowance is not credited to an Owner until the conclusion of the Project. Maystar has always been aware of this cash allowance reserve, and, provided that it is not exhausted, Maystar completely understands that it is to be credited to the City.

Next, under section 5 of Table 2, the Report suggests that there is \$200,000.00 to \$300,000.00 in respect of a tax credit which is due to the City. We confirm that on March 31, 2011 Maystar submitted PST\GST

to HST transition credit in the amount of \$303,589.75 to KBMB under Change Directive 089, in connection with various tax credits.

We will now briefly address the components of the reduction of the GC Contract as identified by the Report that Maystar has concerns about.

I. Unallowable Subcontractor Markup on Second Tier Subcontractors

First with respect to this category, it should be noted that Maystar has already made arrangements to correct markup charged by second tier Subcontractors. That is, Maystar has ensured on a going forward basis that no markup be included by second tier Subcontractors. In addition, Maystar is prepared to credit the City in connection with any overhead costs which were charged in respect of second tier Subcontractors.

However, we note that the Report estimates that the value of this error is \$300,000.00. Maystar takes exception to this attributed value and requires some time to review our records to confirm the same.

II. Maystar applied OHP on Subcontractor quotes that included OHP

Maystar takes exception to this assertion. We note that various Subcontractors provide documentation in various ways. Specifically, some Subcontractors include overhead and profit in their quotation, others do not, while others include overhead and profit as a line item (ie. it is separated and delineated in the quote). It is incorrect to assume that all Subcontractors in fact include overhead and profit in some uniform or aggregate fashion. Maystar does not, however, suggest that an error could not have been made without having the opportunity to review the change Orders identified in Appendix C. Maystar requires time to review and examine the documentation in connection with any errors in this respect.

III. Unallowable Overhead Costs

Maystar's position, as with its position regarding second tier Subcontractor mark up, identified above, is that it concedes that Subcontractors should not include costs for items not allowed under the contract. Maystar confirms that any amounts charged in connection with the same will be credited to the City. Maystar in any event reserves the right to review the values included in the Report, but requires time to review the same.

IV. Mistakes on Change Orders

It should also be noted that we are not in a position to comment on the category labelled "Mistakes on Change Orders", in the Report given the time constraints. There are several change orders identified in Appendix E which Maystar requires time to review.

V. OHP Calculations by Maystar

We note that the report has taken exception to Maystar's manner of calculating overhead and profit for Subcontractor work and overhead and profit for its own work. Specifically, the report has taken exception to the manner in which Maystar has calculated 15% and 10% respectively in connection with the same.

Maystar has always calculated its overhead and profit in this manner. Moreover, it is Maystar's position that this is standard industry practice.

If the intention was to calculate the 15% value in a specific manner it ought to have clearly stated the same in the relevant Contract Documents, which it did not.

In addition to the foregoing, we note that the report suggests that the changes appear to be overvalued by 30%. The overvalue of change orders is a result of what the Report believes is attributed to rework, inefficiencies to do cumulative changes and premium for changes. We take exception to this assertion. The charge for work was entirely commercially reasonable in the circumstances. In addition, by the Report's own admission, "the actual execution method, the total forecast of costs for the audit appears to be reasonable and appropriate for a Project of this size scope and requirements". Accordingly, we believe that the rates charged were entirely commercially reasonable.

In addition, the Report asserts that the labor rates charged are 35% higher than rates stipulated in Statistics Canada and Work place Safety and Insurance Board ("WSIB") rates, which rates the Report asserts are verified with several of the local unions.

With respect, we are unaware of the accuracy or value of these rates. We are aware, however, that labor rates charged were confirmed with the Consultant's team and the rates were subject to a negotiation process. These rates in our view are entirely reasonable and nothing would suggest that they are "overvalued". Nothing in the tender documents suggest some base value that Maystar should consider in calculating these labor rates. We do not understand how the Report reached this conclusion in these circumstances, but simply state that we reject that the labor rates were 35% higher as stipulated in the Report.

We trust we will have an opportunity to adequately respond to the Report and cooperate with the City to address the issues raised in the Report. For now, we are of the view that the value of the proposed credit reduction to the GC contract which the Report recommends requires further examination.

Yours truly,

Joe Maio
President



MAYSTAR

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C	<u>2</u>
Item #	<u>1</u>
Report No.	<u>15</u>
FINANCE + ADMINISTRATION COMMITTEE	
July 6, 2011	

July 4, 2011

Sybil Fernandes
Deputy City Clerk
Office of the City Clerk
Level 100
2141 Major Mackenzie Drive
Vaughan, Ontario
L6A 1T1

Delivered by Email and by Hand

Attention: Ms. Fernandes

Dear Sirs

Re: Maystar Response to Construction Audit Report for Vaughan
Project: Vaughan Civic Centre

This letter is further to our letter of June 30, 2011 addressed to Clayton D. Harris in response to the findings contained in the Construction Audit Report for Vaughan prepared by Commercial Cost Control Inc. (the "Report"). We have enclosed a copy of our June 30th letter for your ease of reference.

The purpose of this letter is twofold: first, to further solidify our position expressed in paragraphs 5 and 6 of the last page of our June 30th letter wherein we rebut the purported 35 percent overvalue of Subcontractor hourly rates which are stipulated in Table 15 of the Report; second, to briefly address the article which we discovered on York Region's website posted on June 30, 2011 entitled "Damning Vaughan City Hall Audit Report States Costs Could Soar" (the "Article").

With respect to the allegation that Subcontractor hourly rates in connection with the Project are 35 percent overvalued, we have begun gathering documentation to refute this assertion and the same will be provided to the City shortly.

In the interim, we maintain our position expressed in our letter of June 30, 2011, that the Subcontractor hourly rates charged were arrived at after a lengthy dialogue with the Consultant team and were the subject of a negotiation process. In this respect, we reference the statement in the Report pursuant to which the Report confirms that the "Architect indicated that initial change rates were checked against other internal projects and that the rates used by the subcontractors were comparable."

It is Maystar's position that the Report's suggestion that the "actual wage data paid to Craft labour" should have been the rates compared to, are without merit. There is no indication in the Contract Documents with respect to specific manner or standard in which Subcontractor rates should be arrived at, and it is our position that the method employed, being subcontractor hourly rates being the result of a rigorous negotiation process with the Consultant team, is common industry practice.

With respect to the Article referenced above, Maystar's concerns have been confirmed with respect to the manner in which the results of the Report were expressed in the Article. The misleading and inaccurate results of the Report will, in our view, have the effect of tarnishing Maystar's reputation as a competent cost effective contractor capable of performing work in respect of projects of this magnitude.

Specifically, and to reiterate our position communicated in our June 30th letter, the Article surmises based on the results of the Report, that there are 2.3 million dollars in reductions which could be made to the Project. We believe that there is a negative inference that this apparent reduction could be attributed to Maystar's performance. We confirm once again that, of the 2.3 million dollars in reductions referenced in Table 2 of the Report entitled "Summary of Financial Findings," the breakdown is as follows:

1. \$615,692 is in respect of the Project's Cash Allowance, which is a reserve fund that Maystar fully intends to credit the City provided that the Cash Allowance is not exhausted;
2. \$202, 837 is in respect of Design Assist, pursuant to which the Report concludes that the same should be the responsibility of the Consultant; and,
3. \$437, 282.00 in respect of a reduction of Architectural and Engineering fees for deficient design, to which Maystar is not responsible for.

With respect to the Reduction to the GC Contract of \$1,061,603.43, which is directly related to Maystar, Maystar confirms that much of this proposed credit is a result of differing interpretations of the Contract Documents. Further particulars will be provided at a later date. It should be noted that the items which are or will be the source of these differing interpretations are detailed in our June 30th letter, and, for the purpose of brevity, we have not detailed them in the within letter.

Lastly, we understand that there is a Council meeting scheduled to be held on Wednesday, July 6, 2011 wherein the focus will be the findings of the Report. We confirm that representatives of

Maystar will be at the meeting to monitor closely the accurateness of statements made in connection with the findings of the Report. In this respect, we would appreciate receiving a copy of the meeting agenda which will be circulated prior to the Council meeting.

We look forward to working with the City of Vaughan and KPMB to resolve the proposed reductions to the GC Contract identified in the Construction Audit report.

Yours truly,



Joe Maio

President

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Yours truly,

Joe Maio
President



subject: Operating Budget Quarterly Reporting December 2010 - Insurance Premium Increases

C	3
Item #	2
Report No.	15
FINANCE + ADMIN. COMMITTEE	
July 6, 2011	

-----Original Message-----

From: Gino Ruffolo [mailto:ruffolog@rogers.com]

Sent: Monday, July 04, 2011 4:28 PM

To: Deb Schulte

Cc: Maurizio Bevilacqua ; Gino Rosati; Michael DiBiase; Marilyn Iafrate; Tony Carella; Rosanna DeFrancesca; Sandra Racco; Alan Shefman

Subject: Operating Budget Quarterly Reporting December 2010 - Insurance Premium Increases

Dear Regional Councillor Schulte,

I come to you as one of my Regional representatives which I have also had the pleasure of getting to know over the last number of years. I followed your campaign during the election and was impressed with your position on many issues of accountability and transparency. I ask that you look into this item and do whatever you can in the best interests of the residents of Vaughan.

These are my comments and questions to the item identified.

I have gone over the Quarterly Reporting of the City's operating Budgets for December 2010. I see an unfavourable balance of close to \$700,000.00 for insurance costs due to rising premiums for just 1 quarter.

I again bring to your attention the fact that you are in protracted costly litigation with a claim of over \$150M, \$140M of which is taxpayer's direct liability. I am not an insurance expert, but it looks like this insurance company, who I guess is the same one who has "carriage" of the \$150M lawsuit, appears to be increasing insurance premiums on the City.

I am not sure how the City Councillors thought there was some sort of benefit to their residents to lose "carriage" of this litigation to an insurance company. 95% of the liability falls on the City's taxpayer's shoulders and this insurance company is only responsible for a measly 5% and is just happening to be increasing their premiums at this time.

Everything is always on the back of the taxpayers and our elected officials appear to not be taking note. Whatever cost savings to the City by not having to hire lawyers to defend this case are completely out of the window with a \$700,000 insurance premium increase. How did you not do that simple mathematical equation?

And of course there is the absolute illogical position that a 5% stake should make decisions for 95% of the liability bearer. That just makes no sense. Enough said on that point.

My questions are as follows:

1. Is the City's insurance provider for the 4th quarter of 2010 that is responsible for the insurance premium of \$700,000.00 the same insurance provider that has "carriage" of the \$150M lawsuit?

2. What steps has the City taken to canvass the market for more affordable and competitive insurance companies that will save us tax dollars and do a better job of defending the rights of our citizens in court. So far this insurance company who has "carriage" of this lawsuit has not done a very good job.

I look forward to hearing from you.

Gino Ruffolo

Vaughan Resident



memorandum

July 5, 2011

C	4
Item #	5
Report No.	15
FINANCE + ADMINISTRATION COMMITTEE JULY 6, 2011	

To: Honourable Maurizio Bevilacqua, Mayor
Members of Council

From: Barbara Cribbett, Commissioner of Finance/City Treasurer

RE: **FINANCE AND ADMINISTRATION COMMITTEE – JULY 6, 2011**
Item No. 5 - UPLANDS GOLF AND SKI CENTRE - CHAIR LIFT
REPAIR / REPLACEMENT

Please find Attachment #5 and #6 to item No. 5, Uplands Golf and Ski Centre, Chair Lift Repair / Replacement report that were omitted during the printing of the Finance and Administration agenda July 6th.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Barbara Cribbett', written over a horizontal line.

Barbara Cribbett, CMA
Commissioner of Finance/City Treasurer

Attachments

c: Clayton Harris, City Manager
Senior Management Team

Uplands Golf and Ski Centre Pro Forma
Option 1

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
January 1 (uncommitted)	\$564,225	\$426,490	\$274,884	\$55,570	\$15,765	(\$1,013,966)	(\$921,440)	(\$806,101)	(\$687,879)	(\$566,701)	(\$442,493)
Proposed Expenditures											
Annual General Repairs	\$103,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000
Chair Lift Audit / Repair	\$200,000										
Chair Lift Replacement					\$1,100,000						
Magic Carpet Lift		\$250,000									
Golf Course Watering System			\$315,000								
Ski Watering System				\$135,000							
Total Proposed Expenditure	\$303,000	\$315,000	\$380,000	\$200,000	\$1,165,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000
Estimated Revenues	\$160,000	\$160,000	\$160,000	\$160,000	\$160,000	\$180,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000
	\$421,225	\$271,490	\$54,884	\$15,570	(\$989,235)	(\$898,966)	(\$786,440)	(\$671,101)	(\$552,879)	(\$431,701)	(\$307,493)
Interest Revenue	\$5,265	\$3,394	\$686	\$195							
Interest(Expense)				(\$24,731)	(\$22,474)	(\$19,661)	(\$16,778)	(\$13,822)	(\$10,793)	(\$7,687)	
Estimated Ending Balance December 31	\$426,490	\$274,884	\$55,570	\$15,765	(\$1,013,966)	(\$921,440)	(\$806,101)	(\$687,879)	(\$566,701)	(\$442,493)	(\$315,181)

Uplands Golf and Ski Centre Pro Forma
Option 2

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
January 1 (uncommitted)	\$564,225	(\$490,744)	(\$523,513)	(\$721,101)	(\$600,753)	(\$733,647)	(\$613,613)	(\$490,579)	(\$364,468)	(\$235,205)	(\$102,710)
Proposed Expenditures											
Annual General Repairs	\$103,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000
Chair Lift Replacement \$1,100,000											
Magic Carpet Lift					\$250,000						
Golf Course Watering System			\$315,000								
Ski Watering System		\$135,000									
Total Proposed Expenditure	\$1,203,000	\$200,000	\$380,000	\$65,000	\$315,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000
Estimated Revenues											
	\$160,000	\$180,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000
	(\$478,775)	(\$510,744)	(\$703,513)	(\$586,101)	(\$715,753)	(\$598,647)	(\$478,613)	(\$355,579)	(\$229,468)	(\$100,205)	\$32,290
Interest Revenue											\$404
Interest(Expense)	(\$11,969)	(\$12,769)	(\$17,588)	(\$14,653)	(\$17,894)	(\$14,966)	(\$11,965)	(\$8,889)	(\$5,737)	(\$2,505)	
Estimated Ending Balance December 31	(\$490,744)	(\$523,513)	(\$721,101)	(\$600,753)	(\$733,647)	(\$613,613)	(\$490,579)	(\$364,468)	(\$235,205)	(\$102,710)	\$32,694

Subject: Finance Committee Item 8 - Corporate Review Proposal

C	5
Item #	8
Report No.	15
FINANCE + ADMINISTRATION COMMITTEE	
July 6, 2011	

From: antony.niro@timeforchangevaughan.ca [mailto:antony.niro@timeforchangevaughan.ca]

Sent: Tuesday, July 05, 2011 4:13 PM

To: Iafate, Marilyn; Bevilacqua, Maurizio; DeFrancesca, Rosanna; Di Biase, Michael; Shefman, Alan; Racco, Sandra; Carella, Tony; Rosati, Gino; Schulte, Deb

Cc: Caroline Grech; npinto@rogers.com; rlorello@rogers.com; Clerks@vaughan.ca

Subject: Finance Committee Item 8 - Corporate Review Proposal

Dear Mayor and Members of Council,

I was very excited to read about Vaughan going through a Corporate Review. This is an outward expression of the need to identify change on the staff corporate level. A cultural shift needs to take place internally at the City to reflect the results of this past election and hopefully this review will acknowledge that need and bring forward those recommendations.

On the corporate hierarchy ladder, residents and businesses of Vaughan are squared in on the box just above the Mayor. That is a right and a privilege we enjoy. Our directions, needs and desires come down our chain of command to our Mayor and to the balance of the members of council once every 4 years. I believe it was very clear this past October that the Citizens of Vaughan need and desire change. The elected Members of Council hopefully feel that their bosses (us the residents) require tectonic shifts in the management of the City.

Accountability, Transparency and Tax Dollar Management were three relevant key issues of record that elected many new councillors and I believe sent a clear message to returning councillors that it matters to us. Implementing tools such as an Auditor General or Ombudsman will send a good message to staff that change is required and there will be checks and balances to ensure that change will occur. Some may view an Auditor General as a strong arm approach, but I would disagree. It serves two functions. First and foremost, it sends a report back up the chain of command to the citizens of Vaughan that their directions for change are being implemented by Members of Council. Secondly, it is an effective tool down the chain of command that Members of Council are concerned with past practices and tax dollar management and future tax dollar custody will be scrutinized.

The basics of change are very simple. Something different from the past. That's it. Senior Management changes are a key to implementing change. A new Commissioner of Planning and a new Commissioner of Engineering are fresh faces to a City yearning for more. The former Commissioners of those positions should be commended for their hard work and dedication to the City over their years. Change in their positions is not a reflection of their poor standards or efforts to our community. It is likely the very opposite. They have served our community well for the times they served.

I hope the corporate review will acknowledge the cultural shift that the residents spoke of this past October. It was not a subtle shift of change, it was a drastic shift. Councillors should feel empowered to implement those drastic changes. Every senior and junior management position should be looked at. Those that occupy those positions need to meet the test of cultural shifts for change on key issues of accountability, transparency and proper management of

tax dollars. They must implement the vision of us citizens through our elected officials.

I would suggest every member of Vaughan Council to outline in writing their vision for change in this corporate review and have it submitted to the Consultant. A track record of your opinions is important so there is no ambiguity on the matter. Showing leadership on this subject will go very far.

I look forward to hearing about the new positions created, new members of our City staff and the moving forward principles under the mandate given this past October. We need to SEE change. Good luck.

Antony Niro P.Eng.

Founder

Time For Change Vaughan

www.timeforchangevaughan.ca



Commercial Cost Control, Inc.
Construction Consulting Services
540 Clark Road
Hopewell, PA, 16650
Tel: 814 928 3378
Fax: 866 332 0038
www.CommercialCostControl.com

July 1, 2011

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Re: CCC Response to Maystar Comments to the Construction Audit Report for Vaughan City Hall

Dear Mr. Maio,

Thank you for taking the time to provide a response to our report. As we have recommended to the City of Vaughan, CCC believes that all parties should be given the opportunity to review the data to verify that the values identified in the audit have been correctly understood and calculated. The responses in this letter are being provided to help clarify the basis of the areas identified in Maystar's letter.

Cash Allowance

This item is identified in the report so that it can be included in the Audit forecast. The report does state that this item has been tracked throughout the project. CCC is not suggesting that the credit be given at any sooner date than is appropriate or typical for the project. It is important to understand that integral component to the construction audit is to identify all of the cost components and forecast the final value.

PST/GST

This item was listed in the report as an observation. As with the allowances, this item is in the report as part of the diligence of identifying any values which could affect the final value of the contract. Our copies of CD 89 do not have any values. We checked the scans that you sent me and they also CD 89 was not included. We will be happy to review the information for CD 89 and update our observation accordingly. We do however, recognize and respect that the City has engaged a consultant to evaluate this item and our findings should not supersede their effort.

I. Unallowable Subcontractor Markup on 2nd Tier Subs

This item was briefly discussed with Mr. Garrett in a meeting on June 1, 2011. The extent of the conversation was that Mr. Garrett believed there may be a reason to allow some of the 2nd tier subcontractor OHP. Mr. Garrett was going to do some further investigation to determine a scenario where this charge would be allowable. There was no further indication of analysis or action to this item.

Appendix B of the report lists each CO that was found to have the multi-tier sub OHP. CCC will consider any documentation that Maystar could provide to validate or explain the multi-tier OHP that is listed in the COs.

II. Maystar applied OHP on Subcontractor quotes that Included OHP

Many of these items are the result of what is shown in the back up documentation of the subcontractor quote. These quotes may indicate that their estimated price is the complete total (inclusive of OHP) or the total value that their contract would be modified by. CCC respects the subcontractors presents their estimates in different manners. CCC would welcome any documentation that demonstrates that the values in the quotes do not include OHP. The easiest form of documentation would be a copy of the subcontract change orders for each of these items which would show that the OHP was awarded in addition to the quote. There may have been further clarification to this item during the audit visit if Maystar would have allowed CCC to review the subcontract records, which were requested on multiple occasions. .

III. Unallowable Overhead Cost

CCC agrees that Maystar should be allowed a reasonable amount of time to review the documents.

IV. Mistakes on Change Orders

CCC agrees that Maystar should be allowed a reasonable amount of time to review the documents.

V. OHP Calculations by Maystar

The contract section 6.1.3 states the OHP to be 15% and subcontractor OHP and 10% for contractor OHP. CCC is not aware of any precedence that allows this value to be separated if it is not explicitly stated. CCC will consider any documentation provided by Maystar that supports their position.

Overvalue of Change Orders

The report's position is that there are numerous factors that cause the cost of work performed under change orders to be higher than the cost of work performed under the base scope.. CCC recognizes that it typically requires a greater number of hours to perform change work than base scope work due to items such as rework and inefficiencies due to cumulative changes. This is the premise behind the conclusion that the COs average 30% high but are reasonable and appropriate for a project of this size, etc.

This observation is directed more at how the project was executed by the whole team and was not intended to be directed specifically at Maystar.

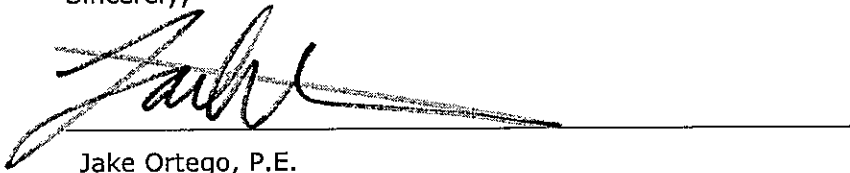
Labour Rates

Appendix G shows how the percentage was calculated using hours from the change orders. Appendix H shows the published data for union based wages and workman's comp for the Toronto area. CCC contacted several Toronto unions including the electrical union, sheet metal union and carpenters union to verify that these total rates included all taxes, insurances, fringes, etc. The rates that were found also correspond to some of the deductive rates found on subcontract changes to Accel and Pipe All. See CO 33 and 87 as examples.

CCC acknowledges that the rates in the changes were reviewed by the architect. However, the information that the architect has provided in support of the review suggests that the higher rates may be inclusive of OHP and small tools. CCC will consider any data provided by the architect or Maystar that may explain or validate the hourly rates used. The easiest form of data would be to have some of the subcontractors provide a sampling of certified payroll to show the actual rates paid along with all burdens and fringes.

CCC welcomes all discussion regarding the report. Should you have any questions, or require additional information, please contact me at (814) 928-3378.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jake', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Jake Ortego, P.E.

Vice President of Construction Consulting
Commercial Cost Control, Inc.

Attached:

Maystar Letter Dated June 30, 2011

Re: Maystar Responses to Construction Audit Report for Vaughan

MAYSTAR

GENERAL CONTRACTORS INC.

71 Buttermilk Avenue
Concord, Ontario
L4K 3X2

Tel: (905) 738-8640
Fax: (905) 738-6281



June 30, 2011

Clayton D. Harris
City Manager
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
L6A 1T1

Dear Sir,

Re: Maystar Response to Construction Audit Report for Vaughan

We are writing in response to the Construction Audit Report for Vaughan (the "Report"), which we received on June 28, 2011. As a preliminary note, we confirm that we have not been given the opportunity to provide a detailed review of the Report in its entirety, given that it is our understanding that the Report will be presented to Council on July 6th, 2011. We are prepared to provide a more detailed review at a later date.

We begin by addressing the \$1,061,603.03 identified in Table 2 entitled "Summary of Financial Findings" under the column labelled "Reduction to the GC Contract," and specifically under item 1 "Change Order Errors" wherein the Report recommends that Maystar should be required to provide to The City of Vaughan (the "City") a credit. The Report breaks down the basis for this credit under a number of categories which necessitated this finding.

We take issue with this position, as we advise below. Before proceeding with our evaluation of the components of the proposed credit, enumerated above, however, Maystar would like to clarify certain information included in Table 2. Specifically in section 4 of Table 2 the Report includes a cash allowance of \$615,692.00 suggesting that the auditor discovered this money. Typically, in the construction process, the unused amount of the cash allowance is not credited to an Owner until the conclusion of the Project. Maystar has always been aware of this cash allowance reserve, and, provided that it is not exhausted, Maystar completely understands that it is to be credited to the City.

Next, under section 5 of Table 2, the Report suggests that there is \$200,000.00 to \$300,000.00 in respect of a tax credit which is due to the City. We confirm that on March 31, 2011 Maystar submitted PST/GST

to HST transition credit in the amount of \$303,589.75 to KBMB under Change Directive 089, in connection with various tax credits.

We will now briefly address the components of the reduction of the GC Contract as identified by the Report that Maystar has concerns about.

I. Unallowable Subcontractor Markup on Second Tier Subcontractors

First with respect to this category, it should be noted that Maystar has already made arrangements to correct markup charged by second tier Subcontractors. That is, Maystar has ensured on a going forward basis that no markup be included by second tier Subcontractors. In addition, Maystar is prepared to credit the City in connection with any overhead costs which were charged in respect of second tier Subcontractors.

However, we note that the Report estimates that the value of this error is \$300,000.00. Maystar takes exception to this attributed value and requires some time to review our records to confirm the same.

II. Maystar applied OHP on Subcontractor quotes that included OHP

Maystar takes exception to this assertion. We note that various Subcontractors provide documentation in various ways. Specifically, some Subcontractors include overhead and profit in their quotation. others do not, while others include overhead and profit as a line item (ie. it is separated and delineated in the quote). It is incorrect to assume that all Subcontractors in fact include overhead and profit in some uniform or aggregate fashion. Maystar does not, however, suggest that an error could not have been made without having the opportunity to review the change Orders identified in Appendix C. Maystar requires time to review and examine the documentation in connection with any errors in this respect.

III. Unallowable Overhead Costs

Maystar's position, as with its position regarding second tier Subcontractor mark up, identified above, is that it concedes that Subcontractors should not include costs for items not allowed under the contract. Maystar confirms that any amounts charged in connection with the same will be credited to the City. Maystar in any event reserves the right to review the values included in the Report, but requires time to review the same.

IV. Mistakes on Change Orders

It should also be noted that we are not in a position to comment on the category labelled "Mistakes on Change Orders", in the Report given the time constraints. There are several change orders identified in Appendix E which Maystar requires time to review.

V. OHP Calculations by Maystar

We note that the report has taken exception to Maystar's manner of calculating overhead and profit for Subcontractor work and overhead and profit for its own work. Specifically, the report has taken exception to the manner in which Maystar has calculated 15% and 10% respectively in connection with the same.

Maystar has always calculated its overhead and profit in this manner. Moreover, it is Maystar's position that this is standard industry practice.

If the intention was to calculate the 15% value in a specific manner it ought to have clearly stated the same in the relevant Contract Documents, which it did not.

In addition to the foregoing, we note that the report suggests that the changes appear to be overvalued by 30%. The overvalue of change orders is a result of what the Report believes is attributed to rework, inefficiencies to do cumulative changes and premium for changes. We take exception to this assertion. The charge for work was entirely commercially reasonable in the circumstances. In addition, by the Report's own admission, "the actual execution method, the total forecast of costs for the audit appears to be reasonable and appropriate for a Project of this size scope and requirements". Accordingly, we believe that the rates charged were entirely commercially reasonable.

In addition, the Report asserts that the labor rates charged are 35% higher than rates stipulated in Statistics Canada and Work place Safety and Insurance Board ("WSIB") rates, which rates the Report asserts are verified with several of the local unions.

With respect, we are unaware of the accuracy or value of these rates. We are aware, however, that labor rates charged were confirmed with the Consultant's team and the rates were subject to a negotiation process. These rates in our view are entirely reasonable and nothing would suggest that they are "overvalued". Nothing in the tender documents suggest some base value that Maystar should consider in calculating these labor rates. We do not understand how the Report reached this conclusion in these circumstances, but simply state that we reject that the labor rates were 35% higher as stipulated in the Report.

We trust we will have an opportunity to adequately respond to the Report and cooperate with the City to address the issues raised in the Report. For now, we are of the view that the value of the proposed credit reduction to the GC contract which the Report recommends requires further examination.

Yours truly,



Joe Maio
President