

THE CORPORATION OF THE TOWNSHIP OF PRINCE

BY-LAW 95-11

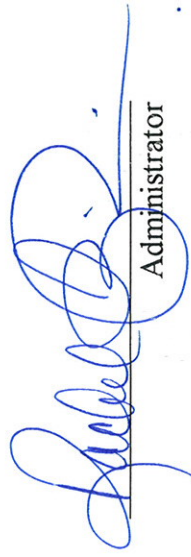
A by-law to authorize execution of an Agreement between the municipality and Boman Construction Sault Ste. Marie Limited

THE COUNCIL of the Corporation of the Township of Prince HEREBY ENACTS AS FOLLOWS:

1. That the Reeve and Administrator be and they are hereby authorized to execute and affix the Corporate Seal to an Agreement between the municipality and Boman Construction Sault Ste. Marie Limited for expansion to the Community Centre under the infrastructure program, which Agreement is attached hereto as Schedule "A".
2. Schedule "A" hereto forms part of this by-law.

READ THREE TIMES and PASSED in open Council this 15th day of August, 1995.

  
Reeve

  
Administrator



THE DOCUMENTS BOUND BY THIS SEAL FORM THE CONTRACT DATED JULY 20TH, 1995 BETWEEN THE CORPORATION OF THE TOWNSHIP OF PRINCE AND BOMAN CONSTRUCTION SAULT STE. MARIE LTD. FOR THE ADDITION TO THE TOWNSHIP OF PRINCE MUNICIPAL BUILDING, 3042 SECOND LINE WEST, SAULT STE. MARIE, ONTARIO

SIGNED David Edgar Owner

SIGNED [Signature] Owner

SIGNED [Signature] Contractor

# Stipulated price contract

Project:

Project No. 95-12  
ADDITION TO TOWNSHIP OF PRINCE MUNICIPAL BUILDING  
3042 SECOND LINE W.,  
SAULT STE. MARIE, ONTARIO

For the Corporation Of The Township Of Prince



Canadian construction documents committee



**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

For use when a stipulated price is the basis of payment.

This Agreement made on the 20th day of July  
in the year 1995

by and between  
The Corporation of the Township of Prince

hereinafter called the "Owner"  
and  
Boman Construction Sault Ste. Marie Ltd.

hereinafter called the "Contractor"  
The *Owner* and the *Contractor* agree as follows:

**ARTICLE A-1 THE WORK**

The *Contractor* shall:

- 1.1 perform the *Work* required by the *Contract Documents* for the Addition to the Township  
of Prince Municipal Building  
*insert above the title of the Work*  
located at 3042 Second Line W. Sault Ste. Marie, Ontario  
*insert above the Place of the Work*  
which have been signed by the parties, and for which Chris Tossell, Architect

*insert above the name of the Consultant*  
is acting as and is hereinafter called the "*Consultant*" and

- 1.2 do and fulfill everything indicated by this Agreement, and
- 1.3 commence the *Work* by the 21st day of July in the year 1995  
and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*, by the 18th day of August in the year 1995

## ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 The *Contract* supersedes all prior negotiations, representations, or agreements, either written or oral, relating in any manner to the *Work*, including the bidding documents that are not expressly listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS.
- 2.2 The *Contract* may be amended only as provided in the *Contract Documents*.

## ARTICLE A-3 CONTRACT DOCUMENTS

- 3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement - THE WORK:
  - Agreement Between Owner and Contractor
  - Definitions
  - The General Conditions of the Stipulated Price Contract
  - \*  
Refer to Drawings, Specifications and Addenda Nos. 1 and 2 contained herein

\* (Insert here, attaching additional pages if required, a list identifying all other *Contract Documents* e.g. *Supplementary Conditions*, *Specifications*, giving a list of contents with section numbers and titles, number of pages, and date; *Drawings*, giving drawing number, title, date, revision date or mark; *Addenda*, giving title, number, date)

ARTICLE A-4 CONTRACT PRICE

4.1 The Contract Price, which excludes Value Added Taxes, is:

Eighty Thousand, One Hundred Thirty Nine--  
dollars

and zero cents. \$ 80,139.00

4.2 Value Added Taxes (of 7 %) payable by the Owner to the Contractor are:

Five Thousand, Six Hundred Nine---  
dollars

and seventy three-- cents. \$ 5,609.73

4.3 Total amount payable by the Owner to the Contractor for the construction of the Work is:

Eighty Five Thousand, Seven Hundred Forty Eight--  
dollars

and seventy three cents. \$ 85,748.73

4.4 All amounts are in Canadian funds.

4.5 These amounts shall be subject to adjustments as provided in the Contract Documents.

## ARTICLE A-5 PAYMENT

- 5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of ten percent ( 10 %), the *Owner* shall in Canadian funds:
1. make progress payments to the *Contractor* on account of the *Contract Price* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payment, and
  2. upon *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
  3. upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.
- 5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Contractor* in accordance with the provisions of GC 11.1 - INSURANCE.
- 5.3 Interest
1. Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at two percent ( 2 %) per annum above the bank rate on such unpaid amounts shall also become due and payable until payment. Such interest shall be compounded on a monthly basis. The bank rate shall be the rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the chartered banks.
  2. Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the amount of any claim settled pursuant to Part 8 of the General Conditions - DISPUTE RESOLUTION from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.



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

6.1 Notices in writing between the parties or between them and the *Consultant* shall be considered to have been received by the addressee on the date of delivery if delivered to the individual, or to a member of the firm, or to an officer of the corporation for whom they are intended by hand or by registered post; or if sent by regular post, to have been delivered within 5 *Working Days* of the date of mailing when addressed as follows:

The *Owner* at 3042 Second Line W.  
*street and number and postal box number if applicable*  
Sault Ste. Marie, ON P6A 6K4  
*post office or district, province, postal code*

The *Contractor* at 62 Centennial Avenue  
*street and number and postal box number if applicable*  
Sault Ste. Marie, ON P6A 5B3  
*post office or district, province, postal code*

The *Consultant* at 524 Albert St. E.  
*street and number and postal box number if applicable*  
Sault Ste. Marie, ON P6A 2K4  
*post office or district, province, postal code*

#### ARTICLE A-7 LANGUAGE OF THE CONTRACT

7.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/French\* language shall prevail.

\* *Complete this statement by striking out inapplicable term.*

7.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

#### ARTICLE A-8 SUCCESSION

8.1 The *Contract Documents* are to be read into and form part of this Agreement and the whole shall constitute the *Contract* between the parties, and subject to the law and the provisions of the *Contract Documents* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement and by the hands of their duly authorized representatives.

**SIGNED AND DELIVERED**

in the presence of:

**OWNER**

The Corporation of the Township of Prince

name of owner

signature *David Egan*

WITNESS

name and title of person signing  
*DAVID EGAN REEVE*

signature *David Egan*

signature

name and title of person signing  
*Rachel Tydzinski, Administrator*

name and title of person signing

**CONTRACTOR**

name of contractor  
*Boman Construction Sault Ste. Marie Ltd.*

signature *[Handwritten Signature]*

WITNESS

name and title of person signing  
*Kerry Brown, President*

signature

signature

name and title of person signing

name and title of person signing

N.B. Where legal jurisdiction, local practice, or Owner or Contractor requirement calls for:  
(a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or  
(b) the affixing of a corporate seal, this Agreement should be properly sealed.

## DEFINITIONS

The following Definitions shall apply to all *Contract Documents*.

- 1. Contract**  
The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities, and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.
- 2. Contract Documents**  
The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments agreed upon between the parties.
- 3. Owner**  
The *Owner* is the person or entity identified as such in the Agreement. The term *Owner* means the *Owner* or the *Owner's* authorized agent or representative as designated to the *Contractor* in writing, but does not include the *Consultant*.
- 4. Contractor**  
The *Contractor* is the person or entity identified as such in the Agreement. The term *Contractor* means the *Contractor* or the *Contractor's* authorized representative as designated to the *Owner* in writing.
- 5. Subcontractor**  
A *Subcontractor* is a person or entity having a direct contract with the *Contractor* to perform a part or parts of the *Work*, or to supply *Products* worked to a special design for the *Work*.
- 6. Supplier**  
A *Supplier* is a person or entity having a direct contract with the *Contractor* to supply *Products* not worked to a special design for the *Work*.
- 7. Consultant**  
The *Consultant* is the person or entity identified as such in the Agreement. The *Consultant* is the Architect, the Engineer, or entity licensed to practice in the province or territory of the *Place of the Work*. The term *Consultant* means the *Consultant* or the *Consultant's* authorized representative.
- 8. Project**  
The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.
- 9. Work**  
The *Work* means the total construction and related services required by the *Contract Documents*.
- 10. Place of the Work**  
The *Place of the Work* is the designated site or location of the *Work* identified in Article A-1 of the Agreement - THE WORK.
- 11. Product**  
*Product or Products* means material, machinery, equipment, and fixtures forming the *Work*, but does not include machinery and equipment used to prepare, fabricate, convey, or erect the *Work*, which are referred to as construction machinery and equipment.
- 12. Provide**  
*Provide* means to supply and install.

13. **Contract Price**  
The *Contract Price* is the amount stipulated in Article A-4 of the Agreement - CONTRACT PRICE.
14. **Contract Time**  
The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement - THE WORK from commencement of the *Work* to *Substantial Performance of the Work*.
15. **Working Day**  
*Working Day* means a day other than a Saturday, Sunday, or a holiday which is observed by the construction industry in the area of the *Place of the Work*.
16. **Supplemental Instruction**  
A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of specifications, drawings, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents* as required for the performance of the *Work*.
17. **Change Order**  
A *Change Order* is a written amendment to the *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Contractor* stating their agreement upon:
  - a change in the *Work*;
  - the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
  - the extent of the adjustment in the *Contract Time*, if any.
18. **Change Directive**  
A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing a change in the *Work* within the general scope of the *Contract Documents*.
19. **Substantial Performance of the Work**  
*Substantial Performance of the Work* is as defined in the Ijen legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, *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*.
20. **Value Added Taxes**  
*Value Added Taxes* means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax and any similar tax, the payment or collection of which is by the legislation imposing such tax an obligation of the *Contractor*.

- .2 drawings of larger scale shall govern over those of smaller scale of the same date.
- .3 dimensions shown on drawings shall govern over dimensions scaled from drawings.
- .4 later dated documents shall govern over earlier documents of the same type.

1.1.10 The *Owner* shall provide the *Contractor*, without charge, sufficient copies of the *Contract Documents* to perform the *Work*.

1.1.11 Specifications, drawings, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property, with the exception of the signed *Contract* sets, which shall belong to each party to the *Contract*. All specifications, drawings, and models furnished by the *Consultant* are to be used only with respect to the *Work* and are not to be used on other work. These specifications, drawings, and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.

1.1.12 Models furnished by the *Contractor* at the *Owner's* expense are the property of the *Owner*.

#### **GC 1.2 LAW OF THE CONTRACT**

1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

#### **GC 1.3 RIGHTS AND REMEDIES**

1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

1.3.2 No action or failure to act by the *Owner*, *Consultant*, or *Contractor* shall constitute a waiver of any right or duty afforded any of them under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **GC 1.4 ASSIGNMENT**

1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

### **PART 2 ADMINISTRATION OF THE CONTRACT**

#### **GC 2.1 AUTHORITY OF THE CONSULTANT**

2.1.1 The *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.1.2.

2.1.2 The duties, responsibilities, and limitations of authority of the *Consultant* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner*, the *Contractor*, and the *Consultant*.

2.1.3 If the *Consultant's* employment is terminated, the *Owner* shall immediately appoint or reappoint a *Consultant* against whom the *Contractor* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Consultant*.

## GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products*, and services necessary for the performance of the *Work* by the *Contractor* in accordance with these documents. It is not intended, however, that the *Contractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
  - 1 the *Owner* and a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work*.
  - 2 the *Consultant* and the *Contractor*, a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 The specifications are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, and the services necessary for the performance of the *Work*.
- 1.1.7 The drawings are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location, and dimensions of the *Work*, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.8 Neither the organization of the specifications into divisions, sections, and parts nor the arrangement of drawings shall control the *Contractor* in dividing the work among *Subcontractors* and *Suppliers* or in establishing the extent of the work to be performed by a trade.
  - 1.1.9 If there is a conflict within *Contract Documents*:
    - 1 the order of priority of documents, from highest to lowest, shall be
      - the Agreement between the *Owner* and the *Contractor*,
      - the Definitions,
      - Supplementary Conditions,
      - the General Conditions,
      - Division 1 of the specifications,
      - Divisions 2 through 16 of the specifications,
      - material and finishing schedules,
      - drawings.

## GC 2.2 ROLE OF THE CONSULTANT

- 2.2.1 The *Consultant* will provide administration of the *Contract* as described in the *Contract Documents* during construction until issuance of the final certificate for payment, and subject to GC 2.1 - AUTHORITY OF THE CONSULTANT and with the *Owner's* concurrence, from time to time until the completion of any correction of defects as provided in paragraph 12.3.3 of GC 12.3 - WARRANTY.
- 2.2.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
- 2.2.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in writing to the *Contractor*.
- 2.2.4 Based on the *Consultant's* observations and evaluation of the *Contractor's* applications for payment, the *Consultant* will determine the amounts owing to the *Contractor* under the *Contract* and will issue certificates for payment as provided in Article A-5 of the Agreement - PAYMENT, GC 5.3 - PROGRESS PAYMENT, and GC 5.7 - FINAL PAYMENT.
- 2.2.5 The *Consultant* will not be responsible for and will not have control, charge, or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations, or general construction practice. The *Consultant* will not be responsible for the *Contractor's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of, or be responsible for the acts or omissions of the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.
- 2.2.6 The *Consultant* will be, in the first instance, the interpreter of the requirements of the *Contract Documents* and shall make findings as to the performance thereunder by both parties to the *Contract*, except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER. Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents*. When making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Contractor*.
- 2.2.7 Claims, disputes, and other matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents*, except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, shall be referred initially to the *Consultant* by notice in writing given to the *Consultant* and to the other party for the *Consultant's* interpretation and finding which will be given by notice in writing to the parties within a reasonable time.
- 2.2.8 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed, or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*.
- 2.2.9 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Contractor*.
- 2.2.10 The *Consultant* will review and take appropriate action upon such *Contractor's* submittals as shop drawings, *Product* data, and samples, as provided in the *Contract Documents*.

- 2.2.11 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 2.2.12 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK.
- 2.2.13 All certificates issued by the *Consultant* shall be to the best of the *Consultant's* knowledge, information, and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.2.14 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Contractor* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

#### GC 2.3 REVIEW AND INSPECTION OF THE WORK

- 2.3.1 The *Owner* and the *Consultant* shall have access to the *Work* at all times. The *Contractor* shall provide sufficient, safe, and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.
- 2.3.2 If work is designated for tests, inspections, or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or the laws or ordinances of the *Place of the Work*, the *Contractor* shall give the *Consultant* reasonable notice of when the work will be ready for review and inspection. The *Contractor* shall arrange for and shall give the *Consultant* reasonable notice of the date and time of inspections by other authorities.
- 2.3.3 The *Contractor* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.3.4 If the *Contractor* covers, or permits to be covered, work that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or completed, the *Contractor* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Contractor's* expense.
- 2.3.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Contractor* shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.

#### GC 2.4 DEFECTIVE WORK

- 2.4.1 The *Contractor* shall promptly remove from the *Place of the Work* and replace or re-execute defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products, or damage through carelessness or other act or omission of the *Contractor*.
- 2.4.2 The *Contractor* shall make good promptly other contractor's work destroyed or damaged by such removals or replacements at the *Contractor's* expense.
- 2.4.3 If in the opinion of the *Consultant* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Contractor* the difference in value between the work as performed and that called for by the *Contract*



*Documents*. If the *Owner* and the *Contractor* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a determination.

### **PART 3 EXECUTION OF THE WORK**

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

- 3.1.1 The *Contractor* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Contractor* shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract*.

#### **GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

- 3.2.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform work with own forces.
- 3.2.2 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:
- .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Work* of the *Contract*;
  - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
  - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
  - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 - INSURANCE and co-ordinate such insurance with the insurance coverage of the *Contractor* as it affects the *Work*; and
  - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 3.2.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Contractor* shall:
- .1 afford the *Owner* and other contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute their work;
  - .2 co-ordinate and schedule the *Work* with the work of other contractors and *Owner's* own forces and connect as specified or shown in the *Contract Documents*;
  - .3 participate with other contractors and the *Owner* in reviewing their construction schedules when directed to do so; and
  - .4 where part of the *Work* is affected by or depends upon for its proper execution the work of other contractors or *Owner's* own forces, promptly report to the *Consultant* in writing and prior to proceeding with that part of the *Work*, any apparent deficiencies in such work. Failure by the *Contractor* to so

report shall invalidate any claims against the *Owner* by reason of the deficiencies in the work of other contractors or *Owner's* own forces except those deficiencies not then reasonably discoverable.

3.2.4 Where a change in the *Work* is required as a result of the co-ordination and connection of the work of other contractors or *Owner's* own forces with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.

3.2.5 Claims, disputes, and other matters in question between the *Contractor* and other contractors shall be dealt with as provided in Part 8 of the General Conditions - DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Contractor* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owner* contains a similar agreement to arbitrate.

### **GC 3.3 TEMPORARY SUPPORTS, STRUCTURES, AND FACILITIES**

3.3.1 The *Contractor* shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary supports, structures, and facilities and the design and execution of construction methods required in their use.

3.3.2 The *Contractor* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the *Contract Documents* and in all cases where such temporary supports, structures, and facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.

3.3.3 Notwithstanding the provisions of GC 3.1 - CONTROL OF THE WORK, paragraph 3.3.1, and paragraph 3.3.2 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for temporary supports, structures, and facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the *Work* and the *Contractor* shall not be held responsible for that part of the design or the specified method of construction. The *Contractor* shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

### **GC 3.4 DOCUMENT REVIEW**

3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Contractor* may discover. Such review by the *Contractor* shall be to the best of the *Contractor's* knowledge, information, and belief and in making such review the *Contractor* does not assume any responsibility to the *Owner* or the *Consultant* for the accuracy of the review. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* did not discover. If the *Contractor* does discover any error, inconsistency, or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

### **GC 3.5 CONSTRUCTION SCHEDULE**

3.5.1 The *Contractor* shall:

1. prepare and submit to the *Owner* and the *Consultant* prior to the first application for payment, a construction schedule that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time*.

2. monitor the progress of the *Work* relative to the construction schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
3. advise the *Consultant* of any revisions required to the schedule as the result of extensions of the *Contract Time* as provided in Part 6 of the General Conditions - CHANGES IN THE WORK.

### **GC 3.6 CONSTRUCTION SAFETY**

3.6.1 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*.

### **GC 3.7 SUPERVISOR**

- 3.7.1 The *Contractor* shall employ a competent supervisor and necessary assistants who shall be in attendance at the *Place of the Work* while work is being performed. The supervisor shall not be changed except for valid reason.
- 3.7.2 The supervisor shall represent the *Contractor* at the *Place of the Work* and notices and instructions given to the supervisor by the *Consultant* shall be held to have been received by the *Contractor*.

### **GC 3.8 SUBCONTRACTORS AND SUPPLIERS**

- 3.8.1 The *Contractor* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
  1. enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
  2. incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
  3. be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers*, and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Contractor*.
- 3.8.2 The *Contractor* shall indicate in writing, at the request of the *Owner*, those *Subcontractors* or *Suppliers* whose bids have been received by the *Contractor* which the *Contractor* would be prepared to accept for the performance of a portion of the *Work*. Should the *Owner* not object before signing the *Contract*, the *Contractor* shall employ those *Subcontractors* or *Suppliers* so identified by the *Contractor* in writing for the performance of that portion of the *Work* to which their bid applies.
- 3.8.3 The *Owner* may, for reasonable cause, at any time before the *Owner* has signed the *Contract*, object to the use of a proposed *Subcontractor* or *Supplier* and require the *Contractor* to employ one of the other subcontract bidders.
- 3.8.4 If the *Owner* requires the *Contractor* to change a proposed *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences occasioned by such required change.
- 3.8.5 The *Contractor* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to whom the *Contractor* may reasonably object.

3.8.6 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified for payment.

### **GC 3.9 LABOUR AND PRODUCTS**

3.9.1 The *Contractor* shall provide and pay for labour, *Products*, tools, construction machinery and equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.

3.9.2 *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.

3.9.3 The *Contractor* shall maintain good order and discipline among the *Contractor's* employees engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the tasks assigned.

### **GC 3.10 DOCUMENTS AT THE SITE**

3.10.1 The *Contractor* shall keep one copy of current *Contract Documents*, submittals, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and the *Consultant*.

### **GC 3.11 SHOP DRAWINGS**

3.11.1 Shop drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product*, and other data which the *Contractor* provides to illustrate details of a portion of the *Work*.

3.11.2 The *Contractor* shall provide shop drawings as described in the *Contract Documents* or as the *Consultant* may reasonably request.

3.11.3 The *Contractor* shall review all shop drawings prior to submission to the *Consultant*. The *Contractor* represents by this review that: the *Contractor* has determined and verified all field measurements and field construction conditions, or will do so; *Product* requirements; catalogue numbers; and similar data and that the *Contractor* has checked and co-ordinated each shop drawing with the requirements of the *Work* and of the *Contract Documents*. The *Contractor* shall confirm this review of each shop drawing by stamp, date, and signature of the person responsible. At the time of submission the *Contractor* shall notify the *Consultant* in writing of any deviations in the shop drawings from the requirements of the *Contract Documents*.

3.11.4 The *Contractor* shall submit shop drawings to the *Consultant* to review in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of other contractors. Upon request of the *Contractor* or the *Consultant*, they jointly shall prepare a schedule of the dates for submission and return of shop drawings. Shop drawings which require approval of any legally constituted authority having jurisdiction shall be submitted to such authority by the *Contractor* for approval.

3.11.5 The *Contractor* shall submit shop drawings in the form specified or as the *Consultant* may direct. The *Consultant* will review and return shop drawings in accordance with the schedule agreed upon, or otherwise with reasonable promptness so as to cause no delay. The *Consultant's* review is for conformity to the design concept and for general arrangement only. The *Consultant's* review shall not relieve the *Contractor* of responsibility for errors or omissions in the shop drawings or for meeting all requirements of the *Contract Documents* unless the *Consultant* expressly notes the acceptance of a deviation on the shop drawings.

3.11.6 Upon the *Consultant's* request, the *Contractor* shall revise and resubmit shop drawings which the *Consultant* rejects as inconsistent with the *Contract Documents* unless otherwise directed by the *Consultant*. The

*Contractor* shall notify the *Consultant* in writing of any revisions to the resubmission other than those requested by the *Consultant*.

### **GC 3.12 USE OF THE WORK**

- 3.12.1 The *Contractor* shall confine construction machinery and equipment, storage of *Products*, and operations of employees to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Work* with *Products*.
- 3.12.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

### **GC 3.13 CUTTING AND REMEDIAL WORK**

- 3.13.1 The *Contractor* shall do the cutting and remedial work required to make the several parts of the *Work* come together properly.
- 3.13.2 The *Contractor* shall co-ordinate the *Work* to ensure that this requirement is kept to a minimum.
- 3.13.3 Should the *Owner*, the *Consultant*, other contractors or anyone employed by them 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 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.
- 3.13.4 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

### **GC 3.14 CLEANUP**

- 3.14.1 The *Contractor* shall maintain the *Work* in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.
- 3.14.2 The *Contractor* shall remove waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees, and shall leave the *Work* clean and suitable for occupancy by the *Owner* before attainment of *Substantial Performance of the Work*. The *Contractor* shall remove products, tools, construction machinery, and equipment not required for the performance of the remaining work.
- 3.14.3 Prior to application for the final certificate for payment, the *Contractor* shall remove products, tools, construction machinery and equipment, and waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees.

## **PART 4 ALLOWANCES**

### **GC 4.1 CASH ALLOWANCES**

- 4.1.1 The *Contract Price* includes cash allowances stated in the *Contract Documents*, which allowances shall be expended as the *Owner* directs through the *Consultant*.
- 4.1.2 Cash allowances cover the net cost to the *Contractor* of services, *Products*, construction machinery and equipment, freight, unloading, handling, storage, installation, and other authorized expenses incurred in

performing the work stipulated under the cash allowances but do not include any *Value Added Taxes* payable by the *Owner* to the *Contractor*.

4.1.3 The *Contract Price*, and not the cash allowances, includes the *Contractor's* overhead and profit in connection with such cash allowances.

4.1.4 Where costs under a cash allowance exceed the amount of the allowance, the *Contractor* shall be compensated for any excess incurred and substantiated plus an amount for overhead and profit as set out in the *Contract Documents*.

4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the actual cost and each cash allowance.

4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments.

4.1.7 The *Contractor* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

#### **GC 4.2 CONTINGENCY ALLOWANCE**

4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Contract Documents*.

4.2.2 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.

4.2.3 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.2 and the contingency allowance.

#### **PART 5 PAYMENT**

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

5.1.1 The *Owner* shall, at the request of the *Contractor*, prior to execution of the Agreement, and/or promptly from time to time thereafter, furnish to the *Contractor* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.

5.1.2 The *Owner* shall notify the *Contractor* in writing of any material change in the *Owner's* financial arrangements during the performance of the *Contract*.

##### **GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT**

5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement - PAYMENT may be made monthly as the *Work* progresses.

5.2.2 Applications for payment shall be dated the last day of the agreed monthly payment period and the amount claimed shall be for the value, proportionate to the amount of the *Contract*, of work performed and *Products* delivered to the *Place of the Work* at that date.

5.2.3 The *Contractor* shall submit to the *Consultant*, at least 14 days before the first application for payment, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.

- 5.2.4 The schedule of values shall be made out in such form and supported by such evidence as the *Consultant* may reasonably direct and when accepted by the *Consultant*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.2.5 The *Contractor* shall include a statement based on the schedule of values with each application for payment.
- 5.2.6 Claims for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.

### **GC 5.3 PROGRESS PAYMENT**

- 5.3.1 The *Consultant* will issue to the *Owner*, no later than 10 days after the receipt of an application for payment from the *Contractor* submitted in accordance with GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT, a certificate for payment in the amount applied for or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly notify the *Contractor* in writing giving reasons for the amendment.
- 5.3.2 The *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement - PAYMENT no later than 5 days after the date of a certificate for payment issued by the *Consultant*.

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

- 5.4.1 When the *Contractor* considers that the *Work* is substantially performed, or if permitted by the lien legislation applicable to the *Place of the Work* a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Contractor* shall prepare and submit to the *Consultant* a comprehensive list of items to be completed or corrected and apply for a review by the *Consultant* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*.
- 5.4.2 No later than 10 days after the receipt of the *Contractor's* list and application, the *Consultant* will review the *Work* to verify the validity of the application, and no later than 7 days after completing the review, will notify the *Contractor* whether the *Work* or the designated portion of the *Work* is substantially performed.
- 5.4.3 The *Consultant* shall state the date of *Substantial Performance of the Work* or designated portion of the *Work* in a certificate.
- 5.4.4 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, will establish a reasonable date for finishing the *Work*.

### **GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

- 5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor* shall:
- .1 submit an application for payment of the holdback amount,
  - .2 submit a sworn statement that all accounts for labour, subcontracts, *Products*, construction machinery and equipment, and other indebtedness which may have been incurred by the *Contractor* in the *Substantial Performance of the Work* and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.

5.5.2 After the receipt of an application for payment from the *Contractor* and the sworn statement as provided in paragraph 5.5.1, the *Consultant* will issue a certificate for payment of the holdback amount.

5.5.3 Where the holdback amount has not been placed in a separate holdback account, the *Owner* shall, 10 days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Contractor*.

5.5.4 The holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice, or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.

#### **GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK**

5.6.1 Where legislation permits and where, upon application by the *Contractor*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*.

5.6.2 Notwithstanding the provisions of the preceding paragraph, and notwithstanding the wording of such certificates, the *Contractor* shall ensure that such subcontract work or *Products* is protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

#### **GC 5.7 FINAL PAYMENT**

5.7.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment.

5.7.2 The *Consultant* will, no later than 10 days after the receipt of an application from the *Contractor* for final payment, review the *Work* to verify the validity of the application. The *Consultant* will, no later than 7 days after reviewing the *Work*, notify the *Contractor* that the application is valid or give reasons why it is not valid.

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

5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 - WORKERS' COMPENSATION, and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 days after the issuance of a final certificate for payment, pay the *Contractor* as provided in Article A-5 of the Agreement - PAYMENT.

#### **GC 5.8 WITHHOLDING OF PAYMENT**

5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Contractor*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such remaining work.



#### **GC 5.9 NON-CONFORMING WORK**

- 5.9.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

#### **PART 6 CHANGES IN THE WORK**

##### **GC 6.1 CHANGES**

- 6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make changes in the *Work* consisting of additions, deletions, or other revisions to the *Work* by *Change Order* or *Change Directive*.
- 6.1.2 The *Contractor* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.

##### **GC 6.2 CHANGE ORDER**

- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* shall provide a notice describing the proposed change in the *Work* to the *Contractor*. The *Contractor* shall present, in a form acceptable to the *Consultant*, a method of adjustment or 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 *Work*.
- 6.2.2 When the *Owner* and the *Contractor* agree to the adjustments in the *Contract Price* and *Contract Time* or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*, signed by *Owner* and *Contractor*. The value of the work performed as the result of a *Change Order* shall be included in applications for progress payment.

##### **GC 6.3 CHANGE DIRECTIVE**

- 6.3.1 If the *Owner* requires the *Contractor* to proceed with a change in the *Work* prior to the *Owner* and the *Contractor* agreeing upon the adjustment in *Contract Price* and *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the change in the *Work*. The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of expenditures and savings to perform the work attributable to the change. If a change in the *Work* results in a net increase in the *Contract Price*, an allowance for overhead and profit shall be included.
- 6.3.3 If a change in the *Work* results in a net decrease in the *Contract Price*, the amount of the credit shall be the net cost, without deduction for overhead or profit. When both additions and deletions covering related work or substitutions are involved in a change in the *Work*, the allowance for overhead and profit shall be calculated on the basis of the net increase, if any, with respect to that change in the *Work*.
- 6.3.4 The *Contractor* shall keep and present, in such form as the *Consultant* may require, an itemized accounting of the cost of expenditures and savings referred to in paragraph 6.3.2 together with supporting data. The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of all of the following:
- .1 wages and benefits paid for labour in the direct employ of the *Contractor* under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the *Owner* and *Contractor*;

- 2 salaries, wages, and benefits of the *Contractor's* office personnel engaged in a technical capacity and other personnel at shops or on the road, engaged in expediting the production or transportation of materials or equipment;
  - 3 contributions, assessments, or taxes incurred for such items as unemployment insurance, provincial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the *Contractor* and included in the cost of the work as provided in paragraphs 6.3.4.1 and 6.3.4.2;
  - 4 travel and subsistence expenses of the *Contractor's* personnel described in paragraphs 6.3.4.1 and 6.3.4.2;
  - 5 the cost of all *Products* including cost of transportation thereof;
  - 6 the cost of materials, supplies, equipment, temporary services and facilities, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed, and cost less salvage value on such items used but not consumed, which remain the property of the *Contractor*;
  - 7 rental cost of all tools, machinery, and equipment, exclusive of hand tools, whether rented from or provided by the *Contractor* or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery cost thereof;
  - 8 deposits lost;
  - 9 the amounts of all subcontracts;
  - 10 the cost of quality assurance such as independent inspection and testing services;
  - 11 charges levied by authorities having jurisdiction at the *Place of the Work*;
  - 12 royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefor subject always to the *Contractor's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 - PATENT FEES;
  - 13 any adjustment in premiums for all bonds and insurance which the *Contractor* is required, by the *Contract Documents*, to purchase and maintain;
  - 14 any adjustment in taxes and duties for which the *Contractor* is liable;
  - 15 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred;
  - 16 the cost of removal and disposal of waste products and debris;
  - 17 cost incurred due to emergencies affecting the safety of persons or property;
- 6.3.5 Pending determination of the final amount of a *Change Directive*, the undisputed value of the work performed as the result of a *Change Directive* is eligible to be included in progress payments.
- 6.3.6 If the *Owner* and *Contractor* do not agree on the proposed adjustment in the *Contract Time* or the method of determining it, the adjustment shall be referred to the *Consultant* for determination.
- 6.3.7 If at any time after the start of the work directed by a *Change Directive*, the *Owner* and the *Contractor* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order* signed by *Owner* and *Contractor*.

#### GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner* or the *Contractor* discover conditions at the *Place of the Work* which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
  - .2 physical conditions of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*;
- then the observing party shall notify the other party in writing before conditions are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Consultant*, with the *Owner's* approval, shall issue appropriate instructions for a change in the *Work* as provided in GC 6.2 - CHANGE ORDER or GC 6.3 - CHANGE DIRECTIVE.
- 6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* shall report the reasons for this finding to the *Owner* and the *Contractor* in writing.

#### GC 6.5 DELAYS

- 6.5.1 If the *Contractor* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant*, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, 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.
- 6.5.2 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 or engaged by the *Contractor* directly or indirectly, 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.
- 6.5.3 If the *Contractor* is delayed in the performance of the *Work* by labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound), fire, unusual delay by common carriers or unavoidable casualties, or without limit to any of the foregoing, by a cause beyond the *Contractor's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*.
- 6.5.4 No extension shall be made for delay unless notice in writing of claim is given to the *Consultant* not later than 10 *Working Days* after the commencement of delay, providing however, that in the case of a continuing cause of delay only one notice of claim shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.2.9 of GC 2.2 - ROLE OF THE CONSULTANT, no claim for delay shall be allowed because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made and not then, unless the claim is reasonable.

## PART 7 DEFAULT NOTICE

### GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, STOP THE WORK, OR TERMINATE THE CONTRACT

- 7.1.1 If the *Contractor* should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Contractor's* insolvency, or if a receiver is appointed because of the *Contractor's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, by giving the *Contractor* or receiver or trustee in bankruptcy notice in writing, terminate the *Contract*.
- 7.1.2 If the *Contractor* should neglect to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract* to a substantial degree and if the *Consultant* has given a written statement to the *Owner* and *Contractor* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, notify the *Contractor* in writing that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the 5 *Working Days* immediately following the receipt of such notice.
- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified, the *Contractor* shall be in compliance with the *Owner's* instructions if the *Contractor*:
- 1 commences the correction of the default within the specified time, and
  - 2 provides the *Owner* with an acceptable schedule for such correction, and
  - 3 corrects the default in accordance with such schedule.
- 7.1.4 If the *Contractor* fails to correct the default in the time specified or subsequently agreed upon, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- 1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Contractor* provided the *Consultant* has certified such cost to the *Owner* and the *Contractor*, or
  - 2 terminate the *Contractor's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Contractor's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall be entitled to:
- 1 take possession of the *Work* and *Products*; utilize the construction machinery and equipment; subject to the rights of third parties, finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense; and
  - 2 withhold further payment to the *Contractor* until a final certificate for payment is issued; and
  - 3 charge the *Contractor* the amount by which the full cost of finishing the *Work* as certified by the *Consultant*, including compensation to the *Consultant* for the *Consultant's* additional services and a reasonable allowance as determined by the *Consultant* to cover the cost of corrections to work performed by the *Contractor* that may be required under GC 12.3 - WARRANTY, exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference; and
  - 4 on expiry of the warranty period, charge the *Contractor* the amount by which the cost of corrections to the *Contractor's* work under GC 12.3 - WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Contractor* the difference.

7.1.6 The *Contractor's* obligation under the *Contract* as to quality, correction, and warranty of the work performed by the *Contractor* up to the time of termination shall continue in force after such termination.

## **GC 7.2 CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT**

7.2.1 If the *Owner* should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, by giving the *Owner* or receiver or trustee in bankruptcy notice in writing, terminate the *Contract*.

7.2.2 If the *Work* should be stopped or otherwise delayed for a period of 30 days or more under an order of 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 of anyone directly or indirectly employed or engaged by the *Contractor*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, by giving the *Owner* notice in writing, terminate the *Contract*.

7.2.3 The *Contractor* may notify the *Owner* in writing, with a copy to the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:

- .1 the *Owner* fails to furnish, when so requested by the *Contractor*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
- .2 the *Consultant* fails to issue a certificate as provided in GC 5.3 PROGRESS PAYMENT, or
- .3 the *Owner* fails to pay the *Contractor* when due the amounts certified by the *Consultant* or awarded by arbitration or court, or
- .4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Consultant*, except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Contractor* that sufficient cause exists.

7.2.4 The *Contractor's* notice in writing to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the notice in writing, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, stop the *Work* or terminate the *Contract*.

7.2.5 If the *Contractor* terminates the *Contract* under the conditions set out above, the *Contractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and construction machinery and equipment, and such other damages as the *Contractor* may have sustained as a result of the termination of the *Contract*.

## **PART 8 DISPUTE RESOLUTION**

### **GC 8.1 AUTHORITY OF THE CONSULTANT**

8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Consultant* as provided in GC 2.2 - ROLE OF THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions - DISPUTE RESOLUTION.

8.1.2 If a dispute arises under the *Contract* in respect of a matter in which the *Consultant* has no authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of

GC 8.2 - NEGOTIATION, MEDIATION, AND ARBITRATION, and in GC 8.3 - RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.

8.1.3 If a dispute is not resolved promptly, the *Consultant* shall give such instructions as in the *Consultant's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Contractor* costs incurred by the *Contractor* in carrying out such instructions which the *Contractor* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

## GC 8.2 NEGOTIATION, MEDIATION, AND ARBITRATION

8.2.1 In accordance with the latest edition of the Rules for Mediation of CCDC 2 Construction Disputes, the parties shall appoint a Project Mediator

1. within 30 days after the *Contract* was awarded, or
2. if the parties neglected to make an appointment within the 30 day period, within 15 days after either party by notice in writing requests that the Project Mediator be appointed.

8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Consultant* under GC 2.2 - ROLE OF THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a notice in writing of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a notice in writing of reply to the dispute within 10 *Working Days* after receipt of the notice of dispute setting out particulars of this response and any relevant provisions of the *Contract Documents*.

8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information, and documents to facilitate these negotiations.

8.2.4 After a period of 10 *Working Days* following receipt of a responding party's notice in writing of reply under paragraph 8.2.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the latest edition of the Rules for Mediation of CCDC 2 Construction Disputes.

8.2.5 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.4 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving notice in writing to both parties.

8.2.6 By giving a notice in writing to the other party, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the latest edition of the Rules for Arbitration of CCDC 2 Construction Disputes. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.

8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a notice is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.

8.2.8 If neither party requires by notice in writing given within 10 *Working Days* of the date of notice requesting arbitration in paragraph 8.2.6 that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be

- .1 held in abeyance until
  - (1) *Substantial Performance of the Work*,
  - (2) the *Contract* has been terminated, or
  - (3) the *Contractor* has abandoned the *Work*,whichever is earlier, and
- .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

### **GC 8.3 RETENTION OF RIGHTS**

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the notices required under Part 8 of the General Conditions - DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3.
- 8.3.2 Nothing in Part 8 of the General Conditions - DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

## **PART 9 PROTECTION OF PERSONS AND PROPERTY**

### **GC 9.1 PROTECTION OF WORK AND PROPERTY**

- 9.1.1 The *Contractor* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
  - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, their agents and employees.
- 9.1.2 Should the *Contractor* in the performance of the *Contract* damage the *Work*, the *Owner's* property, or property adjacent to the *Place of the Work*, the *Contractor* shall be responsible for the making good such damage at the *Contractor's* expense.
- 9.1.3 Should damage occur to the *Work* or *Owner's* property for which the *Contractor* is not responsible, as provided in paragraph 9.1.1, the *Contractor* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.

### **GC 9.2 DAMAGES AND MUTUAL RESPONSIBILITY**

- 9.2.1 If either party to the *Contract* should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone for whom the other party is responsible in law, then that party shall be reimbursed by the other party for such damage. The reimbursing party shall be subrogated to the rights of the other party in respect of such wrongful act or neglect if it be that of a third party.

9.2.2 Claims for damage under paragraph 9.2.1 shall be made in writing to the party liable within reasonable time after the first observance of such damage and if undisputed shall be confirmed by *Change Order*. Disputed claims shall be resolved as set out in Part 8 of the General Conditions - DISPUTE RESOLUTION.

9.2.3 If the *Contractor* has caused damage to the work of another contractor on the *Project*, the *Contractor* agrees upon due notice to settle with the other contractor by negotiation or arbitration. If the other contractor makes a claim against the *Owner* on account of damage alleged to have been so sustained, the *Owner* shall notify the *Contractor* and may require the *Contractor* to defend the action at the *Contractor's* expense. The *Contractor* shall satisfy a final order or judgment against the *Owner* and pay the costs incurred by the *Owner* arising from such action.

9.2.4 If the *Contractor* becomes liable to pay or satisfy a final order, judgment, or award against the *Owner*, then the *Contractor*, upon undertaking to indemnify the *Owner* against any and all liability for costs, shall have the right to appeal in the name of the *Owner* such final order or judgment to any and all courts of competent jurisdiction.

### GC 9.3 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

9.3.1 For the purposes of applicable environmental legislation, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.

9.3.2 Prior to the *Contractor* commencing the *Work*, the *Owner* shall

- 1 take all reasonable steps to determine whether any toxic or hazardous substances or materials are present at the *Place of the Work*, and
- 2 provide the *Consultant* and the *Contractor* with a written list of any such substances and materials.

9.3.3 The *Owner* shall take all reasonable steps to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances or materials which were at the *Place of the Work* prior to the *Contractor* commencing the *Work*.

9.3.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with legal requirements, to dispose of, store or otherwise render harmless toxic or hazardous substances or materials which were present at the *Place of the Work* prior to the *Contractor* commencing the *Work*.

9.3.5 If the *Contractor*

- 1 encounters toxic or hazardous substances or materials at the *Place of the Work*, or
- 2 has reasonable grounds to believe that toxic or hazardous substances or materials are present at the *Place of the Work*,
- 3 take all reasonable steps, including stopping the *Work*, to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to or the presence of the substances or materials, and
- 4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.



9.3.6 If the *Contractor* is delayed in performing the *Work* or incurs additional costs as a result of taking steps required under paragraph 9.3.5.3, the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and the *Contractor* shall be reimbursed for reasonable costs incurred as a result of the delay and as a result of taking those steps.

9.3.7 Notwithstanding paragraphs 2.2.6 and 2.2.7 of GC 2.2 - ROLE OF THE CONSULTANT, or paragraph 8.1.1 of GC 8.1 - AUTHORITY OF THE CONSULTANT, the *Consultant* may select and rely upon the advice of an independent expert in a dispute under paragraph 9.3.6 and, in that case, the expert shall be deemed to have been jointly retained by the *Owner* and the *Contractor* and shall be jointly paid by them.

9.3.8 The *Owner* shall indemnify and hold harmless the *Contractor*, the *Consultant*, their agents and employees, from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which were at the *Place of the Work* prior to the *Contractor* commencing the *Work*. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in GC 12.1 - INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph.

9.3.9 GC 9.3 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS shall govern over the provisions of paragraph 1.3.1 of GC 1.3 - RIGHTS AND REMEDIES or GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.

## **PART 10 GOVERNING REGULATIONS**

### **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.

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

10.2.1 The laws of the *Place of the Work* shall govern the *Work*.

10.2.2 The *Owner* shall obtain and pay for the building permit, permanent easements, and rights of servitude. The *Contractor* shall be responsible for permits, licenses, or certificates necessary for the performance of the *Work* which were in force at the date of bid closing.

10.2.3 The *Contractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.

10.2.4 The *Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the date of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Contractor* shall notify the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.

10.2.5 If the *Contractor* fails to notify the *Consultant* in writing; and fails to obtain direction as required in paragraph 10.2.4; and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes; the *Contractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses, and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.

#### **GC 10.3 PATENT FEES**

10.3.1 The *Contractor* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Contractor* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Contractor* or anyone for whose acts the *Contractor* may be liable.

10.3.2 The *Owner* shall hold the *Contractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, the model, plan, or design of which was supplied to the *Contractor* as part of the *Contract Documents*.

#### **GC 10.4 WORKERS' COMPENSATION**

10.4.1 Prior to commencing the *Work*, *Substantial Performance of the Work*, and the issuance of the final certificate for payment, the *Contractor* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.

10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.

### **PART 11 INSURANCE — BONDS**

#### **GC 11.1 INSURANCE**

11.1.1 Without restricting the generality of GC 12.1 - INDEMNIFICATION, the *Contractor* shall provide, maintain, and pay for the insurance coverages specified in GC 11.1 - INSURANCE. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the *Work* until the date of the final certificate for payment. Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.

##### **.1 General Liability Insurance:**

General liability insurance shall be in the joint names of the *Contractor*, the *Owner*, and the *Consultant*, with limits of not less than \$2,000,000 per occurrence and with a property damage deductible not exceeding \$2,500. The insurance coverage shall not be less than the insurance required by IBC Form 2100, or its equivalent replacement, provided that IBC Form 2100 shall contain the latest edition of the relevant CCDC endorsement form. To achieve the desired limit, umbrella, or excess liability insurance may be used. All liability coverage shall be maintained for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*. Where the *Contractor* maintains a single, blanket policy, the addition of the *Owner* and the *Consultant* is limited

to liability arising out of the *Project* and all operations necessary or incidental thereto. The policy shall be endorsed to provide the *Owner* with not less than 30 days notice in writing in advance of any cancellation, and of change or amendment restricting coverage.

**.2 Automobile Liability Insurance:**

Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$2,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all licensed vehicles owned or leased by the *Contractor*, and endorsed to provide the *Owner* with not less than 15 days notice in writing in advance of any cancellation, change or amendment restricting coverage. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Contractor* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Contractor*.

**.3 Aircraft and Watercraft Liability Insurance:**

Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the *Work*, including use of additional premises, shall be subject to limits of not less than \$2,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$2,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the *Owner*. The policies shall be endorsed to provide the *Owner* with not less than 15 days notice in writing in advance of cancellation, change, or amendment restricting coverage.

**.4 Property and Boiler and Machinery Insurance:**

(1) "All risks" property insurance shall be in the joint names of the *Contractor*, the *Owner*, and the *Consultant*, insuring not less than the sum of the amount of the *Contract Price* and the full value, as stated in the Supplementary Conditions, of *Products* that are specified to be provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$2,500. The insurance coverage shall not be less than the insurance required by IBC Form 4042 or its equivalent replacement, provided that IBC Form 4042 shall contain the latest edition of the relevant CCDC endorsement form. The coverage shall be maintained continuously until 10 days after the date of the final certificate for payment.

(2) Boiler and machinery insurance shall be in the joint names of the *Contractor*, the *Owner*, and the *Consultant* for not less than the replacement value of the boilers, pressure vessels, and other insurable objects forming part of the *Work*. The insurance provided shall not be less than the insurance provided by the "Comprehensive Boiler and Machinery Form" and shall be maintained continuously from commencement of use or operation of the property insured and until 10 days after the date of the final certificate for payment.

(3) The policies shall allow for partial or total use or occupancy of the *Work*. If because of such use or occupancy the *Contractor* is unable to provide coverage, the *Contractor* shall notify the *Owner* in writing. Prior to such use or occupancy the *Owner* shall provide, maintain, and pay for property and boiler insurance insuring the full value of the *Work*, as in sub-paragraphs (1) and (2), including coverage for such use or occupancy and shall provide the *Contractor* with proof of such insurance. The *Contractor* shall refund to the *Owner* the unearned premiums applicable to the *Contractor's* policies upon termination of coverage.

(4) The policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Contractor* as their respective interests may appear. The *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to

such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Consultant* may recommend in consultation with the *Contractor*.

- (5) The *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount at which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds and as provided in GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 - PROGRESS PAYMENT. In addition the *Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Contractor's* interest in the restoration of the *Work*.
- (6) In the case of loss or damage to the *Work* arising from the work of another contractor, or *Owner's* own forces, the *Owner*, in accordance with the *Owner's* obligations under paragraph 3.2.2.4 of GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, shall pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as provided in GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 - PROGRESS PAYMENT.

#### 5 Contractors' Equipment Insurance:

"All risks" contractors' equipment insurance covering construction machinery and equipment used by the *Contractor* for the performance of the *Work*, including boiler insurance on temporary boilers and pressure vessels, shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. The policies shall be endorsed to provide the *Owner* with not less than 15 days notice in writing in advance of cancellation, change, or amendment restricting coverage. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* agrees to waive the equipment insurance requirement.

11.1.2 The *Contractor* shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the *Contractor's* responsibility by the terms of GC 9.1 - PROTECTION OF WORK AND PROPERTY and GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.

11.1.3 Where the full insurable value of the *Work* is substantially less than the *Contract Price*, the *Owner* may reduce the amount of insurance required or waive the course of construction insurance requirement.

11.1.4 If the *Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Contractor* and the *Consultant*. The *Contractor* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the amount which is due or may become due to the *Contractor*.

11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.

#### GC 11.2 BONDS

11.2.1 The *Contractor* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any surety bonds required by the *Contract*.

11.2.2 Such bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION — WAIVER — WARRANTY

GC 12.1 INDEMNIFICATION

12.1.1 The *Contractor* shall indemnify and hold harmless the *Owner* and the *Consultant*, their agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings (hereinafter called "claims"), by third parties that arise out of, or are attributable to, the *Contractor's* performance of the *Contract* provided such claims are:

- .1 attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and
- .2 caused by negligent acts or omissions of the *Contractor* or anyone for whose acts the *Contractor* may be liable, and
- .3 made in writing within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work*, or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The *Owner* expressly waives the right to indemnity for claims other than those stated above.

12.1.2 The obligation of the *Contractor* to indemnify hereunder shall be limited to \$2,000,000 per occurrence from the commencement of the *Work* until *Substantial Performance of the Work* and thereafter to an aggregate limit of \$2,000,000.

12.1.3 The *Owner* shall indemnify and hold harmless the *Contractor*, the *Contractor's* agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.

12.1.4 GC 12.1 - INDEMNIFICATION shall govern over the provisions of paragraph 1.3.1 of GC 1.3 - RIGHTS AND REMEDIES or GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.

GC 12.2 WAIVER OF CLAIMS

12.2.1 Waiver of Claims by *Owner*

As of the date of the final certificate for payment, the *Owner* expressly waives and releases the *Contractor* from all claims against the *Contractor* including without limitation those that might arise from the negligence or breach of contract by the *Contractor* except one or more of the following:

- .1 those made in writing prior to the date of the final certificate for payment and still unsettled;
- .2 those arising from the provisions of GC 12.1 - INDEMNIFICATION or GC 12.3 - WARRANTY;
- .3 those arising from the provisions of paragraph 9.3.5 of GC 9.3 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS and those arising from the *Contractor* bringing or introducing any toxic or hazardous substances and materials to the *Place of the Work* after the *Contractor* commences the *Work*.

In the Common Law provinces GC 12.2.1.4 shall read as follows:

- .4 those made in writing within a period of 6 years from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, or within such shorter period as

may be prescribed by any limitation statute of the province or territory of the *Place of the Work* and those arising from any liability of the *Contractor* for damages resulting from the *Contractor's* performance of the *Contract* with respect to substantial defects or deficiencies in the *Work* for which the *Contractor* is proven responsible.

As used herein "substantial defects or deficiencies" means those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*.

In the Province of Quebec GC 12.2.1.4 shall read as follows:

.4 those arising under the provisions of Article 2118 of the Civil Code of Quebec.

#### 12.2.2 Waiver of Claims by *Contractor*

As of the date of the final certificate for payment, the *Contractor* expressly waives and releases the *Owner* from all claims against the *Owner* including without limitation those that might arise from the negligence or breach of contract by the *Owner* except:

- 1 those made in writing prior to the *Contractor's* application for final payment and still unsettled; and
- 2 those arising from the provisions of GC 9.3 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS or GC 10.3 - PATENT FEES.

12.2.3 GC 12.2 - WAIVER OF CLAIMS shall govern over the provisions of paragraph 1.3.1 of GC 1.3 - RIGHTS AND REMEDIES or GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.

#### GC 12.3 WARRANTY

12.3.1 The warranty period with regard to the *Contract* is one year from the date of *Substantial Performance of the Work* or those periods specified in the *Contract Documents* for certain portions of the *Work* or *Products*.

12.3.2 The *Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.

12.3.3 Except for the provisions of paragraph 12.3.6 and subject to paragraph 12.3.2, the *Contractor* shall correct promptly, at the *Contractor's* expense, defects or deficiencies in the *Work* which appear prior to and during the warranty periods specified in the *Contract Documents*.

12.3.4 The *Owner*, through the *Consultant*, shall promptly give the *Contractor* notice in writing of observed defects and deficiencies that occur during the warranty period.

12.3.5 The *Contractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.3.

12.3.6 The *Contractor* shall be responsible for obtaining *Product* warranties in excess of one year on behalf of the *Owner* from the manufacturer. These *Product* warranties shall be issued by the manufacturer to the benefit of the *Owner*.