

CCDC 31

Service Contract Between Owner and Consultant

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Name of Project

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CCDC 31 SERVICE CONTRACT BETWEEN OWNER AND CONSULTANT

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AGREEMENT BETWEEN OWNER AND CONSULTANT

This Agreement made on the _____ day of _____ in the year _____
by and between the parties

hereinafter called the “*Owner*”
and

hereinafter called the “*Consultant*”

The *Owner* and *Consultant* agree as follows:

ARTICLE A-1 PROFESSIONAL SERVICES

1.1 The *Consultant* shall provide *Professional Services* in connection with the following *Project*:
(Insert a short description of the *Project*)

The location of the *Project* is as follows:
(Insert the address, location or legal description of the site of the *Project*)

- 1.2 The *Consultant* shall provide *Professional Services* for the *Project* in accordance with Schedule A – CONSULTANT’S SCOPE OF PROFESSIONAL SERVICES.
- 1.3 Any change to the *Professional Services* listed in Schedule A – CONSULTANT’S SCOPE OF PROFESSIONAL SERVICES will be made by written order signed by both parties identifying the change plus adjustments, if any, to the *Consultant’s* fees and *Reimbursable Expenses* and time for completion of the *Professional Services*.
- 1.4 The *Consultant* shall commence the *Professional Services* by the _____ day of _____ in the year _____ and complete by the _____ day of _____ in the year _____ and continue to completion in accordance with the *Contract Time*.

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

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

ARTICLE A-3 CONTRACT DOCUMENTS

3.1 The following sections and documents form part of and are incorporated into the *Contract*:

- Agreement
- Definitions
- General Conditions
- Schedule A - CONSULTANT'S SCOPE OF PROFESSIONAL SERVICES
- Schedule B - REIMBURSABLE EXPENSES
- Schedule C - TIME-BASED RATES FOR PERSONNEL EMPLOYED BY THE CONSULTANT

*

For Educational Only

**(Insert here, attaching additional pages if required, a list of all other Contract Documents e.g. supplementary conditions, Contract Time, Budget of the Work, other schedules and lists that are to be incorporated into the Contract.)*

ARTICLE A-4 REMUNERATION FOR THE PROFESSIONAL SERVICES

4.1 The *Owner* shall pay to the *Consultant* the fees and *Reimbursable Expenses*, as set forth below, for the *Professional Services*.

4.2 The fee, excluding any applicable *Value Added Taxes*, is comprised of one or more of the following:

(delete subparagraphs that do not apply)

- .1 A fixed fee of (\$) earned in accordance with paragraph 4.3 of this Article.
- .2 A percentage-based fee of percent (%) of the *Budget of the Work*, the *Construction Cost Estimate*, and the *Construction Cost* as described in GC 4.2 – PERCENTAGE-BASED FEE.
- .3 A fee based on time-based rates for personnel employed by the *Consultant* as described in Schedule C – TIME-BASED RATES FOR PERSONNEL EMPLOYED BY THE CONSULTANT.
- .4 *Other:
(Insert details)

4.3 When the fee for the *Project* shall be calculated as a fixed fee, it shall be apportioned as follows:

Amount	Milestone/Task
--------	----------------

The fixed fees shall be applicable for (select one):

- the duration of the *Contract*
- twelve months from the effective date of this Agreement at which time the rates shall be increased by % , unless otherwise agreed in writing by the parties
- other (specify)

4.4 When the fee for the *Professional Services* is a percentage fee, the fee shall be apportioned among the *Professional Services* as follows:

Advisory Services	(%) of fee
Project Initiation Services	(%) of fee
Conceptual Design and Review Services	(%) of fee
Preliminary Design and Reviews Services	(%) of fee
Detailed Design and Review Services	(%) of fee
Construction Administration Services	(%) of fee
On-Site Professional Services	(%) of fee
Post Construction Services	(%) of fee
Total	(100 %) of fee as outlined in paragraph 4.2.2 of this Article.

4.5 If through no fault of the *Consultant*, the execution of the *Professional Services* have been unduly delayed, the amounts and rates set forth in this *Contract* shall be subject to review and equitable adjustment.

4.6 Fees for time-based rates in paragraph 4.2.3 of this Article are subject to review and adjustment every months from the date of the *Contract*.

4.7 *Reimbursable Expenses* are the actual expenses, supported by receipts or invoices, which the *Consultant* incurred in providing the *Professional Services*, and as identified in Schedule B – REIMBURSABLE EXPENSES to this Agreement plus an administrative charge of %.

ARTICLE A-5 PAYMENT

- 5.1 The *Consultant* shall issue monthly invoices, or as otherwise agreed, for fees and *Reimbursable Expenses*, together with applicable *Value Added Taxes*.
- 5.2 The *Owner* shall pay the *Consultant* within 30 calendar days after the receipt of an invoice, or as such shorter period that may be prescribed by the law of the *Place of the Work*. The *Owner* shall notify the *Consultant* of any disputed amounts within 14 calendar days of receipt of invoice. In the event of a disputed invoice, only the disputed amount shall be withheld from payment and the *Owner* shall pay the undisputed amount.
- 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 adjudication, arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - (1) 2% per annum above the prime rate for the first 60 days.
 - (2) 4% per annum above the prime rate after the first 60 days.
 Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by *(Insert name of chartered lending institution whose prime rate is to be used)* for prime business loans as it may change from time to time.
 - .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to GC 7.1 – 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 NOTICES IN WRITING

- 6.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 6.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first-class mail, or by other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 6.3 A *Notice in Writing* delivered by one party in accordance with the *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier or, if sent by mail, it will be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* will be deemed to have been received on the *Working Day* next following such day.
- 6.4 A *Notice in Writing* sent by any form of electronic communication will be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it will be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission.
- 6.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address to be delivered in accordance with this Article.

Owner

*name of Owner**

address

email address

Consultant

*name of Consultant**

address

email address

**If it is intended that a specific individual or officer must receive the notice, that individual's name shall be indicated.*

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 the 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 This Agreement 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 by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

in the presence of:

WITNESS

OWNER

name of Owner

signature

signature

name of person signing

name and title of person signing

WITNESS

CONSULTANT

name of Consultant

signature

signature

name of person signing

name and title of person signing

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

DEFINITIONS

The following Definitions shall apply to all Contract Documents.

Additional Services

Those services that are not included or contemplated as *Professional Services* to be provided as identified in Schedule A – CONSULTANT’S SCOPE OF PROFESSIONAL SERVICES at the time this *Contract* was signed, which, with the written agreement of the *Owner* and the *Consultant*, are added to the *Professional Services* identified in Schedule A – CONSULTANT’S SCOPE OF PROFESSIONAL SERVICES.

Budget of the Work

The maximum amount, including contingency allowances, the *Owner* is prepared to spend on the *Work*.

Construction Administration Services

The services, if any, that relate to the administration of the *Construction Contract* and which are identified as such in Schedule A – CONSULTANT’S SCOPE OF PROFESSIONAL SERVICES to form part of the *Professional Services*.

Construction Contract

The written agreement between the *Owner* and the *Contractor* for the performance of the *Work* by the *Contractor*.

Construction Contract Time

The contract time of the *Construction Contract*.

Construction Cost

The actual cost of the *Work*, including overhead, permit fees, all applicable taxes, but excluding the value added taxes.

Construction Cost Estimate

The anticipated total *Construction Cost* at the scheduled time of construction, as agreed to by the *Consultant*, the accuracy of which corresponds to the level of detail of the *Construction Documents* available at the time of the estimate.

Construction Documents

All documents related to the *Work* issued by or through the *Consultant* or the *Owner* that are incorporated into the *Construction Contract* and all variations and modifications issued by or approved by the *Consultant*.

Consultant

The person or entity identified as such in the *Contract*. The *Consultant* is the entity licensed to practice in the province or territory of the *Place of the Work*.

Contract

The written agreement between the *Owner* and the *Consultant* to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

Contract Documents

Those documents identified in Article A-3 – CONTRACT DOCUMENTS and amendments agreed between the parties.

Contract Time

The time schedule mutually agreed to by the *Owner* and the *Consultant* for the delivery of the *Professional Services*.

Contractor

The person or entity contracting with the *Owner* under a *Construction Contract* to perform all or part of the *Work*.

General Review

The visits to the *Place of the Work* at intervals appropriate to the progress of the *Work* that the *Consultant* considers, in the *Consultant’s* professional judgement, to be necessary to become familiar with the progress and quality of the *Work* and to determine that the *Work* is performed in general conformity with the *Construction Documents* and applicable statutes, regulations, codes, and bylaws of all authorities having jurisdiction. *General Review* does not require making exhaustive or continuous site reviews.

Instruments of Service

The drawings, plans, digital and physical models, designs, specifications, studies, reports, photographs, computer software, concepts, products, or processes if proprietary to the *Consultant*, surveys, calculations and other data required by the scope of *Professional Services*, and which were prepared by or on behalf of the *Consultant* and are deliverables for the execution of the *Work*.

Notice in Writing

A written communication between the parties that is transmitted in accordance with the provisions of Article A-6 – NOTICES IN WRITING.

Other Consultant

A specialist, other than the *Consultant* or *Subconsultant*, engaged by the *Owner* for the *Project*.

Owner

The person or entity identified as such in the *Contract*.

Place of the Work

The designated site or location of the *Work* identified in the *Contract*.

Professional Services

Those services provided by the *Consultant* that are identified in Schedule A – CONSULTANT’S SCOPE OF PROFESSIONAL SERVICES, including those provided by *Subconsultants*.

Project

The total endeavour contemplated in the *Contract* of which the *Professional Services* and the *Work* may be the whole or a part.

Ready-for-Takeover

The date as defined in the *Construction Contract*, or if not defined in the *Construction Contract*, of substantial performance or completion of the *Work* as defined in the lien legislation applicable to the *Place of the Work*.

Reimbursable Expenses

Those expenses that are identified in Schedule B – REIMBURSABLE EXPENSES and which are payable by the *Owner* to the *Consultant*.

Shop Drawings

Drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data that are to be provided by the *Contractor* or by others to illustrate details of portions of the *Work*.

Subconsultant

A person or entity engaged by the *Consultant* to provide part of the *Professional Services*.

Value Added Taxes

Those taxes as shall be levied upon the fees and *Reimbursable Expenses* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the fees and *Reimbursable Expenses* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which are imposed on the *Consultant* by tax legislation.

Work

The total construction and related services required by the *Construction Contract*, but does not include the *Professional Services* and the services of *Other Consultants*.

Working Day

A day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The *Contract Documents* are complementary, and what is required by one shall be as binding as if required by all.
- 1.1.2 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.3 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.4 References in the *Contract Documents* to regulations and codes are considered to be references to the latest published version as of the signature date of the *Contract*, unless otherwise indicated.

GC 1.2 LAW OF THE CONTRACT

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

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner* or the *Consultant* shall constitute a waiver of any right or duty afforded to either 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 1.4 ASSIGNMENT

- 1.4.1 Neither the *Owner* nor the *Consultant* shall assign, sublet, or transfer an interest in the *Contract* without the written consent of the other, which consent shall not be unreasonably withheld.

PART 2 ROLES AND RESPONSIBILITIES

GC 2.1 CONSULTANT'S RESPONSIBILITIES

- 2.1.1 The *Consultant's* responsibilities shall include those items identified as *Consultant* responsibilities in SCHEDULE A – CONSULTANT'S SCOPE OF PROFESSIONAL SERVICES.
- 2.1.2 The parties acknowledge that the *Consultant* has obligations arising from the *Consultant's* professional status and by law, which oblige the *Consultant* to exercise the *Consultant's* judgement and take actions to protect the public.
- 2.1.3 The *Consultant* shall provide the *Professional Services* in accordance with the *Contract Documents* and with the degree of care, skill and diligence normally provided by consultants providing comparable services in respect of projects of a similar nature at the same time and in the same or similar locale to that contemplated by the *Contract*. The *Consultant* shall re-perform, at its own cost, *Professional Services* which do not meet the standard set out in this paragraph.
- 2.1.4 The *Consultant* shall provide the *Professional Services* in accordance with the *Contract Time* and as expeditiously as required for the orderly progress of the *Professional Services* and the *Work*.
- 2.1.5 The *Consultant*, following site entry protocol, shall have access to the *Project* site at all reasonable times as required to provide the *Professional Services*. While the *Consultant* is performing *General Review*, any comments on parts of the *Work* which have not been reviewed and which are unrelated to the *Professional Services*, shall be construed as being assumptions only and shall not be relied upon unless the *Owner* requests such review and comment as an *Additional Service*.
- 2.1.6 The *Consultant* may engage *Subconsultants* to provide a part of the *Professional Services*. If the *Owner* reasonably objects to a *Subconsultant* engaged by the *Consultant*, the *Owner* may request the *Consultant* to replace the *Subconsultant*. In this event, the *Owner* shall pay all costs resulting from termination and replacement of that *Subconsultant* and the parties shall adjust the fees and *Contract Time* of the *Professional Services* to take into account the termination and replacement.
- 2.1.7 The *Consultant* shall engage those *Subconsultants* under contracts that incorporate applicable terms and conditions of the *Contract*.
- 2.1.8 The *Consultant* shall coordinate the activities of its *Subconsultants*.

- 2.1.9 If the *Owner* provides equipment or materials for the *Project*, the *Consultant* shall have the discretion to request such equipment or materials be tested or verified before being used for the purposes intended by the *Owner* or be validated by appropriate certification of compliance.
- 2.1.10 Upon receipt of the requested test or verification reports or certificate of compliance, the *Consultant* shall notify the *Owner* of the *Consultant's* acceptance or refusal of equipment or materials concerned, with or without such reservations as the *Consultant* considers to be appropriate. If the *Owner* insists upon using an item to which the *Consultant* has objected or expressed reservations in writing or if the *Owner* declines to arrange to test, verify or certify an item as requested by the *Consultant*, the *Owner* shall be considered to have waived any recourse against the *Consultant* resulting from the use of such item or from a defect or inadequacy in such item.
- 2.1.11 The *Consultant* shall not accept a commission or other compensation from a manufacturer, supplier or contractor involved in the *Project*. The *Consultant* shall have no financial interest in the equipment or materials specified or recommended by the *Consultant* as part of the *Professional Services*. However, ownership of less than 1% of the securities issued by a company whose securities are traded on a recognized securities exchange shall not be deemed to constitute a financial interest.
- 2.1.12 Where the *Consultant* does not provide *Construction Administration Services* referred to in GC 3.3 – CONSTRUCTION ADMINISTRATION in the *Contract* but the *Owner* nevertheless requests the *Consultant* to attend at the *Place of the Work* for any reason, the *Consultant* shall not incur any liability to the *Owner* for having attended at the *Place of the Work* unless the *Owner* makes a specific request to the *Consultant* in writing stating why the *Owner* has requested the *Consultant's* attendance and the *Consultant* has agreed to attend for that sole purpose. In such event, the only responsibility of the *Consultant* shall be to respond to the *Owner's* specific request provided such request falls within the mandate and competence of the *Consultant*.
- 2.1.13 Except to the extent there are errors or deficiencies that would be obvious or apparent to a *Consultant* qualified in the *Place of the Work* to provide services similar in scope, nature and complexity to the *Professional Services*, the *Consultant* is entitled to rely upon the accuracy and completeness of records, information, data, and specifications furnished by:
- .1 the *Owner*, unless specifically stated otherwise;
 - .2 government authorities and public utilities; and
 - .3 manufacturers and suppliers of equipment, material or supplies.
- Should such records, information, data, and specifications prove to be erroneous or inaccurate, the *Consultant* is entitled to make the necessary changes to the *Contract Documents* at the expense of the *Owner*.
- 2.1.14 The *Consultant* shall not be responsible for:
- .1 the services of *Other Consultants*; or
 - .2 the advice of any independent expert engaged either by the *Owner* or the *Contractor*, whether or not recommended by the *Consultant*.
- 2.1.15 In addition to paragraph 2.1.14, and where the *Project* involves construction, the *Consultant* shall not be responsible:
- .1 for the performance of the *Construction Contract*;
 - .2 for the performance by the *Contractor*, subcontractors, suppliers or any other contractors of the *Work* or for the failure of any of them to carry out the *Work* in accordance with the *Construction Contract*;
 - .3 for any and all matters arising from toxic or hazardous substances or materials;
 - .4 to control, direct or supervise the construction methods, means, techniques, sequences, or procedures of the *Contractor*, subcontractors, suppliers, or any other contractors;
 - .5 for acts or omissions of *Other Consultants*, or the *Contractor*, subcontractors, suppliers, or any other contractors;
 - .6 for safety precautions and programs required in connection with the *Work* or for general site safety at the *Place of the Work* under applicable health and construction safety legislation at the *Place of the Work*; or
 - .7 to make exhaustive or continuous on-site reviews.

GC 2.2 OWNER'S RESPONSIBILITIES

- 2.2.1 The *Owner* shall promptly fulfill all of the *Owner's* responsibilities so as not to impede the *Consultant's* orderly provision of the *Professional Services*.
- 2.2.2 The *Owner* shall advise the *Consultant* in writing of the *Owner's* requirements in connection with the *Project*, including the *Budget of the Work*, and time constraints of the *Owner*.
- 2.2.3 The *Owner* shall make available to the *Consultant* all information or data pertinent to the *Project* which is required by the *Consultant* to provide the *Professional Services*.
- 2.2.4 The *Owner*, when so notified by the *Consultant*, may directly engage the services of a specialist to provide information or ancillary services that are necessary to enable the *Consultant* to provide the *Professional Services*.

- 2.2.5 If the *Owner* fails to provide the information as described in paragraph 2.2.3 or engage a specialist as described in paragraph 2.2.4, the *Consultant* may give *Notice in Writing* to the *Owner* either to terminate the *Contract* or to be relieved of any responsibility for the consequences of the *Owner's* failure to provide such information or to engage such specialist.
- 2.2.6 The *Owner* shall ensure that where applicable, *Other Consultants* have adequate professional liability insurance, commensurate with the services they will provide for the *Project*.
- 2.2.7 The *Owner* shall, at the request of the *Consultant* before signing the *Contract*, and as requested, furnish to the *Consultant* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 2.2.8 The *Owner* shall give the *Consultant Notice in Writing* of any material change in the *Owner's* ability to fulfill the *Owner's* payment obligations under the *Contract* during the performance of the *Contract*.
- 2.2.9 The *Owner* shall designate in writing an individual to act as the *Owner's* representative who shall have authority to transmit instructions to and receive information from the *Consultant*.
- 2.2.10 Unless otherwise stated in Schedule A – CONSULTANT'S SCOPE OF PROFESSIONAL SERVICES, the *Owner* shall obtain required approvals, licences, and permits from municipal, governmental or other authorities having jurisdiction over the *Project* so as not to delay the *Consultant* in providing the *Professional Services*.
- 2.2.11 The *Owner* shall not enter into contracts with *Other Consultants* or *Contractors* that are deemed incompatible or inconsistent with the *Professional Services* to be provided under the *Contract*.
- 2.2.12 The *Owner* shall provide to the *Consultant*:
- .1 a copy of the *Contract Documents*;
 - .2 all required cost estimating information;
 - .3 the *Budget of the Work*;
 - .4 a time schedule based upon the *Professional Services* as described in Article A-1 – PROFESSIONAL SERVICES;
 - .5 surveys describing the physical characteristics, legal limitations and utility locations for the site, including legal descriptions of the site and adjoining properties, and any other information necessary to complete the *Professional Services*;
 - .6 reports and appropriate professional recommendations of specialist consultants required by the *Consultant*;
 - .7 inspection and test reports required by the *Owner*, the *Consultant*, *Subconsultants*, *Other Consultants*, authorities having jurisdiction, or by the *Contract Documents*; and
 - .8 pertinent information on contracts with *Other Consultants* identified in Article A-3 – CONTRACT DOCUMENTS.
- 2.2.13 The *Owner* shall:
- .1 examine requests for information or decisions submitted by the *Consultant*, and promptly provide the *Consultant* with the necessary information or decisions to avoid any delay;
 - .2 obtain and pay the costs of all required consents, approvals, licenses, and permits from authorities having jurisdiction, unless the *Owner* is not required to do so under the *Contract Documents*;
 - .3 promptly inform the *Consultant* by *Notice in Writing* if the *Contractor* observes or otherwise becomes aware of any non-conformity with the requirements of the *Construction Documents*. Nothing in this paragraph shall relieve the *Consultant* of responsibility for the *Consultant's* own errors and omissions;
 - .4 keep the *Consultant* informed of any changes in available information with respect to the *Professional Services* and the *Work*, whether identified by the *Owner* or otherwise, including changes in the *Owner's* statement of requirements;
 - .5 include the *Consultant* in any value analysis; and
 - .6 include the *Consultant* in preparing *Construction Cost Estimates*.

PART 3 EXECUTING PROFESSIONAL SERVICES

GC 3.1 BUDGET OF THE WORK, CONSTRUCTION COST ESTIMATE, AND BIDS

- 3.1.1 If at any time before award of a *Construction Contract*, the lowest compliant bid or the lowest negotiated proposal exceeds the *Construction Cost Estimate* by more than 15%, the *Owner* shall:
- .1 give the *Consultant* written approval of an increase in the *Budget of the Work*;
 - .2 co-operate with the *Consultant* to revise the *Construction Documents* to meet the latest *Budget of the Work* while complying with the requirements of the *Contract*;
 - .3 rebid or re-negotiate the bids or proposals; or
 - .4 terminate this *Contract* in accordance with GC 5.1 – TERMINATION AND SUSPENSION.
- 3.1.2 If the *Owner* chooses to proceed under paragraph 3.1.1.2, the *Consultant* shall revise the *Construction Documents* to meet the latest *Budget of the Work* while complying with the requirements of the *Contract*. Such revision shall be performed in accordance with a mutually accepted schedule, and shall be paid for by the *Owner* unless such revision is required as a direct result of the *Consultant's* failure to make reasonable efforts in the execution of the *Professional Services* to meet the *Budget of the Work*.

- 3.1.3 If the *Owner* proceeds under paragraph 3.1.1.3, and the overage is not due to extraordinary market conditions, events, or other factors not reasonably foreseeable by or under the control of the *Consultant*, then the *Owner* may require the *Consultant* to:
- .1 modify the design; and
 - .2 provide other *Professional Services*, including *Additional Services* related to re-bidding or re-negotiating of a *Contractor*'s proposal, for no additional fee.

This shall be the limit of the *Consultant*'s responsibility under GC 3.1 – BUDGET OF THE WORK, CONSTRUCTION COST ESTIMATE, AND BIDS.

GC 3.2 ADDITIONAL SERVICES

- 3.2.1 The *Consultant* and the *Owner* acknowledge that the need for *Additional Services* not included or contemplated in the original *Contract* may arise for a number of reasons, including, but not limited to changes in the *Budget of the Work*, the *Project* scope, the construction schedule, or unforeseen conditions at the *Place of the Work*.
- 3.2.2 Upon recognizing a need to provide *Additional Services*, either the *Consultant* or the *Owner* shall promptly notify the other explaining the facts and circumstances, and shall endeavor to reach agreement on any adjustments to remuneration and time for provision the *Additional Services*. Such agreement shall be recorded in writing.
- 3.2.3 If there is no objection on the part of the *Owner* in a reasonable timeframe to provide the *Additional Services*, the *Consultant* is entitled to proceed with the *Additional Services*. There is no liability to the *Owner* for any *Additional Services* when the *Owner* has not been notified of the need for the *Additional Services*.
- 3.2.4 Failing agreement under paragraph 3.2.2 and subject to paragraph 3.2.5, the *Consultant* shall have no liability with respect to that which would have been an *Additional Service*.
- 3.2.5 Where the *Consultant* considers emergency services to be necessary to meet the *Consultant*'s professional obligations under paragraph 2.1.2, the *Consultant* shall advise the *Owner* and provide the *Additional Services*, and shall be at liberty to pursue recovery of the costs of such *Additional Services*.
- 3.2.6 If the *Owner* requires the *Consultant* to proceed with *Additional Services* before the *Consultant* agrees, or if the parties are unable to agree with respect to the *Additional Services*, the *Owner* may issue a *Notice in Writing* to proceed with the *Additional Services* prior to such agreement. If the *Consultant* believes that the *Additional Services* will increase or decrease the remuneration for *Professional Services* or *Contract Time*, the *Consultant* shall, within 5 *Working Days* of receiving such *Notice in Writing* or before carrying out the *Additional Services*, give written notice of its concerns and impacts to the *Owner*.
- 3.2.7 Any dispute unable to be resolved between the *Owner* and the *Consultant* with respect to *Additional Services* shall be resolved through GC 7.1 – DISPUTE RESOLUTION. The *Consultant* shall continue to provide all *Professional Services* not related to the *Additional Services* in dispute.

GC 3.3 CONSTRUCTION ADMINISTRATION

- 3.3.1 GC 3.3 – CONSTRUCTION ADMINISTRATION applies only when and to the extent that the *Owner* requires *Construction Administration Services* under Schedule A – CONSULTANT'S SCOPE OF PROFESSIONAL SERVICES.
- 3.3.2 The *Consultant* shall have authority to act on behalf of the *Owner* but only to the extent provided in the *Construction Administration Services*.
- 3.3.3 The duties, responsibilities and limitations of authority of the *Consultant* as set forth in the *Construction Contract* shall be modified or extended only with the written consent of the *Owner*, the *Consultant* and the *Contractor*.
- 3.3.4 The *Consultant* shall manage or shall be included in all *Notices in Writing*, instructions, requests, claims, or other communications between the *Owner* and the *Contractor* and between the *Owner* and any *Other Consultants*.
- 3.3.5 The *Consultant* shall have the authority to reject *Work* that does not conform to the requirements of the *Construction Contract*.
- 3.3.6 The *Consultant*:
- .1 shall have the authority to require special inspection or testing of *Work*, whether or not such *Work* has been fabricated, installed or completed;
 - .2 shall have the authority to order minor adjustments in the *Work* that are consistent with the intent of the *Construction Contract*, when these do not involve an adjustment in the *Construction Cost* or an extension of the *Construction Contract Time*; and
 - .3 shall comply with any health and safety precautions and programs related to the *Work*.
- 3.3.7 In addition to those limitations outlined in paragraphs 2.1.14 and 2.1.15, the *Consultant* shall not:
- .1 be required to provide *Professional Services* that involve modification of the *Construction Documents*, except as provided under GC 3.3.6.2;

- .2 be responsible to the *Owner*, the *Contractor* or any *Other Consultant* for the means, methods, techniques, sequences, procedures, and use of equipment for the *Project*, whether or not reviewed by the *Consultant*, which are employed by the *Contractor* or by an *Other Consultant* in executing, designing or administering the *Work*; or
 - .3 be responsible for commissioning and start-up of any facility or equipment, unless specified in the *Contract*.
- 3.3.8 The *Consultant*, if specified in Schedule A – CONSULTANT’S SCOPE OF PROFESSIONAL SERVICES and in the contracts among the *Owner* and *Other Consultants*, shall coordinate the activities of the *Other Consultants*.
- 3.3.9 No acceptance by the *Consultant* of the *Work* or of the services of the *Other Consultants*, whether express or implied, will relieve the *Contractor* or the *Other Consultants* from their responsibility to the *Owner* for the proper performance of the *Work* or their services.
- 3.3.10 *Shop Drawings* shall be reviewed by the *Consultant* only for the limited purpose of checking for general conformance with information given and the design concept expressed in the *Construction Documents*. The *Consultant*’s review of *Shop Drawings* is not for the purpose of determining the feasibility or constructability of the *Work* detailed within the *Shop Drawings* or the accuracy or completeness of instructions for installation.

GC 3.4 PAYMENT CERTIFICATION BY THE CONSULTANT

- 3.4.1 GC 3.4 – PAYMENT CERTIFICATION BY THE CONSULTANT applies only when and to the extent that the *Consultant* is required to issue payment certifications under Schedule A – CONSULTANT’S SCOPE OF PROFESSIONAL SERVICES.
- 3.4.2 The issuance of a certificate for payment shall constitute a representation by the *Consultant* to the *Owner*, based on the *Consultant*’s *General Review* and on review of the *Contractor*’s schedule of values and application for payment, that the *Work* has progressed to the value indicated, that to the best of the *Consultant*’s knowledge, information and belief, the *Work* observed during the course of *General Review* is in general conformity with the *Construction Contract*, and that the *Contractor* is entitled to payment in the amount certified.
- 3.4.3 The issuance of a certificate for payment shall not be a representation that the *Consultant* has made any examination to ascertain how and for what purpose the *Contractor* has used the monies paid by the *Owner*, or that the *Contractor* has discharged its legal obligations.

PART 4 PAYMENT

GC 4.1 PAYMENT

- 4.1.1 Payments for the *Consultant*’s approved invoices shall be made as described in Article A-5 of the Agreement – PAYMENT and SCHEDULE B – REIMBURSABLE EXPENSES.
- 4.1.2 Any expenditure not defined in Schedule B – REIMBURSABLE EXPENSES, which the *Consultant* intends to invoice as a *Reimbursable Expense*, shall be approved by the *Owner* in writing as a *Reimbursable Expense* prior to the expenditure being incurred.
- 4.1.3 If the scope of the *Professional Services* is changed through no fault of the *Consultant*, the fees shall be equitably adjusted as mutually agreed in writing.
- 4.1.4 If the *Professional Services* are to be provided under time-based rates and *Reimbursable Expenses*, the *Consultant* shall provide, prior to the commencement of the *Professional Services*, an estimate of the cost of the *Professional Services* to be provided. These costs shall be monitored and verified from time to time and when the billing reaches 60% of the estimated cost, the parties shall review the progress of the *Project* and make the necessary adjustments if deemed appropriate.
- 4.1.5 The *Consultant* shall maintain records of *Reimbursable Expenses* and time records for *Professional Services* provided for which the fee is computed on an hourly basis. These records shall be maintained by generally accepted accounting principles and made available to the *Owner* at mutually convenient times during the term of the *Contract* and for a period not exceeding one year following completion of the *Professional Services*.

GC 4.2 PERCENTAGE-BASED FEE

- 4.2.1 GC 4.2 – PERCENTAGE-BASED FEE shall apply only when the *Consultant*’s fee, or part thereof, is percentage-based as stated in Article A-4 of the Agreement – REMUNERATION FOR THE PROFESSIONAL SERVICES.
- 4.2.2 The basis for calculating the percentage-based fee shall be as follows:
- .1 before a *Construction Cost Estimate* is available, the fee shall be based on the *Budget of the Work* at the time of the invoice;
 - .2 after a *Construction Cost Estimate* is available, the fee shall be based on the *Construction Cost Estimate* at the time of the invoice; and
 - .3 after the *Construction Contract* is entered into, the fee shall be based on the *Construction Cost* at the time of the invoice.

- 4.2.3 The fee shall not be subject to any retroactive adjustments based on increases or decreases to the *Budget of the Work* or the *Construction Cost Estimate* as the *Professional Services* progress.
- 4.2.4 If the *Owner* furnishes labour or material below market cost, the amounts upon which the fee is calculated shall be adjusted as if all labour and material were paid for at market prices at the time of construction.

PART 5 GOVERNING PRINCIPLES

GC 5.1 TERMINATION AND SUSPENSION

- 5.1.1 The *Contract* shall terminate on the earliest of:
- .1 the date when the *Consultant* has provided all of the *Professional Services* as defined in the *Contract*; or
 - .2 the date of termination if termination occurs in accordance with this GC 5.1 – TERMINATION AND SUSPENSION.
- 5.1.2 If a party is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or a receiver is appointed because of its insolvency, the other party may, without prejudice to any other right or remedy it may have, terminate the *Contract* by giving that party or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 5.1.3 If the *Consultant* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or a receiver is appointed because of its insolvency, the *Owner* shall be entitled to take possession of the *Instruments of Service*, subject to the rights of third parties, to finish the *Professional Services* by whatever method the *Owner* may consider expedient, but without undue delay or expense.
- 5.1.4 If the *Consultant* neglects to properly provide the *Professional Services* 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, give the *Consultant Notice in Writing* of such defect or deficiency in *Professional Services*, including failing to meet the time schedule agreed upon in the *Contract*, and instruct the *Consultant* to correct the defect or deficiency within the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 5.1.5 If the defect or deficiency cannot be corrected within the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Consultant* shall be in compliance with the *Owner's* instructions if the *Consultant*:
- .1 commences the correction of the defect or deficiency within the specified time;
 - .2 provides the *Owner* with an acceptable schedule for such correction; and
 - .3 corrects the default in accordance with the *Contract* terms and within such schedule.
- 5.1.6 If the *Consultant* does not correct the defect or deficiency in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any rights or remedies the *Owner* may have, the *Owner* may:
- .1 correct such defect or deficiency, and deduct the cost thereof from any payment then or thereafter due to the *Consultant*;
 - .2 terminate the *Consultant's* right to continue providing the *Professional Services*, in whole or in part; or
 - .3 terminate the *Contract*.
- Such termination shall not relieve the *Owner* of the obligation to pay for *Professional Services* properly provided and *Reimbursable Expenses* properly incurred by the *Consultant* up to the date of termination and in the manner provided in the *Contract*.
- 5.1.7 If the *Owner* terminates the *Consultant's* right to continue with the *Professional Services* as provided in paragraphs 5.1.6.2 and 5.1.6.3, the *Owner* shall be entitled to withhold further payment to the *Consultant*, and:
- .1 take possession of the *Instruments of Service*, subject to the rights of third parties; finish the *Professional Services* by whatever method the *Owner* may consider expedient, but without undue delay or expense; and
 - .2 charge the *Consultant* the amount by which the full cost of finishing the *Professional Services* exceeds the unpaid balance of the fees and *Reimbursable Expenses*; however, if such cost of finishing the *Professional Services* is less than the unpaid balance of the fees and *Reimbursable Expenses*, the *Owner* shall pay the *Consultant* the difference.
- 5.1.8 If the *Owner* is in default in the performance of any of the *Owner's* obligations under the *Contract*, including but not limited to the non-payment of fees and *Reimbursable Expenses* of the *Consultant* in the manner provided in the *Contract*, the *Consultant* may provide a *Notice in Writing* to the *Owner* that the default must be corrected.
- 5.1.9 If the *Owner* does not correct the default within 5 *Working Days* after receipt of such *Notice in Writing*, or if the default, other than a default in payment, cannot be corrected within those 5 *Working Days*, or if the *Owner* does not commence correction within such 5 *Working Days* or provide the *Consultant* with an acceptable schedule for such correction and correct the default within such schedule, the *Consultant* may suspend or terminate the *Contract* upon further *Notice in Writing* to the *Owner*.

- 5.1.10 If the *Owner* is unwilling or unable to proceed with the *Project*, the *Owner* may suspend or terminate the *Contract* by *Notice in Writing* sent to the *Consultant*. Upon receipt of such *Notice in Writing*, the *Consultant* shall not provide further *Professional Services* other than those reasonably necessary to suspend or terminate that portion of the *Project* for which the *Consultant* is responsible.
- 5.1.11 If the *Owner* suspends performance of the *Professional Services* at any time for more than 30 consecutive or non-consecutive calendar days through no fault of the *Consultant*, the *Consultant* may terminate the *Contract* upon providing a *Notice in Writing* to the *Owner*.
- 5.1.12 If the *Contract* is terminated under any of the conditions set out in paragraphs 5.1.8 to 5.1.10, the *Consultant* shall be entitled to be paid for all *Professional Services* provided and *Reimbursable Expenses* incurred, and for such demonstrable costs the *Consultant* may have sustained as a result of the termination.

GC 5.2 OWNERSHIP AND USE OF DOCUMENTS, PATENTS AND TRADEMARKS

- 5.2.1 The *Instruments of Service* are the property of the *Consultant*, whether the *Project* is completed or not. The *Consultant* reserves the copyright therein and in the *Work* performed therefrom. The *Owner* is entitled to keep a copy of the *Instruments of Service* for its records.
- 5.2.2 The *Consultant* retains ownership of all patents, trademarks, copyrights, industrial or other intellectual property rights resulting from the *Professional Services* or from the *Instruments of Service* which are developed or first reduced to practice by the *Consultant* in the provision of the *Professional Services*. The *Owner* shall not use, infringe or appropriate such proprietary rights without the prior written consent and compensation of the *Consultant*.
- 5.2.3 Provided the fees and *Reimbursable Expenses* of the *Consultant* are paid, the *Owner* shall have a non-exclusive license to use any proprietary *Instruments of Service* which relates to or results from the *Professional Services* and solely for purposes of constructing, using, maintaining, altering, and adding to the *Project*.
- 5.2.4 Any *Instruments of Service* developed by the *Consultant* under the *Contract* shall not infringe the patent, copyright, trademark or other intellectual property rights of another person. The *Consultant* shall indemnify the *Owner* against claims and costs (including legal costs) associated with the *Consultant's* infringement.
- 5.2.5 The *Consultant* shall retain the original of the *Instruments of Service* and of those parts of the *Construction Documents* which are generated by the *Consultant*, including computer-generated designs relating thereto, but excluding any physical models or graphic presentations specifically commissioned and paid for by the *Owner*.
- 5.2.6 Use of the *Instruments of Service* by the *Owner* for purposes other than in connection with the *Project* without notifying the *Consultant* and without the *Consultant's* prior written consent is done so at the sole risk of the *Owner*. The *Owner* shall indemnify the *Consultant* against claims and costs (including legal costs) associated with the *Owner's* improper use. The *Consultant* shall not be responsible for the consequences of any such improper use. The *Consultant* shall be entitled either to compensation for such improper use or to prevent such improper use, or to both.
- 5.2.7 If the *Owner* alters the *Instruments of Service* without notifying the *Consultant* and without the *Consultant's* prior written consent, the *Owner* shall indemnify the *Consultant* against claims and costs (including legal costs) associated with such improper alteration. The *Consultant* shall not be responsible for the consequences of any such improper alteration.
- 5.2.8 The *Owner* may not use the *Instruments of Service* without having paid the fees and *Reimbursable Expenses* of the *Consultant*. The *Consultant* is entitled to injunctive relief if the *Consultant* is not being paid for the *Instruments of Service*.
- 5.2.9 If building information modelling (BIM) is used for the *Project*, and the standard BIM Contract Appendix published by the Institute for BIM in Canada (IBC) is appended to the *Contract*, copyright for the model and model elements shall be as set out in the BIM Contract Appendix.

GC 5.3 CODES, ACTS AND BY-LAWS

- 5.3.1 The *Consultant* shall interpret building codes and by-laws as they apply to the *Project* at the time of design to the best of the *Consultant's* ability. As the *Work* progresses, codes, acts and by-laws may change, or the interpretation by an authority having jurisdiction may differ. In this event, the *Owner* shall compensate the *Consultant* for any additional *Professional Services* required in order to have the *Work* conform to such changes or interpretations of the authority having jurisdiction.

GC 5.4 CONFIDENTIALITY AND IDENTIFICATION

- 5.4.1 Where a confidentiality agreement exists, or as the *Owner* or *Consultant* otherwise expressly identify and require, each party to the *Contract* shall keep confidential all matters respecting technical and commercial issues relating to or arising from 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 their respective *Subconsultants* or *Other Consultants*.

5.4.2 The *Consultant* shall be identified on *Project* signage and promotional material whenever other *Project* design professionals are mentioned. The *Consultant* may refer to the *Project* in the *Consultant's* promotional material with the *Owner's* prior written consent.

PART 6 INSURANCE AND LIABILITY

GC 6.1 INSURANCE

- 6.1.1 All policies of insurance shall be written by insurers adequately licensed to underwrite insurance in the jurisdiction where the *Project* is located.
- 6.1.2 The *Consultant* shall carry professional liability insurance under a policy that insures the *Professional Services*, and that:
- .1 has limits of not less than \$2,000,000 per claim and with an aggregate limit of not less than \$2,000,000 within any policy year, and a deductible not exceeding \$50,000, which shall be the responsibility of the *Consultant*; and
 - .2 is maintained continuously from the commencement of the *Professional Services* for a period of 2 years after the completion of the *Professional Services*.
- 6.1.3 The *Consultant* shall carry from the date of commencement of the *Professional Services* for a period of 2 years, or to the completion of the *Project*, whichever comes later:
- .1 Commercial General Liability Insurance with limits of not less than \$5,000,000 per occurrence;
 - .2 Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence; and
 - .3 If owned or non-owned aircraft and watercraft are used directly or indirectly in the provision of the *Professional Services*, Aircraft and Watercraft Liability Insurance with limits of not less than \$2,000,000 per occurrence.
- 6.1.4 The *Consultant* shall require all *Subconsultants* engaged by the *Consultant* to carry professional liability insurance consistent with those required under the *Contract*.
- 6.1.5 The *Consultant* shall provide evidence of the insurance required in GC 6.1 – INSURANCE prior to the commencement of the *Professional Services*, and shall include the *Owner* as “Additional Insured” with respect to the commercial general liability insurance policy, and note the coverage provided by the insurance policies shall not be cancelled without 30 calendar days’ prior *Notice in Writing* to the *Owner*.

GC 6.2 INDEMNIFICATION AND LIMITATION OF LIABILITY

- 6.2.1 Subject to the limitations of liability set out in the *Contract*, each party shall indemnify the other party, to the extent of the fault or negligence of the indemnifying party, for damages and costs resulting from:
- .1 a breach of contractual obligations under the *Contract* by the indemnifying party or anyone for whom that party is responsible; or
 - .2 negligent or faulty acts or omissions of the indemnifying party or anyone for whom that party is responsible.
- 6.2.2 The *Consultant's* liability for claims which the *Owner* has or may have against the *Consultant* or the *Consultant's* employees, agents, representatives and *Subconsultants* under the *Contract*, whether these claims arise in contract, tort, negligence or under any other theory of liability, shall be limited, notwithstanding any other provision of the *Contract*:
- .1 to claims made by *Notice in Writing* within a period of 6 years after completion of the *Professional Services* or within such shorter period as may be prescribed by any limitation or statute in the jurisdiction in which the *Project* is located;
 - .2 in respect to losses of the type for which insurance is to be provided pursuant to GC 6.1 - INSURANCE, limited to the insurance proceeds recovered under the applicable policy of insurance required in the *Contract*, or that which would have been recovered but for the *Consultant's* failure to maintain such insurance, in no event to exceed the minimum insurance limits of the applicable policies of insurance defined in this *Contract*; and
 - .3 in respect to losses of the type for which insurance is not required to be provided in accordance with GC 6.1 – INSURANCE, limited to the total amount of the *Consultant's* fee and reimbursable expenses, or \$250,000, whichever is greater.
- 6.2.3 Notwithstanding the foregoing, the limitation of liability shall not apply to third parties asserting claims, for bodily injury, sickness, disease (including death), or destruction of tangible property, against either of the parties.
- 6.2.4 Neither party is liable to the other party in relation to the *Contract*, whether due to breach of contract, tort, negligence, warranty, strict liability or otherwise, for consequential or indirect loss or damages, including without limitation, loss of profits, loss of revenue or loss of anticipated business incurred by other party.
- 6.2.5 The obligation of either party to indemnify the other as set forth in paragraphs 6.2.1 and 6.2.2 shall be inclusive of interest and all legal costs.
- 6.2.6 The *Consultant* shall not be liable for the failure of any manufactured product or any manufactured or factory assembled system of components to perform in accordance with the manufacturer’s specifications, product literature or written documentation.

- 6.2.7 Where the *Consultant* is a corporation or partnership, the *Owner* and *Other Consultants* shall limit any claim they may have to the corporation or partnership, without liability on the part of any officer, director, member, employee, or agent of such corporation or partnership.
- 6.2.8 The *Consultant* is not responsible for the identification, reporting, analysis, evaluation, presence, handling, removal or disposal of hazardous substances at or adjacent to the *Place of the Work*, unless specified in Schedule A – CONSULTANT’S SCOPE OF PROFESSIONAL SERVICES, or for the exposure of persons, property or the environment to hazardous substances at or adjacent to the *Place of the Work*.
- 6.2.9 This indemnification and limitation of liability shall survive the *Contract*.
- 6.2.10 The *Consultant* shall not be liable, in contract nor in tort, for:
- .1 any changes made by the *Owner*, the *Contractor*, or other third parties to the *Consultant’s* design or to the *Construction Documents*;
 - .2 acts, omissions or errors of *Other Consultants*; or
 - .3 the result of any finding or interpretation with the *Construction Documents* rendered by *Other Consultants* in accordance with the *Construction Documents*.

PART 7 DISPUTE RESOLUTION

GC 7.1 DISPUTE RESOLUTION

- 7.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes.
- 7.1.2 The *Owner* and the *Consultant* shall make all reasonable efforts to resolve disputes by amicable negotiations and agree to provide, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents, to facilitate these negotiations.
- 7.1.3 In the event of an unresolved dispute, one party sends a *Notice in Writing* of dispute to the other party, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract*.
- 7.1.4 After a period of 10 *Working Days* following receipt of a responding party’s *Notice in Writing* of reply under paragraph 7.1.3, the mediated negotiations shall be conducted, and a Project Mediator appointed, in accordance with the rules for mediation as provided in CCDC 40 ‘Rules for Mediation and Arbitration of Construction Industry Disputes’ in effect on the date of the *Contract*.
- 7.1.5 If the dispute has not been resolved at the mediation or within such further period as is agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner* and the *Consultant*.
- 7.1.6 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 7.1.5, either party may refer the dispute to be finally resolved by arbitration under the rules of arbitration as provided in CCDC 40 in effect on the date of the *Contract*. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 7.1.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 7.1.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 7.1.6 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.
- 7.1.8 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 7.1.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 7.1.6 shall be
- .1 held in abeyance until
 - (1) the *Contract* has been terminated; or
 - (2) the *Consultant* has abandoned the *Professional Services*, whichever is earlier; and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 7.1.6.
- 7.1.9 The paragraphs in GC 7.1 – DISPUTE RESOLUTION shall survive suspension or termination of the *Contract*.
- 7.1.10 Nothing in this *Contract* shall be deemed to affect the rights of the parties to resolve any dispute by adjudication as may be prescribed by applicable legislation.

GC 7.2 SEVERABILITY

- 7.2.1 If any provision of the *Contract* is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from the *Contract* and the other provisions of the *Contract* shall remain in full force and effect.

SCHEDULE A - CONSULTANT'S SCOPE OF PROFESSIONAL SERVICES

<p>Indicate with a ✓ in the appropriate column for each task listed below, including tasks not in the Contract and method of remuneration for tasks in the Contract.</p>	<p>Services not in the Contract</p>	<p>Included in fixed fee (paragraph 4.2.1 of Article A-4)</p>	<p>Included in percentage fee (paragraph 4.2.2 of Article A-4)</p>	<p>Fee on time-based rates (paragraph 4.2.3 of Article A-4)</p>	<p>Other (paragraph 4.2.4 of Article A-4)</p>
<p>1. ADVISORY SERVICES The Consultant shall:</p>					
<p>.1 prepare and periodically update a <i>Construction Cost Estimate</i> and <i>Construction Contract Time</i>;</p>					
<p>.2 assist in the preparation of pre-construction <i>Project</i> operating cost budgets;</p>					
<p>.3 prepare for and attend a public participation or information program;</p>					
<p>.4 prepare for and participate in a value analysis program;</p>					
<p>.5 prepare reports;</p>					
<p>.6 prepare operational studies;</p>					
<p>.7 prepare and deliver renderings;</p>					
<p>.8 prepare and deliver physical models;</p>					
<p>.9 prepare and deliver digital models;</p>					
<p>.10 provide technical representation at meetings;</p>					
<p>.11 prepare specified alternative designs;</p>					
<p>.12 calculate quantities of <i>Work</i> to be performed;</p>					
<p>.13 prepare <i>Project</i> commissioning and start-up procedures;</p>					
<p>.14 prepare applications and supporting documents for governmental grants, loans and subsidies;</p>					
<p>.15 prepare applications and supporting documents for payments in connection with the <i>Project</i>;</p>					
<p>.16 assist in obtaining required approvals, licenses, and permits from governmental authorities having jurisdiction over the <i>Project</i>;</p>					
<p>.17 arrange for the translation of documents into a language other than the language of the <i>Contract</i>;</p>					
<p>.18 arrange for special testing of the <i>Work</i>;</p>					

<p>Indicate with a ✓ in the appropriate column for each task listed below, including tasks not in the Contract and method of remuneration for tasks in the Contract.</p>	<p>Services not in the Contract</p>	<p>Included in fixed fee (paragraph 4.2.1 of Article A-4)</p>	<p>Included in percentage fee (paragraph 4.2.2 of Article A-4)</p>	<p>Fee on time-based rates (paragraph 4.2.3 of Article A-4)</p>	<p>Other (paragraph 4.2.4 of Article A-4)</p>
.19 investigate specified conditions (such as failures, accidents, groundwater and drainage issues, stability, etc.);					
.20 assist in litigation, arbitration, negotiation, adjudication, or other legal or administrative proceedings on behalf of the <i>Owner</i> , and all necessary preparation in respect thereof;					
.21 prepare and deliver of peer review of documents provided by <i>Other Consultants</i> ;					
.22 be, in the first instance, the interpreter of the requirements of the <i>Construction Documents</i> , and shall make written interpretations and findings that are impartial and consistent with the intent of the <i>Construction Documents</i> ;					
.23 other:					
<p>2. PROJECT INITIATION SERVICES The <i>Consultant</i> shall:</p>					
.1 prepare a <i>Project</i> implementation program based upon the <i>Owner's</i> written instructions regarding the <i>Project</i> requirements, the <i>Budget of the Work</i> , and the <i>Owner's</i> time constraints;					
.2 prepare a statement of requirements and <i>Project</i> design criteria to be used in the design process;					
.3 coordinate the work of <i>Other Consultants</i> (where the <i>Consultant</i> is the lead professional);					
.4 prepare specified <i>Project</i> feasibility studies;					
.5 arrange for expert and specialist studies for use in conceptual, preliminary, and detailed design and review services phases;					
.6 prepare environmental assessments and impact studies;					
.7 review studies and reports prepared by others;					
.8 review environmental assessments and impact studies prepared by others;					
.9 review geotechnical reports prepared by others;					
.10 assist in obtaining approvals from authorities having jurisdiction over the <i>Project</i> ;					

<p>Indicate with a ✓ in the appropriate column for each task listed below, including tasks not in the Contract and method of remuneration for tasks in the Contract.</p>	<p>Services not in the Contract</p>	<p>Included in fixed fee (paragraph 4.2.1 of Article A-4)</p>	<p>Included in percentage fee (paragraph 4.2.2 of Article A-4)</p>	<p>Fee on time-based rates (paragraph 4.2.3 of Article A-4)</p>	<p>Other (paragraph 4.2.4 of Article A-4)</p>
<p>.11 other:</p>					
<p>3. CONCEPTUAL DESIGN AND REVIEW SERVICES The Consultant shall:</p>					
<p>.1 review the statement of requirements provided by the <i>Owner</i>;</p>					
<p>.2 analyze information provided by the <i>Owner</i>, including conditions or methods of operations, technical and economic feasibility, location of the Project, and similar matters;</p>					
<p>.3 establish the size, capacity, location, method of operation, and other principal features which form the basis for the design of a proposed <i>Project</i>;</p>					
<p>.4 analyze expert and specialist studies prepared in support of the conceptual design;</p>					
<p>.5 evaluate alternatives;</p>					
<p>.6 prepare concept sketches and develop specification notes;</p>					
<p>.7 prepare <i>Project</i> brief outlining the relevant criteria to be followed in preliminary and detailed <i>Professional Services</i>;</p>					
<p>.8 submit conceptual design and <i>Project</i> brief for review and approval by <i>Owner</i>;</p>					
<p>.9 confirm <i>Budget of the Work</i>;</p>					
<p>.10 other:</p>					

Indicate with a ✓ in the appropriate column for each task listed below, including tasks not in the Contract and method of remuneration for tasks in the Contract.	Services not in the Contract	Included in fixed fee (paragraph 4.2.1 of Article A-4)	Included in percentage fee (paragraph 4.2.2 of Article A-4)	Fee on time-based rates (paragraph 4.2.3 of Article A-4)	Other (paragraph 4.2.4 of Article A-4)
4. PRELIMINARY DESIGN AND REVIEW SERVICES The <i>Consultant</i> shall:					
.1 review information from any <i>Other Consultants</i> to carry out duties and responsibilities;					
.2 prepare preliminary design, including drawings, digital models or sketches illustrating and defining the design concept;					
.3 prepare specification outlines;					
.4 prepare preliminary design report covering alternatives, preliminary sketches and outline specifications;					
.5 prepare documents in support of applications for approval from authorities having jurisdiction over the <i>Project</i> or designated specific aspects of the <i>Project</i> ;					
.6 submit preliminary design report for review and approval by the <i>Owner</i> ;					
.7 confirm <i>Budget of the Work</i> ;					
.8 other:					
5. DETAILED DESIGN AND REVIEW SERVICES The <i>Consultant</i> shall:					
.1 prepare <i>Instruments of Service</i> ;					
.2 prepare bill of quantities;					
.3 prepare documents in support of applications for approval from authorities having jurisdiction for the <i>Project</i> or designated specific aspects of the <i>Project</i> ;					
.4 submit <i>Instruments of Service</i> for review and approval by <i>Owner</i> ;					
.5 prepare and submit <i>Construction Documents</i> for review and approval by the <i>Owner</i> (where the <i>Consultant</i> is the lead professional);					
.6 review <i>Construction Documents</i> prepared by others;					

<p>Indicate with a ✓ in the appropriate column for each task listed below, including tasks not in the Contract and method of remuneration for tasks in the Contract.</p>	Services not in the Contract	Included in fixed fee (paragraph 4.2.1 of Article A-4)	Included in percentage fee (paragraph 4.2.2 of Article A-4)	Fee on time-based rates (paragraph 4.2.3 of Article A-4)	Other (paragraph 4.2.4 of Article A-4)
.7 confirm <i>Budget of the Work</i> ;					
.8 other:					
6. CONSTRUCTION ADMINISTRATION PROFESSIONAL SERVICES The <i>Consultant</i> shall:					
.1 conduct <i>General Review</i> ;					
.2 manage or be included in all communications between the <i>Owner</i> and the <i>Contractor</i> ;					
.3 attend meetings necessary to the coordination of design, construction administration <i>Professional Services</i> , and performance of the <i>Work</i> ;					
.4 prepare and distribute notices of change, change orders, and other necessary <i>Project</i> documentation during the performance of the <i>Work</i> (where the <i>Consultant</i> is the lead professional);					
.5 obtain advice, data and information from <i>Other Consultants</i> when required;					
.6 review <i>Shop Drawings</i> in accordance with paragraph 3.3.10 of GC 3.3 – CONSTRUCTION ADMINISTRATION;					
.7 monitor compliance with the program of construction reviews and testing which may be required by the <i>Consultant</i> or imposed by law in connection with the performance of the <i>Work</i> ;					
.8 interpret <i>Construction Documents</i> (where the <i>Consultant</i> is the lead professional and if so provided in the <i>Construction Contract</i>);					
.9 evaluate <i>Contractor</i> 's applications for payment;					
.10 certify <i>Contractor</i> 's applications for payment, subject to GC 3.4 – PAYMENT CERTIFICATION BY THE CONSULTANT (where the <i>Consultant</i> is the lead professional);					
.11 review of an application for <i>Ready-for-Takeover</i> , noting defects and deficiencies observed in the <i>Work</i> ;					
.12 verify the validity of the <i>Contractor</i> 's application for <i>Ready-for-Takeover</i> (where the <i>Consultant</i> is the lead professional);					
.13 review correction of defects and deficiencies observed in the <i>Work</i> when completed;					

<p>Indicate with a ✓ in the appropriate column for each task listed below, including tasks not in the Contract and method of remuneration for tasks in the Contract.</p>	<p>Services not in the Contract</p>	<p>Included in fixed fee (paragraph 4.2.1 of Article A-4)</p>	<p>Included in percentage fee (paragraph 4.2.2 of Article A-4)</p>	<p>Fee on time-based rates (paragraph 4.2.3 of Article A-4)</p>	<p>Other (paragraph 4.2.4 of Article A-4)</p>
.14 at the end of the <i>Project</i> , compile and deliver to the <i>Owner</i> a reproducible set of updated record documents including data provided by the <i>Contractor</i> , <i>Other Consultants</i> or other parties;					
.15 notify the <i>Contractor</i> in writing of those items requiring attention by the <i>Contractor</i> to complete the construction in accordance with the <i>Construction Documents</i> ;					
.16 do a final <i>General Review</i> and report upon notification by the <i>Contractor</i> that the defects and deficiencies referred to in paragraph 6.14 have been corrected and the <i>Work</i> is completed;					
.17 prepare record drawings;					
.18 other:					
<p>7. ON-SITE PROFESSIONAL SERVICES The <i>Consultant</i> shall:</p>					
.1 arrange for reference surveys for use in the <i>Contractor's</i> layout of the <i>Work</i> (not including surveys of legal property boundaries);					
.2 review <i>Contractor's</i> surveys and layout;					
.3 conduct regular site reviews of the <i>Work</i> to ascertain if the reviewed <i>Work</i> is in general conformance with the <i>Construction Documents</i> ;					
.4 arrange for field-testing and inspection of materials and equipment for <i>Owner's</i> quality assurance program;					
.5 investigate, report, and provide recommendations on unusual circumstances that arise during the <i>Project</i> implementation;					
.6 maintain sufficient data to outline current progress of the <i>Work</i> ;					
.7 conduct final inspection at the conclusion of the <i>Project</i> , including any elements of commissioning agreed to as part of the <i>Owner's</i> acceptance program;					

<p>Indicate with a ✓ in the appropriate column for each task listed below, including tasks not in the Contract and method of remuneration for tasks in the Contract.</p>	<p>Services not in the Contract</p>	<p>Included in fixed fee (paragraph 4.2.1 of Article A-4)</p>	<p>Included in percentage fee (paragraph 4.2.2 of Article A-4)</p>	<p>Fee on time-based rates (paragraph 4.2.3 of Article A-4)</p>	<p>Other (paragraph 4.2.4 of Article A-4)</p>
<p>.8 other:</p>					
<p>8. POST CONSTRUCTION PROFESSIONAL SERVICES The <i>Consultant</i> shall:</p>					
<p>.1 provide commissioning and start-up assistance;</p>					
<p>.2 collect and organize operating and maintenance manuals;</p>					
<p>.3 identify deficiencies during the warranty period at the <i>Owner's</i> request;</p>					
<p>.4 assist in facility management or operations after commissioning and start-up;</p>					
<p>.5 prepare operating or maintenance manuals, operating drawings, or charts;</p>					
<p>.6 other:</p>					

SCHEDULE B REIMBURSABLE EXPENSES

<p>Indicate with a \surd in the appropriate column whether each expense item is included in the fee or is separately reimbursable.</p>	<p>Included in Fee (paragraphs 4.2.1, 4.2.2 or 4.2.3 of Article A-4)</p>	<p>Reimbursable (paragraph 4.7 of Article A-4)</p>
<p>1. Transport, subsistence, and lodging in connection with the <i>Project</i> beyond kilometres of the <i>Consultant's</i> office. Use of vehicles shall be charged at \$ per kilometre.</p>		
<p>2. Long distance telephone and facsimile communications.</p>		
<p>3. Reproduction of information, drawings, specifications, and other documents necessary to the <i>Project</i>.</p>		
<p>4. Testing <i>Professional Services</i>.</p>		
<p>5. Courier and messenger <i>Professional Services</i>.</p>		
<p>6. Fees paid for securing approvals, permits, or licences from regulatory agencies having jurisdiction over the <i>Project</i>.</p>		
<p>7. Advertising incidental to the <i>Project</i>.</p>		
<p>8. Obtaining necessary legal, accounting, insurance, bonding, and other counselling <i>Professional Services</i> pertaining to the <i>Project</i>.</p>		
<p>9. Specialized <i>Project</i> specific computer hardware and software charges and related expenses as agreed to between the <i>Owner</i> and the <i>Consultant</i>.</p>		
<p>10. Customs, excise, or any other taxes incurred by the <i>Consultant</i> with respect to the <i>Professional Services</i>, but excluding <i>Value Added Taxes</i>.</p>		
<p>11. Special or increased insurance coverage required by the <i>Owner</i>.</p>		
<p>12. Fees and disbursements of <i>Subconsultants</i> required to provide the <i>Professional Services</i> where not included in the fees in connection with the <i>Project</i>.</p>		
<p>13. Costs incurred by the <i>Consultant</i> to provide <i>Professional Services</i> in connection with the <i>Project</i> where the <i>Consultant</i> has obtained the prior written approval of the <i>Owner</i>.</p>		
<p>14. Other:</p>		

