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CITY OF NANAIMO

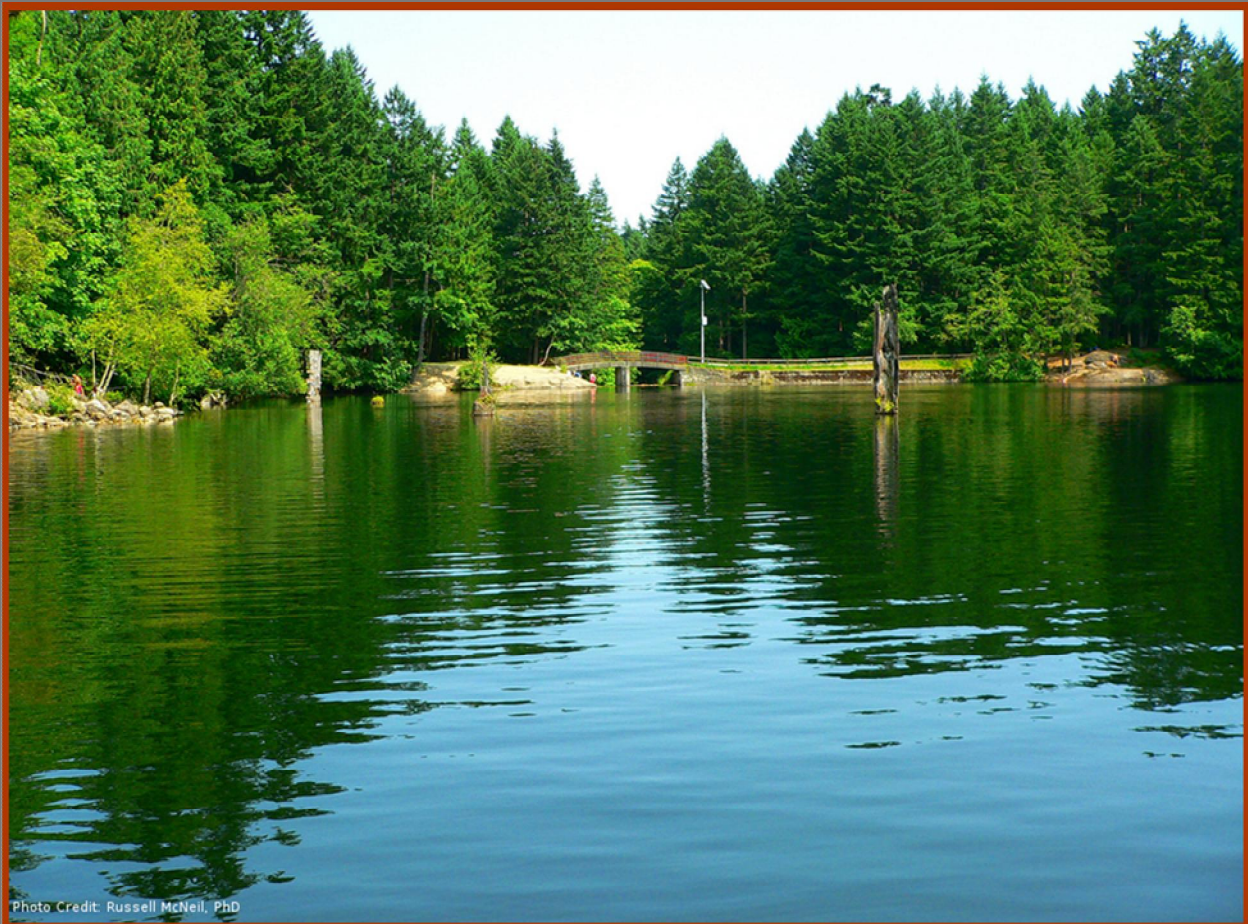


Photo Credit: Russell McNeil, PhD

COLLIERY DAMS RENEWAL PROJECT

June 12, 2013

Executive Summary

CANbuild Solutions proposes to remove the two existing aging dam structures in the Colliery Dam Park in Nanaimo and rebuild two new Roller Compacted Concrete dams in their stead. The removal and reconstruction of the new Colliery Dams will be completed for a guaranteed cost of \$8.6M. This price includes \$400K for an engineered draw down of water (to the satisfaction of the Dam Safety Branch) for the period until reconstruction can occur in the summer of 2014.

Design Build construction is a process whereby the contractor engages the required professionals (engineers, consultants and subcontractors) and is responsible for the entire design and build of the project. This method lends itself to this project as it:

- Provides a single entity for the City of Nanaimo and the Community to relate to for all aspects of the project, be it design or construction.
 - This shifts the primary contact and engagement from the City of Nanaimo to CANbuild Solutions for communication, community interest, and design requests.
- Brings the design process within reach of the community. This will satisfy the community's interest to be an influence in the decisions of the project while easing the City from the role of the communication conduit for the community to one of consultant and advisor on City interests and liabilities.
- Places full financial responsibility to meet a fixed price and scope of work for the dams with CANbuild Solutions.

Drawing down the water in the dams will address the current risk to the community, alleviate liability to the City and provide a more cost effective method of rebuilding the dams. A portion of the efficiencies from this approach is that only one mobilisation of crew and equipment will be required as the removal and rebuilding of the dams will be a single process. Further effectiveness is achieved from simultaneous work flows and movement and use of materials on site. Additional benefits to this approach of drawing down the water in the existing dams are:

- A measure of safety is achieved in the form of storage during a major flood event.
- A retention pond for sedimentation control is created for the freshly exposed lake bottoms.
- Colliery Dam Park would stay open until deconstruction as the bridges and existing trails would remain. Safety fencing would to be installed adjacent to walk and trail ways.

CANbuild Solutions is a fully bonded and insured local contracting firm that is well capable of meeting the requirements of this unique project. CANbuild will liaise with the necessary regulatory bodies via the engaged team of consultants and will deliver the best solution for the community and the City of Nanaimo.

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1. CANbuild's Colliery Dams Solution

CANbuild Solutions proposes the following Solutions for the Colliery Dams Renewal Project.

- Complete removal of the middle and lower Chase River Dams and construction of new Colliery Dams for a guaranteed cost of \$8.6M. The price includes \$400K for the engineered draw down of the water (to the satisfaction of the Dam Safety Branch) for the period until reconstruction can occur in the summer of 2014.

Included with this proposal (*Appendix C*) is a prefilled CCDC 14 (Design/Build Stipulated Price Contract) to be completed with the City of Nanaimo. Once collaboration begins the *Statement of Requirements* can be developed and included in the contract.

CANbuild Solutions is fully bonded and insured as per the requirements of the CCDC 14 contract (*Appendix B*)

1.1 Legacy Project

This is a legacy project; with the potential to leave a rich, park-like environment and community recreation area for future generations. It will be valued by both residents and visitors to Nanaimo for decades and beyond. This appreciation will depend upon the aesthetics and sensitivity brought to the design of the dam and its habitat.

Environmental opportunities like this have but one chance to be optimized. Once complete, they stand for more than a century as a reflection and statement of the insight and judgment of the decision makers of the time.

We believe a project of this nature can become a win/win for all involved through a Managed Process of Design-Build. With an efficient collaborative approach, the City and other stakeholders can be participant in identifying their needs, wishes and interests. Usually, as a result of creativity and synergy, most interests can be incorporated and met. The process is based in the use of professionals to define, engineer and approve the design. Cooperative and collaborative approaches are brought together with real world input from the contractor to define practical and cost effective solutions. Realistic final costs are developed *while* design is being completed. Final projected costs are achieved as the design is tailored to this real world budget.

1.2 Innovation of Approach

We propose an innovative approach to arrive at the final design and engineering for the project. This is Design-Build.

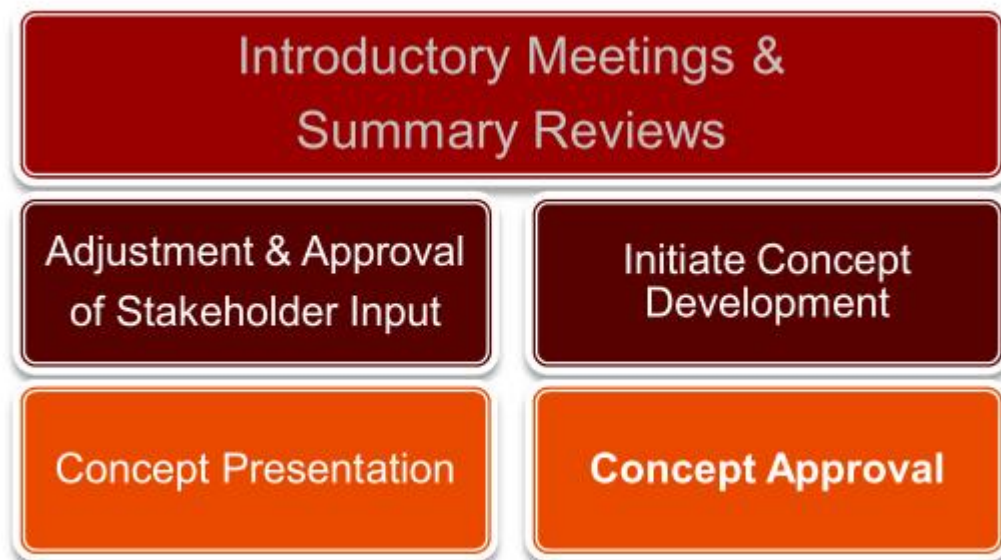


Though employed in some locations in the construction industry, it is still rather new and innovative. The benefits are:

- The function and aesthetics of the design are met through consultation and collaboration with all of the stakeholders; including the necessary Engineers and consultants, the community, the municipality, the required sub-contractors and CANbuild Smart Solutions. The project scope of work, as outlined in Klohn Crippen Berger's April 30th Report titled "Conceptual Costing of Rehabilitation and Replacement Options" creates the parameters to design within. Through consultation and detailed involvement of CANbuild Smart

Solutions and all stakeholders during the design process, the typical construction Change Orders that are normally encountered during a project, **and their resulting additional costs, are avoided.**

- Through a *managed process* of Design-Build, we will work closely with our environmental consultants to ensure the best solution for the community, habitat and environment. As well, the community and City of Nanaimo will be participant in this consultation to assure all interests are heard and incorporated as much as possible.
- The aim is to sustain and develop habitat to support generous and diverse wildlife, while being accessible to the public.



We recognize the objective of the City of Nanaimo to immediately comply with the requirements of the Dam Safety Branch (DSB). This, along with the detailed information supplied by the City of Nanaimo and the interests and needs expressed by the citizens of Nanaimo forms the basis of our view and vision for the project. We know as well that to maximize potential of the project an efficient ‘discovery process’ is worthy of pursuit at the outset with all stakeholders. Further focus in the design stage will align features to budgets, working to best options for priorities established.

With specialized focus on Design-Build, CANbuild recognizes the City of Nanaimo as a focused partner with intentions to produce an outstanding final product for its citizens. Our commitment is to guide this process with the City in an open and transparent manner, while achieving the highest standards and results.

CANbuild will coordinate all contributors and manage all levels of communication to provide practical and smart solutions based on our depth of management and construction experience. We invest focused attention to the detail of the design and physical construction of your project. And, because we are professional problem solvers that facilitate creative solutions, we develop effective results through meeting the challenges of complex projects tasks

1.3 Details of the Proposal

We have conducted a detailed study of the following documents:

- Klohn Crippen Berger’s April 30th, 2013 Report titled “Conceptual Costing of Rehabilitation and Replacement Options”
- Hatch Ltd. May 1st, 2013 Report titled “Cost Estimate Peer Review for Colliery Dams Rehabilitation/Renewal”

- Klohn Crippen Berger's April 26th, 2013 Report titled "Removal of Middle and Lower Chase Dams"
- Associated Engineering September 2012 Report titled "Chase River Dam Breach Flood Inundation Study"
- EBA Engineering Consultants April 14th, 2010 Report titled "Seismic Hazard Assessment – Middle and Lower Chase Dams"

From this study and detailed assessment of the project we have concluded a guaranteed cost for the scope of work is fully feasible for the amount stated. Such is our confidence in the estimate provided by KCB and reviewed by Hatch for the removal and rebuilding of the dams that we agree to contract to do the work for the fixed amount of the total of their cost breakdown (see 1.9 Cost Breakdown). The scope of work considered for this guaranteed sum is as per outlined in the Engineering Proposal & Budgeting document Klohn Crippen Berger's April 30th, 2013 Report titled "Conceptual Costing of Rehabilitation and Replacement Options" Option EXT4 (*Appendix A*)

We propose, where possible, to work with expert local consultants, contractors and suppliers to make this as much a "Local Project" as possible. We are passionate and care about our city and will seek to work with likeminded team members.

The method of drawing down the water, maintaining safe water levels over the winter and the design of the new dams will be developed through a team of professional engineers experienced in dam design. This expertise will be combined with field testing and examination required for design development, including test drilling to establish bedrock elevations; a critical requirement of the overall design.

The design of the surrounding dam environment will be developed through the input of environmental experts, community input and City interests and incorporated into the engineered designs as needed.

Please note the letter of assurance from our Bonding Underwriter (*Appendix B*), supporting our proposal.

1.4 Benefits of the Proposal

- The project is **constructed at a guaranteed cost**, and with **no additional contingency required by the City**.
- Current risk to the community and liability to the City of Nanaimo is alleviated by drawing down the water behind the dams for the period until rebuilding occurs.
- Efficiencies are found by leaving the existing dam structures in place until rebuilding is to occur, with mobilization of crew and equipment required only once for demolition and reconstruction.
- Single removal and rebuild process for each dam
- Park function can remain as the bridges and existing trail areas would remain in place until this time.
- A staggered approach (replace one dam at a time over two summers) would provide further efficiencies, benefit to the environment and community and reduce risks in the construction process.

Environmental Considerations

- Drawn down lakes can provide a storage reservoir to mitigate large rain events and possible flooding.
- Drawn down lakes can provide a form of sedimentation control of the freshly exposed lake bottoms.
- Leaving existing dam structures in place until rebuilding will reduce impact on the environment (no river diversion required) and reduce Habitat Alteration Displacement & Destruction.

We are sensitive to local interests. We are a local firm wanting to leave a legacy, for us and the City, from joint participation and involvement, to maximize the potential of this public environment. Through this approach we – the City, CANbuild Solutions and the community - can create a beautiful environment for comfortable use and enjoyment of the people of Nanaimo for generations to come.

The project is conducted under a Design-Build approach where we, CANbuild, are involved *with* the necessary Engineering Firms *during the design*. To this we bring local knowledge, construction considerations regarding execution and local interests to the project. This is a collaborative approach to design, marrying practical interests of the constructor with design needs of engineering and the needs and potentials for the community.

1.5 Surety of Compliance and Quality of Construction

To ensure quality of construction and compliance to all building requirements, and regulations and standards for the project, the following would be instituted:

- Full time dedicated project engineer provided by CANbuild Solutions for the management of the project
- Full time dedicated site supervisor provided by CANbuild Solutions for the site operations.
- Frequent inspections of the construction of the project by the Engineering Representative approved and/or provided by the Design Engineers.
- Frequent meetings with the City of Nanaimo
- Frequent meetings with all regulatory bodies as required (EA, DSB, DFO)
- Adherence to the required safety regulations (Worksafe BC)
- Full Bonding & Insurance coverage as per City of Nanaimo requirements. See the included letter of Assurance from our Bonding Underwriter, Jardine Lloyd Thompson Canada (*Appendix B*).

1.6 Environmental Aesthetics

Through the Design-Build process, input can be sought from the community and City officials to optimize the aesthetics and practical use of the dam itself and its incorporation into the surrounding environment. Environmental professionals of the area can participate, bringing 'local knowledge' and a relationship to the history of the area and environment.

Where funds allow, recreational uses can be integrated including swimming beaches, canoe and kayak access, hiking trails and locations for relaxation and observation of nature. Small peninsulas of land and tranquil bay areas can create attractive areas to wildlife while affording locations to place natural seating and other means of appreciating the environment.

Careful consideration will be given during design, planning and construction to ensure sensitivity to the environment and minimize impact. Completing both demolition and reconstruction in one summer season will eliminate the exposure of lake bottoms to open stream beds and winter rains, which could create silting of the watercourse.

Given the opportunity our Design-Build process will offer for local input and community considerations, the Colliery Dams Renewal Project can complete reflecting the priorities and aesthetics important to the City of Nanaimo and the community.

1.7 Philosophy of the Project

Being a project of such public interest and presence, and leaving such an important impact for generations to come, many local people have expressed interest in contributing to the project in some form. These interests and contributions can be incorporated in the Design-Build process through the intentional creation of an inclusive and collaborative atmosphere, while maintaining efficiency and practicality. This can be done.

Our philosophy for the project is to bring leadership and a genuine commitment to create a rich habitat for the natural environment and the community of Nanaimo. Success will be measured by the keen interest of individuals to use the

resource, its service to the environment and the enthusiasm and satisfaction felt by all those involved in a process which found harmony and common interest in a job well done.

1.8 Cost Summary

Design – Build: Colliery Dams Removal and Rebuild

*Ref: Klohn Crippen Berger's April 30th, 2013 Report titled "Conceptual Costing of Rehabilitation and Replacement Options" Option EXT4

Division 0 – Design & Development		\$975,000.00
Inclusions: Management & collaboration of all required consultants, stake holder input and necessary permits	Exclusions: N/A	
Division 1 – General Requirements		\$650,000.00
Inclusions: Project Management, Insurance, Bonding, Temporary facilities, First Aid & Safety,	Exclusions: Security	
Division 2 – Site Work		\$5,400,000.00
Inclusions: Demolition, Dewatering, RCC Dams with integrated spillways, HADD Compensation, Clean & Amour Channel, Landscaping	Exclusions: Archaeological findings	
Division 3 – Concrete		\$1,380,000.00
Inclusions: Dam wall surfacing, walkway bridges and reinforcing steel	Exclusions: N/A	
Division 5 – Metals		\$85,000.00
Inclusions: Misc. Metal (incl. Hand / Guard rails)	Exclusions: N/A	
Division 15 – Mechanical		\$75,000.00
Inclusions: Hydro electric rough in provision	Exclusions: N/A	
	SUBTOTAL	\$8,565,000.00
	GST	\$428,250.00
NOTE: FOR ADMINISTRATIVE PURPOSES ONLY	TOTAL	\$8,993,250.00

2. Further Detail

2.1 Company Overview

CANbuild is a Design-Build Construction Specialist. We deliver smart construction solutions in partnership with our clients. Through an efficient process of managed inquiry we are able to define client needs and wants, and then develop solutions that deliver exceptional results. Thoroughness and attention to detail at all stages makes the difference.

CANbuild and its affiliates have a 23 year history, the last 18 of which in Nanaimo. Our work has included complex construction with values in excess of \$6 Million. Our work region covers all of Vancouver Island, with a primary focus on the Mid-Island's economic region. Design-Build has been integral to our approach now for a number of years. This pursuit has been to expand benefits to the client through significant contributions to project concepts much earlier than usual in the design development.

Our most recent Design-Build project has been the completion of a world class teaching facility at the North Island College in Port Alberni. Our culture, out to and including the field, is to invite and draw valuable input from all sources. With suppliers, consultants, trades and employees all on this page, ideas and thoughts for improvements are willingly

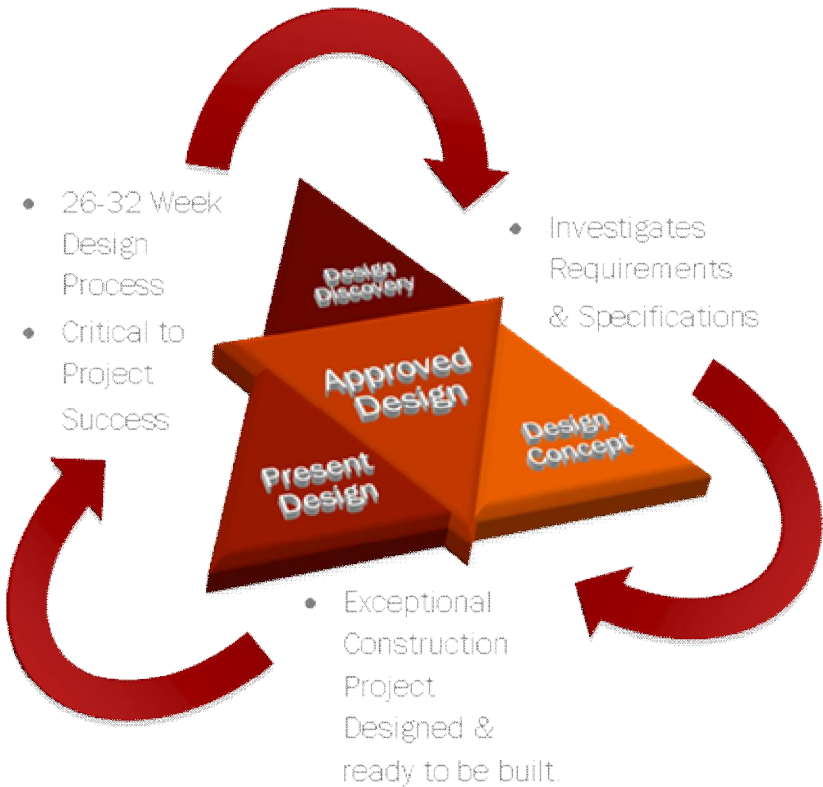
presented in an atmosphere of openness and respect, which is supported by our organization and structure. Ideas flow quickly to where they can be considered, refined and included when deemed of value.

2.2 Design-Build Explained

Design-Build is a method of project delivery in which one entity - the Design-Build team - works under a single contract with the project owner to provide design and construction services. Design-Build results in one entity, one contract, and one unified flow of work from initial concept through to completion.

A key element in the Design Stage of our Process is being attentive to the client’s needs and interests. This requires quality listening and asking the right questions, as well as a perspective on the real world considerations of executing on the project. The process must be managed for efficiency while remaining open to input. The potential is a synergy that occurs through common interest and *diversity of view*. This diversity creates the richness of potential. One idea can feed another, evolving until an optimal option is arrived at. All individuals need to approach the process with ability to compromise and especially, a spirit to work *with* others to attain best results. The end product holds everyone’s fingerprints but no *one* individual name.

The Design-Build procurement route changes the traditional sequence of work. It answers the client's wishes for a single-point of responsibility to reduce risks and overall costs, while increasing the quality and aesthetic of the finished project. Early “Real World” estimates are developed before Working Drawings are completed, allowing for any necessary changes to be align and managed with budgets at the concept stage, avoiding the expense and delay of full redrafting of full Working Drawings.



2.3 The Design Process

In this process we assemble an inclusive group of experts in their respective fields to be motivated “project team members”. They develop the design, plans and solutions using function, quality, cost and aesthetic as their guiding principles. In this way it is possible to creatively enhance the project while finding ways to reduce construction costs without reducing the performance or function of the final product.

Engaging in an integrated Design and Build approach, important questions and answers are considered proactively. It supports undertaking the high aspirations for quality, aesthetics, sustainability, function, schedule and cost effectiveness. A high level of efficiency and integration must be found to achieve these goals.

Highlights of our design process include:

- Stakeholder’s inputs are collected into the development of the early Conceptual Design.
- Involvement of professional engineers, consultants, and suppliers and related trades to collaborate and drive in-depth conceptual solutions.
- Review, refinement and approval of Conceptual Drawings and Estimates
- Early Conceptual Costing to assess viability of approaches.
- Approval of Conceptual Design and related Budgets prior to development of working drawings.

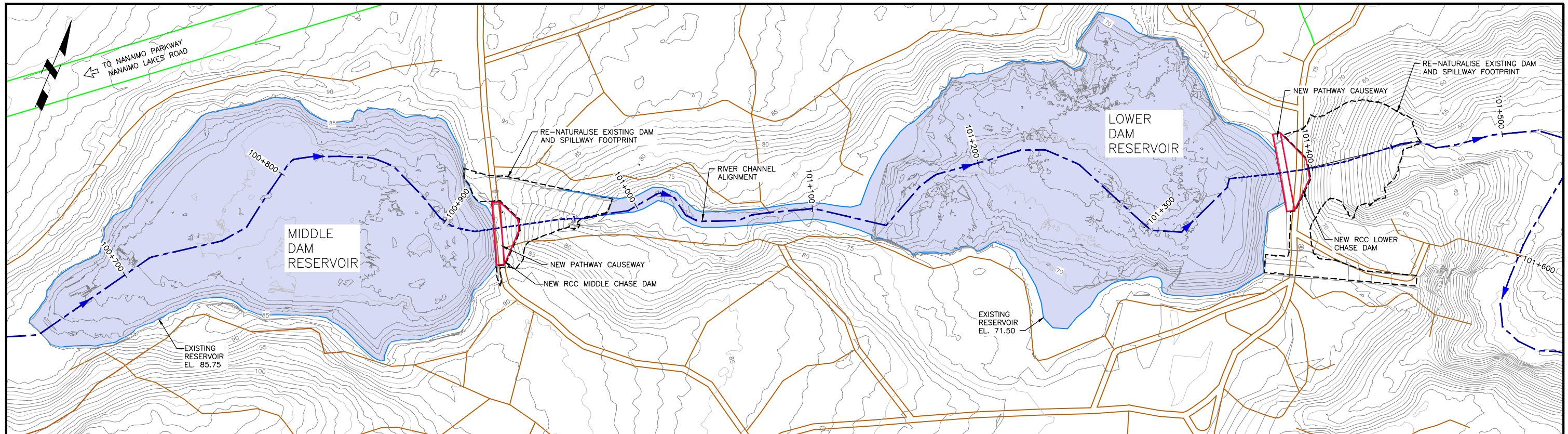
3. Conclusion

We will be known for the footprints we leave behind as well as how we have affected one another and our community. Our children, and grandchildren, will measure us by this. Our interactions, manner and experience in developing a project are as important as the project itself. Though there has been tension over this issue to date, we know that a very constructive process can be brought to the community in which all will enjoy an inclusive atmosphere and commonality of goals. Our commitment is to lead this process to bring harmony to the project as a whole. Solid constructive steps will create fresh lines of communication. Pursuit of common interests, listening and inclusiveness will contribute to building understanding and trust. The process can actually be very satisfying.

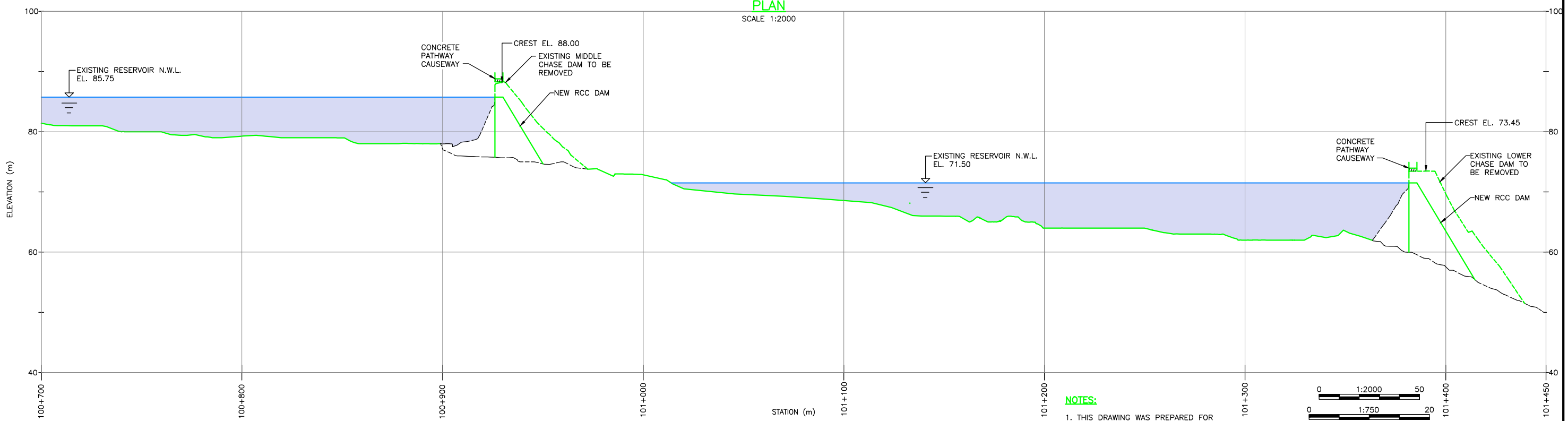
Projects of this type will be cherished as a gift of environment and nature to future generations. Beautiful, natural habitat sustains life. It attracts the creatures of nature, as well as us humans. Through this project reaching its richest potential, it will sustain and refresh both nature and man for years to come.

Our commitment is to bring a positive influence and leadership to these ends.

Appendix A: Klohn Crippen Berger Option EXT4

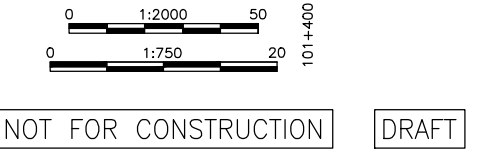


PLAN
SCALE 1:2000



PROFILE ALONG RIVER CHANNEL
SCALE 1:2000 HORIZ
1:750 VERT

NOTES:
1. THIS DRAWING WAS PREPARED FOR CONCEPTUAL DESIGN. RIVER CHANNEL PROFILE SHOWS MOST RELEVANT SECTIONS OF DAMS AND DOES NOT MATCH PLAN VIEW ALIGNMENT.



Time: 13:31:13
 Date: 4/8/2013
 Drawn: J.T. (JT)
 Xref File(s): 2008 Survey; 2013-02-collarytrail; Collary_South; 2009 Survey - FIG3; lidar; contours; RCC MIDDLE & LOWER DAM
 Image File(s): Untitled2

REVISION	DESCRIPTION OF REVISION	DATE (YYYY-MM-DD)	DRAWN	DESIGNED	CHECKED	APPROVED
0	ISSUED FOR REVIEW	2013-04	J.NG/PM			

DRAWING REVISIONS		ORIGINAL ISSUE	
DRAWN:	JT/J.NG	AS A MUTUAL PROTECTION TO OUR CLIENT, THE PUBLIC AND OURSELVES, ALL REPORTS AND DRAWINGS ARE SUBMITTED FOR THE CONFIDENTIAL INFORMATION OF OUR CLIENT FOR A SPECIFIC PROJECT AND AUTHORIZATION FOR USE AND/OR PUBLICATION OF DATA, STATEMENTS, CONCLUSIONS OR ABSTRACTS FROM OR REGARDING OUR REPORTS AND DRAWINGS IS RESERVED PENDING OUR WRITTEN APPROVAL.	CLIENT
DESIGNED:	-		
CHECKED:	-		
APPROVED:	-		

PROJECT
CHASE RIVER DAMS
CONCEPTUAL REHABILITATION

TITLE
OPTION EXT 4
REPLACE BOTH DAMS
WITHOUT DRAW DOWN



SCALE AS SHOWN	PROJECT NO. P09849A01	DWG. NO. 07	REV. 0
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CANCEL PRINTS BEARING PREVIOUS REVISION

KCB-DWG-D-L

Appendix B: Letter of Assurance | Bonding Underwriter



Jardine Lloyd Thompson Canada Inc.

Suite 350, 4396 West Saanich Road
Victoria, BC V8Z 3E9

Tel: 250 388 4416
Fax: 250 388 9926

www.jltcanada.com

May 28, 2013

To: City of Nanaimo
For: Canbuild Smart Solutions
Project: Colliery Dam Removal & Rebuild

We are pleased to advise that we have been dealing with Canbuild Smart Solutions for several years, during which time we have arranged all of their contract bond requirements with their bonding company Trisura Guarantee Insurance Company. We understand that this project is budgeted at \$8.6 million.

In our opinion, their financial and technical capacity is excellent and to the best of our knowledge, all contracts undertaken by them have been performed in a satisfactory manner.

We have no hesitation in recommending them as fully qualified contractors and confirm that subject to the preparation of bidding documents and contractual arrangements satisfactory to Canbuild Smart Solutions and their bonding company, the provisions for any bid bond, consent of surety or Performance and Labour & Material Payment bond will be provided as and when required.

We also undertake to provide all necessary insurance required by Canbuild Smart Solutions for this project.

Yours sincerely,

A handwritten signature in black ink, appearing to be "James Clapp", written over a horizontal line.

James Clapp
Senior Vice President

Appendix C: CCDC 14 Design Build Stipulated Price Contract

design-build stipulated price contract

Project: Colliery Dams Removal and Rebuild

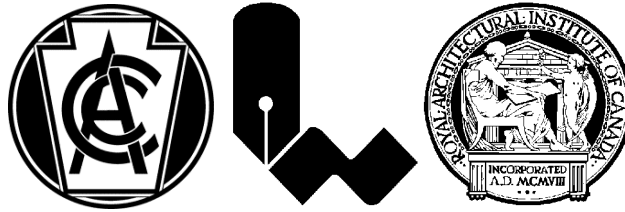


Endorsed by:

**The Canadian Construction Association
Construction Specifications Canada
The Royal Architectural Institute of Canada**

Apply a Document 14 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of Document 14 – 2000 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

INSTRUCTIONS TO USERS OF DOCUMENT 14 - 2000



CCA-CSC-RAIC DOCUMENT 14 - 2000 DESIGN-BUILD STIPULATED PRICE CONTRACT

September 2000

The Design-Build Stipulated Price Contract is developed by the Joint Design-Build Working Group comprised of representatives from:

The Canadian Construction Association
Construction Specifications Canada
The Royal Architectural Institute of Canada

This document is based on CCDC 2 – 1994 ‘Stipulated Price Contract’ and CCAC 6 – 1994 ‘Canadian Standard Form of Agreement Between Client and Architect’. A number of terms in Document 14 are defined differently from other standard contract documents and, accordingly, all definitions should be read to properly understand the terms and conditions of this document.

THE FOLLOWING ARE THE BASIC PRINCIPLES OF DOCUMENT 14 - 2000:

1. The *Owner* deals with one single administrative entity, the *Design-Builder*, who provides *Design Services* and *Construction* of the project under one contract package.
2. The *Contract Documents* include but not limited to:
 - Agreement,
 - Definitions,
 - General Conditions,
 - *Owner’s Statement of Requirements*, and
 - *Construction Documents*, after they have been accepted by the *Owner*.
3. After execution of the *Contract*, *Construction Documents* are prepared to illustrate the details of the design that meets the *Owner’s Statement of Requirements*. When accepted and signed by both the *Owner* and *Design-Builder*, these also become part of the *Contract Documents*.
4. *Change Orders* are issued to change:
 - the *Work*;
 - the *Owner’s Statement of Requirements* (scope);
 - the *Contract Price*; and
 - the *Contract Time*.

5. The only consultant recognized in the *Contract* is the *Design-Builder's Consultant*. The *Owner* may also appoint representatives or advisors, but they are recognized in the *Contract* as the *Owner's* authorized representatives.
6. The roles of the *Design-Builder's Consultant* are:
 - to design to the *Owner's Statement of Requirements* and prepare the *Construction Documents*;
 - to be the interpreter of the *Contract* and *Construction Documents* in the first instance;
 - to certify to the Design-Builder:
 - compliance with *Construction Documents*;
 - *Substantial Performance of the Work*;
 - progress payments based on the agreed schedule of values. (i) These will be used as support documents to the *Design-Builder's* applications for payment, or (ii) in the event that the *Design-Builder's Consultant* is the *Payment Certifier*, will become the payment certificates that authorize payments to the *Design-Builder*.
7. The *Design-Builder's* consultants are bound to fulfil their duties and responsibilities in accordance with the professional standards required by the various professions. The *Design-Builder's* consultants are consultants to the *Design-Builder* to provide the *Design Services*. This does not preclude them from performing normal professional duties, i.e. certifying payments, issuing certificates for payment, and interpretation of the *Contract* and *Construction Documents*.
8. The parties are required to identify the *Payment Certifier* in the Agreement, whose responsibility is to verify a claim and issue certificates for payment. The *Payment Certifier* may be the *Design-Builder's Consultant*, *Owner*, *Owner's Advisor*, or any knowledgeable third party, as designated by the *Owner*.
9. The *Owner's Advisor* is the person or entity employed or engaged by the *Owner* to assist in organizing and administering the design-build selection process and to provide ongoing professional assistance to the *Owner* during the *Project's* implementation as required by the *Owner*.

SUMMARY OF IMPORTANT DIFFERENCES BETWEEN THE 1997 AND THE 2000 EDITIONS:

1. Introduce and explain the roles of the *Payment Certifier* in Article 5.1.1, Article 6.1, Definition 14, GC 1.1.3, GC 2.3.3, and Part 5 of the General Conditions.
2. Revise the Definition of Construction Documents to reaffirm that they must meet the general functional intent of the *Contract Documents*.

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1.	Change Directive
2.	Change Order
3.	Construction
4.	Construction Documents
5.	Consultant
6.	Contract
7.	Contract Documents
8.	Contract Price
9.	Contract Time
10.	Design-Builder
11.	Design Services
12.	Owner
13.	Owner's Statement of Requirements
14.	Payment Certifier
15.	Place of the Work
16.	Product
17.	Project
18.	Provide
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GC 7.2	Design-Builder's Right to Suspend the Work or Terminate the Contract

PART 8 DISPUTE RESOLUTION

GC 8.1	Authority of the Consultant
GC 8.2	Negotiation, Mediation, and Arbitration
GC 8.3	Retention of Rights

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1	Protection of Work and Property
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GC 12.1	Indemnification
GC 12.2	Waiver of Claims
GC 12.3	Warranty

Enquiries should be directed to:

The Secretary
Canadian Construction Documents Committee
400 - 75 Albert Street
Ottawa, Ontario K1P 5E7
Tel: (613) 236-9455
Fax: (613) 236-9526
www.ccdc.org



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AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

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

This Agreement made as of the 10th day of June in the year 2013 .

by and between

City of Nanaimo

hereinafter called the "*Owner*"

and

CANbuild Solutions

hereinafter called the "*Design-Builder*"

The *Owner* and the *Design-Builder* agree as follows:

ARTICLE A-1 THE WORK

The *Design-Builder* shall:

1.1 perform the *Work* required by the *Contract Documents* for Colliery Dams Removal and Rebuild

insert above the title of the Work

located at cnr of Wakesiah & 6th St

insert above the Place of the Work

for which the Agreement has been signed by the parties, and for which _____

insert above the name of the Consultant

is acting as, and is hereinafter called, the "*Consultant*",

1.2 do and fulfil everything indicated by the *Contract Documents*, and

1.3 commence the *Work* by the 1st day of August in the year 2013 and, subject to adjustment in

Contract Time as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*:

.1 1st day of August in the year 2014 ; or

.2 within 2 weeks after receipt of all approvals from authorities having jurisdiction.

(Manually strike out inapplicable paragraph.)

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 The *Contract* as described in Article A-3 of the Agreement - CONTRACT DOCUMENTS supersedes all prior negotiations, representations, or agreements, either written or oral, relating in any manner to the *Work*.
- 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 *Design-Builder*
- Definitions of the Design-Build Stipulated Price Contract
- General Conditions of the Design-Build Stipulated Price Contract
- *Owner's Statement of Requirements*
- *Construction Documents*, after they have been accepted by the *Owner*
- * TBD

* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. Supplementary Conditions; Proposals; 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:

Eight Million Five Hundred Sixty Five Thousand Dollars & Nil cents
/100 dollars \$ 8,565,000.00

4.2 *Value Added Taxes* (of 5 %) payable by the *Owner* to the *Design-Builder* are:

Four Hundred Twenty Eight Thousand Two Hundred & Fity Dollars & Nil cents
/100 dollars \$ 428,250.00

4.3 Total amount payable by the *Owner* to the *Design-Builder* for the *Work* is:

Eight Million Nine Hundred Ninety Three Thousand Two Hundred & Fifty Dollars
& Nil Cents /100 dollars \$ 8,993,250.00

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:

.1 make progress payments to the *Design-Builder* on account of the *Contract Price* when due in the amount certified by City of Nanaimo

insert above the name of the Payment Certifier

who is acting as, and is hereinafter called, the "*Payment Certifier*", together with such *Value Added Taxes* as may be applicable to such payment, and

.2 upon *Substantial Performance of the Work*, pay to the *Design-Builder* 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 *Design-Builder* 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 and machinery insurance policies, payments shall be made to the *Design-Builder* 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 Prime percent (%) per annum above the prime rate on such unpaid amounts shall also become due and payable until payment. Such interest shall be compounded on a monthly basis. The prime rate shall be the lowest rate of interest quoted by the Royal Bank of Canada for prime business loans.

- .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 advanced and for which the *Design-Builder* is thereafter entitled to payment, either pursuant to Part 8 of the General Conditions - DISPUTE RESOLUTION, or otherwise, 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 _____
street and number and postal box number if applicable

_____ *post office or district, province, postal code*

The *Design-Builder* at 4034 Gulfview Drive, _____
street and number and postal box number if applicable

Nanaimo, B.C. V9T-6B4 _____
post office or district, province, postal code

The *Consultant* at _____
street and number and postal box number if applicable

_____ *post office or district, province, postal code*

*The *Payment Certifier* at _____
street and number and postal box number if applicable

_____ *post office or district, province, postal code*

* *Manually strike out this paragraph if inapplicable*

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* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and permitted 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

City of Nanaimo

name of Owner

signature

name and title of person signing

signature

name and title of person signing

WITNESS

signature

name and title of person signing

Design-Builder

CANbuild Solutions

name of Design-Builder

signature

name and title of person signing

WITNESS

signature

name and title of person signing

- N.B. Where legal jurisdiction, local practice, or Owner or Design-Builder 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 OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT

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

1. **Change Directive**
A *Change Directive* is a written instruction signed by the *Owner* directing a change in the *Work* within the general scope of the *Contract Documents*.
2. **Change Order**
A *Change Order* is a written amendment to the *Contract* signed by the *Owner* and the *Design-Builder* stating their agreement upon:
 - a change in the *Work*;
 - an amendment to the *Owner's Statement of Requirements*, if any;
 - 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.
3. **Construction**
Construction means the total construction and related services required by the *Contract Documents*.
4. **Construction Documents**
The *Construction Documents* consist of the drawings and specifications that are prepared based on the *Contract Documents* by or on behalf of the *Design-Builder* and that are accepted and signed by the *Owner* and the *Design-Builder* after execution of the Agreement, as meeting the general functional intent of the *Contract Documents*.
5. **Consultant**
The *Consultant* is the person or entity identified as such in the Agreement. The term *Consultant* means the Architect, the Engineer, or entity licensed to practice in the province or territory of the *Place of the Work* and engaged by the *Design-Builder* to provide the *Consultant's Design Services* and to coordinate the provision of the *Design Services* of all other consultants employed by the *Design-Builder*. The term *Consultant* means the *Consultant* or the *Consultant's* authorized representative as designated by the *Design-Builder* to the *Owner* in writing.
6. **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.
7. **Contract Documents**
The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments thereto agreed upon between the parties.
8. **Contract Price**
The *Contract Price* is the amount stipulated in Article A-4 of the Agreement - CONTRACT PRICE.
9. **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*.
10. **Design-Builder**
The *Design-Builder* is the person or entity identified as such in the Agreement. The term *Design-Builder* means the *Design-Builder* or the *Design-Builder's* authorized representative as designated by the *Design-Builder* to the *Owner* in writing.
11. **Design Services**
Design Services means the professional services for the design and construction administration performed by the *Consultant* or other consultants under the *Contract*.

- 12. 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 by the *Owner* to the *Design-Builder* in writing.
- 13. Owner's Statement of Requirements**
The *Owner's Statement of Requirements* consists of the site information and program requirements provided by the *Owner* and as listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments thereto agreed upon between the parties.
- 14. Payment Certifier**
The *Payment Certifier* is the person or entity identified as such in the Agreement responsible for the issuance of certificates for payment. The *Payment Certifier* may be the *Consultant*, *Owner*, or any knowledgeable third party, as designated by the *Owner*.
- 15. Place of the Work**
The *Place of the Work* is the designated site or location of the *Construction* identified in Article A-1 of the Agreement - THE WORK.
- 16. Product**
Product or Products means material, machinery, equipment, and fixtures forming part of 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.
- 17. Project**
The *Project* means the *Owner's* enterprise of which the *Work* may be the whole or a part.
- 18. Provide**
Provide means to supply and install.
- 19. Subcontractor**
A *Subcontractor* is a person or entity, other than the *Consultant* or other consultants, having a direct contract with the *Design-Builder* to perform a part or parts of the *Work*, or to supply *Products* worked to a special design for the *Work*.
- 20. Substantial Performance of the Work**
Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Consultant*.
- 21. Supplier**
A *Supplier* is a person or entity having a direct contract with the *Design-Builder* to supply *Products* not worked to a special design for the *Work*.
- 22. Value Added Taxes**
Value Added Taxes means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, Harmonized Sales Taxes, and any similar tax, the payment or collection of which, by the legislation imposing such tax, is an obligation of the *Design-Builder*.
- 23. Work**
The *Work* means the *Design Services* and *Construction* required by the *Contract*.
- 24. 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*.

GENERAL CONDITIONS OF THE DESIGN-BUILD 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 *Design Services*, *Construction*, and other services necessary for the performance of the *Work* in accordance with these documents. It is not intended, however, that the *Design-Builder* 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 the *Owner* and the *Consultant*, an other consultant, a *Subcontractor*, a *Supplier*, or their agent, employee, or any other person performing any of the *Work*.
- 1.1.3 If the *Payment Certifier* is not the *Consultant* or the *Owner*, the *Owner* shall, if requested in writing by the *Design-Builder*, disclose the contractual relationship between the *Owner* and the *Payment Certifier* by provision of a copy of the contract with the *Payment Certifier* to the *Design-Builder*.
- 1.1.4 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.5 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.6 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.7 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 *Construction*.
- 1.1.8 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 *Construction*, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.9 Neither the organization of the specifications into divisions, sections, and parts, nor the arrangement of drawings shall control the *Design-Builder* in dividing the work among *Subcontractors* and *Suppliers* or in establishing the extent of the work to be performed by a trade.
- 1.1.10 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and the *Design-Builder*,
 - the Definitions,
 - Supplementary Conditions,
 - the General Conditions,
 - the *Owner's Statement of Requirements*,
 - the *Construction Documents*:
 - Division 1 of the specifications,
 - Divisions 2 through 16 of the specifications,
 - material and finishing schedules,
 - drawings.
 - .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.
- 1.1.11 Copyright for the design and drawings prepared by or on behalf of the *Design-Builder* belongs to the *Consultant* or other consultants who prepared them.
- 1.1.12 Plans, sketches, drawings, graphic representations, and specifications, including computer generated designs, when prepared by the *Consultant*, or other consultants are instruments of their service and shall remain their property whether the *Construction* for which they are made is executed or not.

- 1.1.13 Submissions or distribution of the *Consultant* or other consultants' plans, sketches, drawings, graphic representations, and specifications to meet official regulatory requirements or for other purposes in connection with the *Work* is not to be construed as publication in derogation of their reserved rights.
- 1.1.14 The *Owner* may retain copies, including reproducible copies, of plans, sketches, drawings, graphic representations, and specifications for information and reference in connection with the *Owner's* design and construction and the *Owner's* use and occupancy of the *Work*. As a condition precedent to the use of such documents, the *Owner* shall have paid in full for any *Design Services* rendered. The *Design-Builder* will, prior to any payment being issued under this *Contract*, deliver to the *Owner* a consent and acknowledgement signed by the *Consultant* confirming the *Consultant's* agreement that the *Owner* may use any material produced by the *Consultant* and in which the *Consultant* retains any copyright in the manner set forth in paragraphs 1.1.13 to 1.1.16.
- 1.1.15 Except for reference purposes, the plans, sketches, drawings, graphic representations, and specifications shall not be used for additions or alterations to the *Work* or on any other project.
- 1.1.16 Models and architectural renderings furnished by the *Design-Builder* at the *Owner's* expense are the property of the *Owner*.

GC 1.2 OWNER SUPPLIED INFORMATION

- 1.2.1 Unless the *Contract Documents* specifically state otherwise, the *Design-Builder*, *Consultant* and other consultants may rely on the accuracy and completeness of all information provided by the *Owner* without regard for the source of such information.
- 1.2.2 Notwithstanding any other provision of the *Contract*, the *Design-Builder* is not responsible for any design errors or omissions in any designs or specifications provided by or on behalf of the *Owner* unless the *Design-Builder* has been specifically requested to review and has accepted in writing those designs and specifications under the *Contract*.
- 1.2.3 The *Owner* shall furnish the information and services required under the *Contract* promptly to avoid delay in the performance of the *Contract*.
- 1.2.4 The *Owner's Statement of Requirements* may include:
- .1 site information e.g. site description, topographical and boundary surveys, environmental, geotechnical and designated substance investigation reports, utility information, and covenants and restrictions on the property; and
 - .2 the *Owner's* program requirements e.g. design objectives and parameters, performance requirements, constraints and criteria, spatial and functional requirements and relationships, flexibility and potential for expansion, special equipment and systems, and site requirements and budget.
- 1.2.5 The *Design-Builder* shall review the *Owner's Statement of Requirements* and shall report promptly to the *Owner* any significant error, inconsistency, or omission the *Design-Builder* may discover.
- 1.2.6 The review by the *Design-Builder* under paragraph 1.2.5 shall be to the best of the *Design-Builder's* knowledge, information, and belief and in making such review the *Design-Builder* does not assume any responsibility to the *Owner* for the accuracy of the review with respect to the *Owner's Statement of Requirements* prepared by or on behalf of the *Owner*.
- 1.2.7 The *Design-Builder* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Owner's Statement of Requirements* prepared by or on behalf of the *Owner* which the *Design-Builder* did not discover.
- 1.2.8 If the *Design-Builder* does discover any significant error, inconsistency, or omission in the *Owner's Statement of Requirements* prepared by or on behalf of the *Owner*, the *Design-Builder* shall not proceed with the work affected until the *Design-Builder* and the *Owner* have discussed how the information should be corrected or supplied.

GC 1.3 LAW OF THE CONTRACT

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

GC 1.4 RIGHTS AND REMEDIES

- 1.4.1 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.

- 1.4.2 Except as expressly provided in the *Contract Documents*, no action or failure to act by the *Owner*, *Design-Builder*, or the *Consultant* 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 to in writing.

GC 1.5 ASSIGNMENT

- 1.5.1 Neither party to the *Contract* shall assign all or any part of the *Contract* without the written consent of the other, which consent shall not be unreasonably withheld.

GC 1.6 CONFIDENTIALITY

- 1.6.1 The *Owner* and the *Design-Builder* shall keep confidential all matters respecting technical, commercial, and legal issues relating to or arising out of the *Work* or the performance of the *Contract* and shall not, without the prior written consent of the other party, disclose any such matters, except in strict confidence, to its professional advisors.

PART 2 DESIGN SERVICES AND ADMINISTRATION OF THE CONTRACT

GC 2.1 CONSULTANT

- 2.1.1 The *Design-Builder* shall engage the *Consultant* under a contract pursuant to which the *Consultant's* services, duties and responsibilities will include:
- .1 the review of the *Owner's Statement of Requirements*;
 - .2 the review with the *Owner* of reasonable alternative approaches to the design;
 - .3 the preparation of a design that meets the criteria set forth in the *Contract Documents*;
 - .4 the coordination required to integrate all parts of the *Design Services*;
 - .5 the preparation of schematic design documents to illustrate the scale and character of the *Work* and how the parts of the *Work* functionally relate to each other;
 - .6 the preparation of design development documents, based on the schematic design documents accepted by the *Owner*, consisting of drawings and other documents appropriate to the size of the *Work* to describe the size and character of the entire *Work* including architectural, mechanical and electrical systems, materials, and such other elements as may be appropriate;
 - .7 the preparation of *Construction Documents* setting forth in detail the requirements for *Construction* based on the design development documents accepted by the *Owner*;
 - .8 the provision of assistance to the *Owner* and *Design-Builder* to obtain approvals, permits, and licenses for the *Construction*;
 - .9 the conducting of general review of the progress of the *Construction*, to the extent necessary, in order to determine to the *Consultant's* satisfaction that the *Construction* is performed in general conformity with the requirements of:
 - (1) The *Contract Documents*, and
 - (2) The applicable statutes, regulations, codes, and bylaws of all authorities having jurisdiction over the *Work*;
 - .10 the assurances required by regulatory authorities respecting substantial conformance of the design with the applicable building regulations, other than construction safety issues;
 - .11 the preparation of *Change Orders* and *Change Directives* as set out in GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE;
 - .12 the determining of amounts owing to the *Design-Builder* based on the *Consultant's* observations and evaluation of the *Design-Builder's* applications for payment;
 - .13 the issuance of certificates for payment in the value proportionate to the amount of the *Contract*, for *Work* performed and *Products* delivered to the *Place of the Work*;
 - .14 the interpretation, in the first instance, of the requirements of the *Construction Documents* and the making of findings as to the performance thereunder by both the *Owner* and the *Design-Builder* without showing partiality to either the *Owner* or the *Design-Builder*, and in no event incurring liability for the result of such interpretations or findings rendered in good faith in such capacity;
 - .15 the interpretation and finding, in the first instance, of 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.
 - .16 the rejecting of work which does not conform to the requirements of the *Contract Documents*;

- .17 the requiring of special testing and inspection of the *Construction* at the sole discretion of the *Consultant*, whether or not such *Construction* has been fabricated, installed, or completed;
 - .18 the determining of the date of *Substantial Performance of the Work* and the issuing of a certificate attesting to same;
 - .19 the verification of the *Design-Builder's* application for final payment and the issuing of a certificate for payment;
 - .20 the reviewing of any defects or deficiencies in the *Work* during the period described in GC 12.3 - WARRANTY and the issuance of appropriate instructions for the correction of same; and
 - .21 such other work that may be required from time to time that is agreed to by the *Owner* and the *Design-Builder* in writing and is acceptable to the *Consultant*.
- 2.1.2 In performing the above duties, the *Consultant* will provide the necessary services as expeditiously as is required for the orderly progress of the *Work*.
- 2.1.3 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.
- 2.1.4 The *Consultant* shall perform the *Design Services* and fulfil the *Consultant's* duties and responsibilities to the standard of diligence, skill, and care that consultants would customarily provide in similar circumstances and in the same relative geographic location, subject to the *Consultant's* professional and legal obligations.
- 2.1.5 The *Owner* waives any right of action in negligence or otherwise against the *Consultant* or any other consultant employed by the *Design-Builder* in respect of performance of the *Design Services* except to the extent the *Owner* may be entitled to make a claim against the *Design-Builder* under the *Contract*.
- 2.1.6 If the *Consultant's* engagement is terminated, the *Design-Builder* shall engage a new *Consultant* to provide the *Consultant's* services. The *Design-Builder* shall notify the *Owner* in writing before appointing or reappointing a *Consultant* to provide the *Design Services*. The *Design-Builder* shall not appoint any *Consultant* to whom the *Owner* may reasonably object.

GC 2.2 OWNER'S REPRESENTATIVE

- 2.2.1 The *Owner* shall designate a representative authorized to act on the *Owner's* behalf and shall specify in written notice to the *Design-Builder* any limits on the representative's authority.
- 2.2.2 Subject to any notified limitations in authority, the *Design-Builder* may rely upon any written instructions or directions provided by the *Owner's* representative.
- 2.2.3 The *Owner's* representative shall take all reasonable steps to be accessible to the *Design-Builder* during performance of the *Contract* and shall render any necessary decisions or instructions promptly to avoid delay in the performance of the *Contract*.
- 2.2.4 The *Owner* and *Owner's* representatives shall not communicate with any *Subcontractors* performing the *Work* except through the *Design-Builder* or a person designated by the *Design-Builder*.

GC 2.3 REVIEW AND INSPECTION OF THE WORK

- 2.3.1 The *Design-Builder* shall
- .1 permit the *Owner* to review all material aspects of the design of the *Work* as the design proceeds, and
 - .2 provide a copy of all drawings, specifications, and diagrams to the *Owner* when required for review and acceptance.
- 2.3.2 From time to time, the *Design-Builder* may request and, on request, the *Owner* shall examine certain aspects of the design as set out on design development documents or *Construction Documents* to confirm that the design aspects are in general compliance with:
- .1 the qualitative, functional layout, operational, and other *Owner* requirements for the *Work*; and
 - .2 the standards of finish, comfort, or aesthetics as required by the *Contract Documents*.
- 2.3.3 The *Owner*, the *Consultant* and the *Payment Certifier* shall have access to the *Construction* at all times. The *Design-Builder* shall provide sufficient, safe, and proper facilities at all times for their review of the *Construction* and the inspection of the *Construction* by authorized agencies. If parts of the *Construction* are in preparation at locations other than the *Place of the Work*, the *Owner*, the *Consultant* and the *Payment Certifier* shall be given access to such work whenever it is in progress.

- 2.3.4 If work is designated for tests, inspections, or approvals in the *Contract Documents*, or by the instructions of the *Owner* or the *Consultant*, or the laws or ordinances of the *Place of the Work*, the *Design-Builder* shall give the *Owner* reasonable notice of when the work will be ready for review and inspection. The *Design-Builder* shall arrange for and shall give the *Owner* reasonable notice of the date and time of inspections by other authorities.
- 2.3.5 The *Design-Builder* shall furnish promptly to the *Consultant* and to the *Owner*, on request, a copy of certificates and inspection reports relating to the *Work*.
- 2.3.6 If the *Design-Builder* 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 *Design-Builder* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good the covering work at the *Design-Builder's* expense.
- 2.3.7 The *Owner* may order any portion or portions of the *Construction* 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 *Design-Builder* 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 all costs incurred by the *Design-Builder* as a result of such examination and restoration.
- 2.3.8 The *Consultant* shall provide any required assurances to regulatory authorities respecting substantial conformance of the *Construction* with the design approved by that authority for issuance of the building permit.

GC 2.4 DEFECTIVE WORK

- 2.4.1 The *Design-Builder* 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, design, use of defective products, or damage through carelessness or other act or omission of the *Design-Builder*.
- 2.4.2 The *Design-Builder* shall make good promptly other contractors' work destroyed or damaged by such removals or replacements at the *Design-Builder's* expense.
- 2.4.3 If, in the opinion of the *Owner*, 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 *Design-Builder* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Design-Builder* does not agree on the difference in value, the *Design-Builder* shall refer the dispute to Part 8 of the General Conditions - DISPUTE RESOLUTION.

PART 3 EXECUTION OF THE WORK

GC 3.1 CONTROL OF THE WORK

- 3.1.1 The *Design-Builder* 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 *Design-Builder* shall be solely responsible for construction means, methods, techniques, sequences, and procedures with respect to the *Construction* and for co-ordinating the various parts of the *Construction* under the *Contract*.
- 3.1.3 The *Design-Builder* shall keep the *Owner* informed of the progress of the *Work*.
- 3.1.4 The *Design-Builder* is solely responsible for the quality of the *Work* and shall undertake any quality control activities specified in the *Contract Documents* or, if none are specified, as may be reasonably required to ensure such quality.

GC 3.2 CONSTRUCTION DOCUMENTS

- 3.2.1 During the progress of the *Work*, the *Design-Builder* shall furnish to the *Owner* the *Construction Documents* that describe details of the design required by the *Contract Documents*. At the time of submission the *Design-Builder* shall notify the *Owner* in writing of any significant deviations in the *Construction Documents* from the requirement of the *Contract Documents*.

- 3.2.2 The *Design-Builder* shall submit the *Construction Documents* to the *Owner* to review in orderly sequence and sufficiently in advance so as to cause no delay in the *Work*. Upon request of the *Owner* or the *Design-Builder*, they jointly shall prepare a schedule of the dates for submission and return of *Construction Documents*.
- 3.2.3 The *Owner* shall review the *Construction Documents* in accordance with the schedule agreed upon, or in the absence of an agreed schedule with reasonable promptness so as to cause no delay. The *Owner's* review is for conformity to the intent of the *Contract Documents*. The *Owner's* review shall not relieve the *Design-Builder* of responsibility for errors or omissions in the *Construction Documents* or for meeting all requirements of the *Contract Documents* unless the *Owner* expressly accepts a deviation from the *Contract Documents*.
- 3.2.4 No later than 7 days after completing the review, the *Owner* shall notify the *Design-Builder* in writing that the *Owner* has accepted and has signed the *Construction Documents* or shall notify the *Design-Builder*, giving reasons in writing, why the *Owner* rejects the *Construction Documents*. Upon request by the *Owner*, the *Design-Builder* shall revise and resubmit *Construction Documents* which the *Owner* has rejected. The *Design-Builder* shall notify the *Owner* in writing of any revisions to any resubmission other than those requested by the *Owner*.
- 3.2.5 When the *Construction Documents* are accepted and signed by the *Owner* and the *Design Builder* such *Construction Documents* shall become part of the *Contract Documents*.
- 3.2.6 When a change is required to the *Construction Documents* that have been accepted and signed by the *Owner*, it shall be made in accordance with GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, or GC 6.3 - CHANGE DIRECTIVE.

GC 3.3 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- 3.3.1 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.
- 3.3.2 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 *Design-Builder* 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.
- 3.3.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Design-Builder* 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 schedules when directed by the *Owner*; 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 *Owner* in writing and prior to proceeding with that part of the *Work*, any apparent deficiencies in such work. Failure by the *Design-Builder* 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.
- 3.3.4 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.
- 3.3.5 Claims, disputes, and other matters in question between the *Design-Builder* 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 *Design-Builder* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owner* contains a similar requirement to arbitrate such dispute.

GC 3.4 SCHEDULE OF THE WORK

3.4.1 The *Design-Builder* shall:

- .1 prepare and submit to the *Owner* prior to the first application for payment, a schedule of the *Work* 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 *Design Services* and *Construction* relative to the schedule of the *Work* and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
- .3 advise the *Owner* in writing 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 3.5 CONSTRUCTION SAFETY

3.5.1 Subject to paragraph 3.3.2.2 of GC 3.3 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the *Design-Builder* 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 *Construction*.

GC 3.6 SUPERVISOR

3.6.1 The *Design-Builder* shall employ a competent supervisor and necessary assistants who shall be in attendance at the *Place of the Work* while the *Construction* is being performed. The supervisor shall not be changed except for valid reason.

3.6.2 The supervisor shall represent the *Design-Builder* at the *Place of the Work* and notices and instructions given to the supervisor by the *Owner* shall be held to have been received by the *Design-Builder*.

GC 3.7 OTHER CONSULTANTS, SUBCONTRACTORS, AND SUPPLIERS

3.7.1 The *Design-Builder* 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 the *Consultant*, and other consultants to require them to perform their design and other services as provided in the *Contract Documents*;
- .2 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work and related services as required by the *Contract Documents*;
- .3 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with the *Consultant*, other consultants, *Subcontractors*, and *Suppliers* insofar as they are applicable; and
- .4 be as fully responsible to the *Owner* for acts and omissions of the *Consultant*, other consultants, *Subcontractors*, *Suppliers*, and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Design-Builder*.

3.7.2 The *Design-Builder* shall indicate in writing, at the request of the *Owner*, other consultants, *Subcontractors*, or *Suppliers* whose proposals or bids have been received by the *Design-Builder* which the *Design-Builder* would be prepared to accept for the performance of a portion of the *Work*. Should the *Owner* not object before signing the *Contract*, the *Design-Builder* shall employ other consultants, *Subcontractors*, or *Suppliers* so identified by the *Design-Builder* in writing for the performance of that portion of the *Work* to which their proposal or bid applies.

3.7.3 The *Owner* may, for reasonable cause, at any time before the *Design-Builder* has signed the subcontract, object to the use of a proposed other consultant, *Subcontractor*, or *Supplier* and require the *Design-Builder* to employ another proposed other consultant or subcontract bidder.

3.7.4 If the *Owner* requires the *Design-Builder* to change a proposed other consultant, *Subcontractor*, or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences occasioned by such required change.

3.7.5 The *Design-Builder* shall not be required to employ as an other consultant, *Subcontractor*, or *Supplier*, a person or firm to whom the *Design-Builder* may reasonably object.

3.7.6 The *Owner* may provide to other consultants, *Subcontractors*, or *Suppliers* information as to the percentage of their work which has been certified for payment.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Design-Builder* shall provide and pay for labour, *Products*, tools, construction machinery and equipment, water, heat, light, power, transportation, and other facilities and services, including *Design Services*, necessary for the performance of the *Work* in accordance with the *Contract*.
- 3.8.2 Unless otherwise specified, all *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those similar products specified.
- 3.8.3 The *Design-Builder* shall maintain good order and discipline among the *Design-Builder's* employees engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the tasks assigned.

GC 3.9 DOCUMENTS AT THE SITE

- 3.9.1 The *Design-Builder* 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*.

GC 3.10 SHOP DRAWINGS

- 3.10.1 Shop drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, product, and other data which illustrate details of a portion of the *Work*.
- 3.10.2 The *Design-Builder* shall provide shop drawings as described in the *Contract Documents* or as the *Owner* may reasonably request.
- 3.10.3 The *Design-Builder*, the *Consultant* and where appropriate, other consultants, shall review all shop drawings. The *Design-Builder* represents by this review that: the *Design-Builder* 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 *Design-Builder* has checked and coordinated each shop drawing with the requirements of the *Work* and of the *Contract Documents*.
- 3.10.4 Shop drawings which require approval of any authority having jurisdiction shall be submitted to such authority by the *Design-Builder*.
- 3.10.5 If the *Owner* requests to review shop drawings, the *Design-Builder* shall submit them in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of other contractors. The *Owner* and the *Design-Builder* shall jointly prepare a schedule of the dates for submission and return of shop drawings.
- 3.10.6 The *Owner's* review under paragraph 3.10.5 is for conformity to the intent of the *Contract Documents* and for general arrangement only. The *Owner's* review shall not relieve the *Design-Builder* of the responsibility for errors or omissions in the shop drawings or for meeting all requirements of the *Contract Documents* unless the *Owner* expressly accepts a deviation from the *Contract Documents*.

GC 3.11 USE OF THE WORK

- 3.11.1 The *Design-Builder* 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 *Construction*.
- 3.11.2 The *Design-Builder* shall not load or permit to be loaded any part of the *Construction* with a weight or force that will endanger the safety of the *Project*.

GC 3.12 CUTTING AND REMEDIAL WORK

- 3.12.1 The *Design-Builder* shall do the cutting and remedial work required to make the several parts of the *Construction* come together properly.
- 3.12.2 The *Design-Builder* shall co-ordinate the *Work* to ensure that this requirement is kept to a minimum.
- 3.12.3 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 *Construction*.

GC 3.13 CLEANUP

- 3.13.1 The *Design-Builder* shall maintain the *Place of 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.
- 3.13.2 The *Design-Builder* 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 *Place of the Work* clean and suitable for occupancy by the *Owner* before attainment of *Substantial Performance of the Work*. The *Design-Builder* shall remove products, tools, construction machinery, and equipment not required for the performance of the remaining work.
- 3.13.3 Prior to application for the final certificate for payment, the *Design-Builder* 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.

GC 3.14 SIGNAGE

- 3.14.1 Unless reasonably objected by the *Owner*, the *Design-Builder* and the *Consultant* shall be entitled to sign the building by inscription or otherwise on a suitable and reasonably visible part of the permanent fabric of the building.
- 3.14.2 The *Design-Builder* may erect a sign identifying the *Design-Builder*, the *Consultant*, other consultants, and *Subcontractors* at the *Place of the Work* during the construction.

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.
- 4.1.2 Cash allowances cover the net cost to the *Design-Builder* 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 *Design-Builder*.
- 4.1.3 The *Contract Price*, and not the cash allowances, includes the *Design-Builder'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 *Design-Builder* shall be compensated for any excess incurred and substantiated plus an amount for overhead and profit as provided in GC 6.1 - CHANGES.
- 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 *Design-Builder* and the *Owner* shall jointly prepare a schedule that shows when the *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 *Design-Builder*, prior to execution of the Agreement, and promptly from time to time as requested thereafter, furnish to the *Design-Builder* reasonable evidence that financial arrangements have been made to fulfil the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall notify the *Design-Builder* 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 The *Design-Builder* shall submit to the *Owner*, 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.
- 5.2.3 The schedule of values shall be made out in such form and supported by such evidence as accepted by the *Owner* and shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.2.4 Applications for payment shall be dated the last day of the agreed monthly payment period. They shall be issued to the *Owner* and unless the *Payment Certifier* is identified to be the *Consultant*, to the *Payment Certifier*. 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.
- 5.2.5 The *Design-Builder* shall include a statement based on the schedule of values with each application for payment and a certificate for payment issued by the *Consultant* to the *Design-Builder* in the amount applied for by the *Design-Builder*.
- 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 *Owner* may reasonably require to establish the value and delivery of the *Products*.

GC 5.3 PROGRESS PAYMENT

- 5.3.1 If the *Payment Certifier* is not the *Consultant* or the *Owner*, the *Payment Certifier* will issue to the *Owner*, and if the *Payment Certifier* is the *Owner*, the *Owner* shall issue, no later than 10 days after the receipt of an application for payment from the *Design-Builder* submitted in accordance with GC 5.2 – APPLICATION FOR PROGRESS PAYMENT, a certificate for payment in the amount applied for or in such other amount as the *Payment Certifier* determines to be properly due. If the *Payment Certifier* amends the application, the *Payment Certifier* will promptly notify the *Design-Builder* in writing giving reasons for the amendment.
- 5.3.2 The *Owner* shall make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 15 days after the receipt of a certificate for payment issued by the *Payment Certifier* or after the *Owner* has issued a certificate as contemplated by paragraph 5.3.1.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.4.1 When the *Design-Builder* 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 *Design-Builder* shall prepare and submit to the *Owner* a comprehensive list of items to be completed or corrected and apply for a review by the *Owner*. Failure to include an item on the list does not alter the responsibility of the *Design-Builder* to complete the *Contract*.
- 5.4.2 The *Design-Builder's* list and application for *Substantial Performance of the Work* shall include a statement from the *Consultant* representing to the *Design-Builder* the validity of the list and the date of *Substantial Performance of the Work* or designated portion of the *Work*. Where required by the applicable lien legislation, the *Consultant* shall issue a certificate of *Substantial Performance of the Work*.

- 5.4.3 If the *Consultant* is not the *Payment Certifier* and the applicable lien legislation requires the *Payment Certifier* to determine whether the *Contract* has been substantially performed, the *Owner* shall require the *Payment Certifier* within 7 days after receipt of the *Design-Builder's* application for *Substantial Performance of the Work* issue a certificate of the *Substantial Performance of the Work* which shall state the date of *Substantial Performance of the Work* or advise the *Design-Builder* in writing of the reasons for which such a certificate is not issued.
- 5.4.4 Immediately following the issuance of a certificate of *Substantial Performance of the Work*, the *Design-Builder*, in consultation with the *Owner*, 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* as in accordance with GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK, the *Design-Builder* shall:
- .1 submit an application for payment of the holdback amount,
 - .2 submit a sworn statement that all accounts for the *Design Services*, labour, subcontracts, *Products*, construction machinery and equipment, and other indebtedness which may have been incurred by the *Design-Builder* 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 those amounts not yet paid by the *Owner* to the *Design-Builder* for *Work* done which amounts in the *Design-Builder's* hands would be payable by the *Design-Builder* to those with whom it is bound by contract for the performance of the *Work* or any amounts identified by the *Design-Builder*, the payment of which is in dispute.
- 5.5.2 After the receipt of an application for payment from the *Design-Builder* and the sworn statement as provided in paragraph 5.5.1, the *Payment Certifier* 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 as may be required by the lien legislation applicable to the *Place of the Work*, 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 *Design-Builder*.

In the Common Law provinces GC 5.5.4 shall read as follows:

- 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 *Design-Builder* which are enforceable against the *Owner*.

In the Province of Quebec GC 5.5.4 shall read as follows:

- 5.5.4 The holdback amount authorized by the certificate for payment of the holdback amount is due and payable no later than 30 days after the date of *Substantial Performance of the Work*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any legal hypothecs that have been taken or could be taken against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

In the Common Law provinces GC 5.6.1 shall read as follows:

- 5.6.1 Where legislation permits and where, upon application by the *Design-Builder*, 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 *Design-Builder* 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*.

In the Province of Quebec GC 5.6.1 shall read as follows:

- 5.6.1 Where, upon application by the *Design-Builder*, 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 *Design-Builder* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier* no later than 30 days after the date of *Substantial Performance of the Work*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken or could be taken against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.6.2 Notwithstanding the provisions of the preceding paragraph, and notwithstanding the wording of such certificates, the *Design-Builder* 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 *Design-Builder* considers that the *Work* is completed, the *Design-Builder* shall submit an application for final payment and a certificate for payment issued by the *Consultant* to the *Design-Builder* in the amount applied for by the *Design-Builder*.
- 5.7.2 Unless the *Payment Certifier* is identified to be the *Consultant*, the *Payment Certifier* will review the *Work* to verify the validity of the application after the receipt of the *Design-Builder's* application for final payment and the *Consultant's* certificate for payment. The *Payment Certifier* will review the *Work* within 10 days of receipt of the *Design-Builder's* application and will issue to the *Owner*, no later than 7 days after reviewing the *Work*, a certificate for payment in the amount applied for or in such other amount as the *Payment Certifier* determines to be properly due. If the *Payment Certifier* amends the application, the *Payment Certifier* will promptly notify the *Design-Builder* in writing giving reasons for the amendment.
- 5.7.3 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 make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 15 days after the receipt of a final certificate for payment issued by the *Payment Certifier*.

GC 5.8 WITHHOLDING OF PAYMENT

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Design-Builder*, there are items of the *Work* that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Payment Certifier* 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 *Payment Certifier* 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*, 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 *Design-Builder* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive* except as provided in paragraph 6.1.6.
- 6.1.3 If a change in the *Work* results in a net increase in the *Contract Price*, an allowance for overhead and profit shall be included.
- 6.1.4 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.

- 6.1.5 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*.
- 6.1.6 The *Design-Builder*, without invalidating the *Contract*, may make minor adjustments in the *Work* consistent with the intent of the *Contract Documents* without a *Change Order* and shall advise the *Owner* in writing of such adjustments. Such adjustments in the *Work* shall not involve adjustment in the *Contract Price* or *Contract Time*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change in the *Work* is proposed or required, the *Owner* or the *Design-Builder* shall provide a notice in writing describing the proposed change in the *Work* to the other party. The responding party shall present, in a form acceptable to the other party, an amendment to the *Owner's Statement of Requirements*, if any, and 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 *Design-Builder* agree to the amendment to the *Owner's Statement of Requirements*, 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* and signed by the *Owner* and *Design-Builder*. The value of the *Work* performed as the result of a *Change Order* shall be included in applications for progress payment.
- 6.2.3 If the *Owner* requests the *Design-Builder* to submit a proposal for a change in the *Work* and then elects not to proceed with the change, a *Change Order* shall be issued for the *Owner* to reimburse the *Design-Builder* for all costs incurred in any *Design Services* rendered.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Design-Builder* to proceed with a change in the *Work* within the general scope of the *Work* prior to the *Owner* and the *Design-Builder* agreeing upon the adjustment in *Contract Price* and *Contract Time*, the *Owner* shall direct the preparation of a *Change Directive*.
- 6.3.2 Upon receipt of a *Change Directive*, the *Design-Builder* shall proceed promptly with the change in the *Work*.
- 6.3.3 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.
- 6.3.4 The *Design-Builder* shall keep and present, in such form as the *Owner* may require, an itemized accounting of the cost of expenditures and savings referred to in paragraph 6.3.3 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 *Design-Builder* under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the *Owner* and *Design-Builder*;
 - .2 salaries, wages, and benefits of the *Design-Builder's* personnel, when stationed at the field office, in whatever capacity employed; and personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
 - .3 salaries, wages, and benefits of the *Design-Builder's* office personnel engaged in a technical capacity, and other personnel identified in the agreed wage schedule for the time spent in the performance of the *Work*;
 - .4 contributions, assessments, or taxes incurred for such items as employment 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 *Design-Builder* and included in the cost of the work as provided in paragraphs 6.3.4.1, 6.3.4.2, and 6.3.4.3;
 - .5 travel and subsistence expenses of the *Design-Builder's* personnel described in paragraphs 6.3.4.1, 6.3.4.2, and 6.3.4.3;
 - .6 the cost of *Design Services* including all fees and disbursements of the *Consultant* or other consultants engaged or employed to provide such services;
 - .7 the cost of all *Products* including cost of transportation thereof;
 - .8 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 *Design-Builder*;

- .9 rental cost of all tools, machinery, and equipment, exclusive of hand tools, whether rented from or provided by the *Design-Builder* or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery cost thereof;
 - .10 deposits lost;
 - .11 the amounts of all subcontracts;
 - .12 the cost of quality assurance such as independent inspection and testing services;
 - .13 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - .14 royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefor subject always to the *Design-Builder's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 - PATENT FEES;
 - .15 any adjustment in premium for all bonds and insurance which the *Design-Builder* is required, by the *Contract Documents*, to purchase and maintain in relation to the performance of the *Work*;
 - .16 any adjustment in taxes and duties for which the *Design-Builder* is liable in relation to the performance of the *Work*;
 - .17 charges for long distance telephone and facsimile communications, courier services, expressage, photocopying, reproduction of *Contract Documents*, and petty cash items incurred in relation to the performance of the *Work*;
 - .18 the cost of removal and disposal of waste products and debris;
 - .19 costs 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 *Design-Builder* 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 *Design-Builder* reach agreement on the amendment to the *Owner's Statement of Requirements* or the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order* signed by the *Owner* and the *Design-Builder*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner* or the *Design-Builder* 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, if possible before conditions are disturbed, and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Consultant* or other consultants will promptly investigate such conditions. The *Consultant* will notify the *Owner* and the *Design-Builder* of the finding in writing. If the finding is that the conditions differ materially and this would cause an increase or decrease in the *Design-Builder's* cost or time to perform the *Work*, the *Owner* shall issue appropriate instructions for a change in the *Work* as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and 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 notify the *Owner* and *Design-Builder* in writing.

GC 6.5 DELAYS

- 6.5.1 If the *Design-Builder* is delayed in the performance of the *Work* by an action or omission of the *Owner* 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 agreed between the *Owner* and the *Design-Builder*. *Design-Builder* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Design-Builder* as the result of such delay.

- 6.5.2 If the *Design-Builder* 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 *Design-Builder* or any person employed or engaged by the *Design-Builder* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The *Design-Builder* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Design-Builder* as the result of such delay.
- 6.5.3 If the *Design-Builder* 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 *Design-Builder* is a member or to which the *Design-Builder* 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 *Design-Builder's* control, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Design-Builder* agrees to a shorter extension. The *Design-Builder* 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 promptly to the *Owner* and in no event 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 Any adjustment to *Contract Price* and *Contract Time* required as a result of GC 6.5 - DELAYS shall be made as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.

PART 7 DEFAULT NOTICE

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

- 7.1.1 If the *Design-Builder* should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Design-Builder's* insolvency, or if a receiver is appointed because of the *Design-Builder's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, by giving the *Design-Builder* or receiver or trustee in bankruptcy notice in writing, terminate the *Design-Builder's* right to continue with the *Work*.
- 7.1.2 If the *Design-Builder* should neglect to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, notify the *Design-Builder* in writing that the *Design-Builder* is in default of the *Design-Builder's* contractual obligations and instruct the *Design-Builder* 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 *Design-Builder* shall be in compliance with the *Owner's* instructions if the *Design-Builder*:
- .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 *Design-Builder* 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 to the *Design-Builder*, or
 - .2 terminate the *Design-Builder's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Design-Builder'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 *Construction*, and *Products*; utilize the *Construction Documents*, construction machinery, and equipment; subject to the rights of third parties, finish the *Work* by whatever reasonable method the *Owner* may consider expedient, but without undue delay or expense;
 - .2 withhold further payment to the *Design-Builder* until a final certificate for payment is issued;
 - .3 charge the *Design-Builder* the amount by which the full cost of finishing the *Work* and a reasonable allowance to cover the cost of corrections to *Work* performed by the *Design-Builder* 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 *Design-Builder* the difference; and

- .4 on expiry of the warranty period, charge the *Design-Builder* the amount by which the cost of corrections to the *Design-Builder'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 *Design-Builder* the difference.
- 7.1.6 The *Design-Builder's* obligation under the *Contract* as to quality, correction, and warranty of the work performed by the *Design-Builder* up to the time of termination shall continue in force after such termination.
- 7.1.7 The *Owner* may, if conditions arise which make it necessary for reasons other than as provided in paragraphs 7.1.1 and 7.1.4, suspend performance of the *Work* or terminate the *Contract* by giving written notice to that effect to the *Design-Builder* identifying the reason for the suspension and the expected length of the suspension. Such suspension or termination shall be effective in the manner specified in said notice and shall be without prejudice to any claims which either party may have against the other.
- 7.1.8 The *Design-Builder* upon receiving notice of suspension or termination from the *Owner* shall suspend all operations as soon as reasonably possible except *Work* which, in the *Design-Builder's* opinion, is necessary for the safety of personnel and for the care and preservation of the *Work*, the materials and plant. Subject to any directions in the notice of suspension or termination, the *Design-Builder* shall discontinue ordering materials, facilities, and supplies and make every reasonable effort to delay delivery of existing orders and, in the event of termination, to cancel existing orders on the best terms available.
- 7.1.9 During the period of suspension, the *Design-Builder* shall not remove from the site any part of the *Work*, or any *Product* or materials without the consent of the *Owner*.
- 7.1.10 If the *Work* should be suspended for a period of 30 days or less, the *Design-Builder*, upon the expiration of the period of suspension, shall resume the performance of the *Work* in accordance with the *Contract Documents*. If the suspension was not due to an act or an omission of the *Design-Builder*, the *Contract Price* and *Contract Time* shall be adjusted as provided in paragraph 6.5.1 of GC 6.5 - DELAYS.
- 7.1.11 If, after 30 days from the date of notice of suspension of the *Work* the *Owner* and the *Design-Builder* agree to continue with and complete the *Work*, the *Design-Builder* shall resume operations and complete the *Work* in accordance with any terms and conditions agreed upon by the *Owner* and the *Design-Builder*.

GC 7.2 DESIGN-BUILDER'S RIGHT TO SUSPEND 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 *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* 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 suspended or otherwise delayed for a period of 30 days or more under the *Owner's* direction as provided in paragraph 7.1.7 of GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, SUSPEND THE WORK, OR TERMINATE THE CONTRACT or 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 *Design-Builder* or of anyone directly or indirectly employed or engaged by the *Design-Builder*, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, by giving the *Owner* notice in writing, terminate the *Contract*.
- 7.2.3 The *Design-Builder* may notify the *Owner* in writing that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Design-Builder*, reasonable evidence that financial arrangements have been made to fulfil the *Owner's* obligations under the *Contract*,
 - .2 the *Owner* fails to pay the *Design-Builder* the amounts due under the *Contract* or awarded by arbitration or court,
 - .3 the *Owner* has made an assignment of the *Contract* without the required consent of the *Design-Builder*, or
 - .4 the *Owner* persistently disregards communications or reasonable requests from the *Design-Builder* for information or instructions, or otherwise violates the requirements of the *Contract* to a substantial degree.
- 7.2.4 The *Design-Builder'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, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, suspend the *Work* or terminate the *Contract*.

- 7.2.5 If the *Design-Builder* terminates the *Contract* under the conditions set out above, the *Design-Builder* 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 *Design-Builder* 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, collectively referred to as disputes, which are not resolved in the first instance by findings of the *Consultant* as provided in GC 2.1 - CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions - DISPUTE RESOLUTION.
- 8.1.2 If a dispute is not resolved promptly, the *Consultant* shall give such written 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 *Design-Builder* shall act immediately according to such instructions, it being understood that by so doing the *Design-Builder* will not jeopardize any claim the *Design-Builder* 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 *Design-Builder* costs incurred by the *Design-Builder* in carrying out such instructions which the *Design-Builder* 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 Construction Disputes as provided in CCDC 40, 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 2.1 - 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 disputes 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 Construction Disputes as provided in CCDC 40.
- 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 Construction Disputes as provided in CCDC 40. 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 *Design-Builder* 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 8.1.2.
- 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 *Design-Builder* 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 *Design-Builder'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* issued by the *Owner*;
 - .2 acts or omissions by the *Owner*, other contractors, their agents and employees.
- 9.1.2 Should the *Design-Builder* in the performance of the *Contract* damage the *Work*, the *Owner's* property, or property adjacent to the *Place of the Work*, the *Design-Builder* shall be responsible for the making good such damage at the *Design-Builder's* expense.
- 9.1.3 Should damage occur to the *Work* or *Owner's* property for which the *Design-Builder* is not responsible, as provided in paragraph 9.1.1, the *Design-Builder* shall at the *Owner's* expense 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 *Design-Builder* has caused damage to the work of another contractor on the *Project*, the *Design-Builder* 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 *Design-Builder* and may require the *Design-Builder* to defend the action at the *Design-Builder's* expense. The *Design-Builder* 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 *Design-Builder* becomes liable to pay or satisfy a final order, judgment, or award against the *Owner*, then the *Design-Builder*, 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 *Design-Builder* 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 *Design-Builder* 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, damaged, 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 *Design-Builder* commencing the *Work*.
- 9.3.4 Unless the *Contract Documents* 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 *Design-Builder* commencing the *Work*.
- 9.3.5 If the *Design-Builder*
- .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*,
- which were not disclosed by the *Owner*, as required under paragraph 9.3.2, or which were disclosed but have not been dealt with as required under paragraph 9.3.4, the *Design-Builder* shall
- .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 *Owner* in writing.
- 9.3.6 If the *Design-Builder* 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 and the *Design-Builder* shall be reimbursed for all reasonable costs incurred as a result of the delay and as a result of taking those steps.
- 9.3.7 The *Owner* and the *Design-Builder* may jointly rely upon the advice of an independent expert in a dispute under paragraph 9.3.6 and, in that case, the expert shall be jointly selected, retained, and paid by the *Owner* and the *Design-Builder*.
- 9.3.8 The *Owner* shall indemnify and hold harmless the *Design-Builder*, *Consultant*, other consultants, *Subcontractors*, *Suppliers*, and 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 *Design-Builder* 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 1.4.1 of GC 1.4 - 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 proposal or bid closing except for *Value Added Taxes* payable by the *Owner* to the *Design-Builder* as stipulated in Article A-4 of the Agreement - CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Design-Builder* due to changes in such included taxes and duties after the time of the proposal or bid closing, as the case may be, shall increase or decrease the *Contract Price* accordingly.
- 10.1.3 Refunds that are properly due to the *Owner* and have been recovered by the *Design-Builder* will be promptly refunded to the *Owner*.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The *Owner* shall obtain and pay for the permanent easements and rights of servitude.
- 10.2.2 Unless otherwise stated, the *Design-Builder* shall obtain and pay for the building permit and other permits, licences, or certificates necessary for the performance of the *Work* which were in force at the time of the proposal or bid closing.
- 10.2.3 The *Design-Builder* 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 *Design-Builder* shall not be responsible for verifying that the *Owner's Statement of Requirements* is in substantial compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If, after the time of the proposal or bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Design-Builder* shall notify the *Owner* in writing requesting direction immediately upon such variance or change becoming known. Changes shall be made as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.
- 10.2.5 If the *Design-Builder* fails to notify the *Owner* in writing, 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 *Design-Builder* 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 *Design-Builder* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Design-Builder* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Design-Builder* or anyone for whose acts the *Design-Builder* may be liable.
- 10.3.2 The *Owner* shall hold the *Design-Builder* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder'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 *Design-Builder* 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 application for final payment, the *Design-Builder* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due under it.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Design-Builder* shall provide such evidence of compliance by the *Design-Builder* and *Subcontractors* and any other person performing the *Work* who is required to comply with such legislation.

PART 11 INSURANCE — BONDS

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 - INDEMNIFICATION, and unless the *Owner* and the *Design-Builder* agree to obtain project-specific insurance, or higher insurance limits, the *Design-Builder* shall provide, maintain, and pay for the minimum insurance coverages specified in GC 11.1 - INSURANCE.

.1 General Liability Insurance:

The policy shall be in the joint names of the *Design-Builder*, the *Owner*, the *Consultant* and other consultants, with limits of not less than \$2,000,000 per occurrence and with a property damage deductible of not more than \$5,000. The insurance coverage shall not be less than the insurance required by IBC Forms 2100 and 2320, or their equivalent replacement. Umbrella or excess liability insurance may be used to achieve the desired limit. Where the *Design-Builder* maintains a single, blanket policy, the addition of the *Owner* is limited to liability arising out of the *Work* and all operations necessary or incidental thereto.

Completed Operations Liability coverage shall be maintained continuously from the commencement of the *Construction* until two years after *Substantial Performance of the Work*.

.2 Errors and Omissions Insurance:

The *Design-Builder* shall ensure that the *Consultant* and other consultants engaged in the performance of the *Design Services* each carry Errors and Omissions Insurance that have limits of not less than \$250,000 per claim and with an aggregate limit of not less than \$500,000 within any policy year. The *Consultant* or other consultants found to be at fault will be responsible for the deductible amount.

The policy shall be maintained continuously from the commencement of the *Work*, until 2 years after *Substantial Performance of the Work*.

.3 Automobile Liability Insurance:

The policy covers for bodily injury, death, and damage to property with respect to all licensed vehicles owned or leased by the *Design-Builder*. The policy shall have limits of not less than \$2,000,000 inclusive per occurrence. If the policy is issued pursuant to a government-operated automobile insurance system, the *Design-Builder* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Design-Builder*.

.4 Aircraft and Watercraft Liability Insurance:

The policy shall be for owned or non-owned aircraft and watercraft used directly or indirectly by the *Design-Builder* in the performance of the *Work*, including use of additional premises. The policy shall have 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.

.5 Property and Boiler and Machinery Insurance:

(1) "All risks" property insurance shall be in the joint names of the *Design-Builder*, the *Owner*, the *Consultant*, all other consultants, and all *Subcontractors*. The insurance coverage shall not be less than the insurance required by IBC Forms 4042 and 4047, or their equivalent replacement. The insurance provided shall have limits of not less than the sum of the amount of the *Contract Price*, the applicable *Value Added Taxes*, and the full value of products provided by the *Owner* for incorporation into the *Work* as specified in the Supplementary Conditions. The policy shall have a deductible of not more than \$10,000.

(2) Boiler and machinery insurance shall be in the joint names of the *Design-Builder*, the *Owner*, the *Consultant*, all consultants, and all *Subcontractors*. The insurance coverage shall not be less than the insurance provided by the "Comprehensive Boiler and Machinery Form". The insurance provided shall have limits of not less than the replacement value of the boilers, pressure vessels, and other insurable objects forming part of the *Work*.

(3) The policies shall allow for partial or total use or occupancy of the *Work*. If because of such use or occupancy the *Design-Builder* is unable to provide coverage, the *Design-Builder* shall notify the *Owner* in writing. Prior to such use or occupancy, the *Owner* shall provide, maintain, and pay for all risk property and boiler insurance in the amounts described in sub-paragraphs (1) and (2), including coverage for such use or occupancy and shall provide the *Design-Builder* with proof of such insurance. The policies shall be amended to include permission for completion of *Construction* and shall include all insureds as specified in sub-paragraph (1). The *Design-Builder* shall refund to the *Owner* the unearned premiums applicable to the *Design-Builder'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 *Design-Builder* as their respective interests may appear. The *Design-Builder* 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 *Design-Builder* 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 *Design-Builder* shall be entitled to a reasonable extension of *Contract Time*.

(5) The *Design-Builder* 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 *Design-Builder* shall be entitled to receive from the payments made by the insurer the amount of the *Design-Builder'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 3.3.2.4 of GC 3.3 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, shall pay the *Design-Builder* 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.

.6 Equipment Insurance:

The policy covers construction machinery and equipment used by the *Design-Builder* for the performance of the *Work*, including boiler insurance on temporary boilers and pressure vessels. The policy shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. Subject to satisfactory proof of financial capability by the *Design-Builder* for self-insurance, the *Owner* agrees to waive the equipment insurance requirement.

- 11.1.2 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.
- 11.1.3 The *Design-Builder* shall be responsible for deductible amounts under the policies except where otherwise provided in GC 11.1 - INSURANCE or where such amounts may be excluded from the *Design-Builder's* responsibility by the terms of GC 9.1 - PROTECTION OF WORK AND PROPERTY and GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.
- 11.1.4 Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Design-Builder* 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.
- 11.1.5 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 Property and Boiler and Machinery Insurance requirement.
- 11.1.6 If the *Design-Builder* 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 *Design-Builder* and the *Consultant*. The *Design-Builder* 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 *Design-Builder*.
- 11.1.7 All required insurance policies shall be placed with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.8 All required insurance policies shall be endorsed to provide the *Owner* with not less than 30 days notice in writing in advance of any cancellation and material amendment or change restricting coverage.
- 11.1.9 All insureds shall cooperate with the *Design-Builder* to comply with any reporting requirements of the insurance policies in order to maintain the policies in good standing, to give notice in writing of any incidents which may result in a claim or loss covered by the policies and to provide documentation necessary in the defence or settlement of claims.

GC 11.2 BONDS

- 11.2.1 The *Design-Builder* shall, prior to commencement of the *Work* or within the time specified in the *Contract*, provide to the *Owner* such surety bonds as are required by the *Contract Documents*.
- 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 fulfilment of the *Contract*. The surety 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 *Design-Builder* shall indemnify and hold harmless the *Owner*, the *Owner's* 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 *Design-Builder's* performance of the *Work*, 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 *Design-Builder*, the *Consultant*, all other consultants, all *Subcontractors* or anyone for whose acts the *Design-Builder* may be liable, and
 - .3 made in writing within a period of 2 years from the date 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 *Design-Builder* to indemnify under this *Contract* shall be limited to the insurance coverages and limits as agreed to be provided in GC 11.1 - INSURANCE.
- 12.1.3 The *Owner* shall indemnify and hold harmless the *Design-Builder*, the *Consultant*, all other consultants, all *Subcontractors*, all *Suppliers*, their agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Design Services* and *Construction*, 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* or a negligent act or omission or wilful default of the *Owner*, its agents and employees or any other person in respect of those acts the *Owner* may be liable.
- 12.1.4 GC 12.1 - INDEMNIFICATION shall govern over the provisions of paragraph 1.4.1 of GC 1.4 - 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 *Design-Builder*, the *Consultant*, all other consultants, all *Subcontractors*, all *Suppliers*, and their agents and employees from all claims against them including without limitation those that might arise from the negligence or breach of contract by the *Design-Builder*, the *Consultant*, all other consultants, all *Subcontractors*, and their agents and employees 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 arising from the *Design-Builder* bringing or introducing any toxic or hazardous substances and materials to the *Place of the Work* after the *Design-Builder* 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 2 years from the date 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 arising from any liability of the *Design-Builder* for damages resulting from the *Design-Builder's* performance of the *Contract* with respect to substantial defects or deficiencies in the *Work* for which the *Design-Builder* is proven responsible. As used herein "substantial defects or deficiencies" means those defects or deficiencies in the *Construction* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Construction* is unfit for the purpose specified in 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 *Design-Builder*
- As of the date of the final certificate for payment, the *Design-Builder* 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 *Design-Builder'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 1.4.1 of GC 1.4 - 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 such other periods specified in the *Contract Documents* for certain portions of the *Work* or *Products*.
- 12.3.2 The *Design-Builder* warrants that the *Design Services* meet the standard described in GC 2.1.4. and that the *Work* is in accordance with the *Contract Documents*.
- 12.3.3 Except for the provisions of paragraphs 12.3.2 and 12.3.6, the *Design-Builder* shall correct promptly, at the *Design-Builder's* expense, any work which is not in accordance with the *Contract Documents* or 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* shall promptly give the *Design-Builder* notice in writing of observed defects and deficiencies that occur during the warranty period.
- 12.3.5 The *Design-Builder* shall correct or pay for damage resulting from the defects or deficiencies and the corrections made under the requirements of paragraph 12.3.3.
- 12.3.6 The *Design-Builder* 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*.
- 12.3.7 The *Design-Builder* does not warrant against the effects of corrosion, erosion or wear and tear of any *Product* or failure of any *Product* due to faulty operations or maintenance by the *Owner* or conditions of operation more severe than those specified for the *Product*.
- 12.3.8 The warranties and guarantees specified in GC 12.3 - WARRANTY or elsewhere in the *Contract Documents* are the only warranties and guarantees of the *Design-Builder* applicable to the *Work* and no other warranties or guarantees, statutory or otherwise, are or will be implied.