CONTRACTS COMMITTEE

WELCOME

to the COAA

INDUSTRIAL CONTRACTING Seminar
INTRODUCTIONS

Seminar Presenters:
Dariel Dent, C.P.P.
Purchasing Leader – Strategic Projects, NOVA Chemicals Corporation

W.J. (Bill) Kenny, Q.C.
Partner, Miller Thomson LLP

Lauren Toreson
Associate, Miller Thomson LLP
SCHEDULE

8:15 – 9:00 a.m.  • Breakfast

9:00 – 9:20 a.m.  • Introductions
      • COAA Overview
      • Philosophy for Development of Contract Documents

9:20 – 10:30 a.m.  • Contract Structure and Risk Allocation

11:00 – 11:45 a.m.  • Break

11:45 – 12:00 noon  • Contract Structure – continued
      • Contract Application and Key Considerations
      • Wrap Up
The Construction Owners Association of Alberta is an association of Owner companies working together to achieve construction excellence in Alberta.

COAA provides leadership in the drive towards safe, effective and productive project execution.
COAA STRUCTURE

- **Board of Directors**
  - comprised of senior representatives from Owner companies

- **Best Practices Committee**
  - creation and promotion of best practices for heavy industrial construction
  - Sub Committees focused on:
    - Safety
    - Workforce Development
    - Productivity
    - Contracts
  - promotion through workshops, seminars, COAA Best Practices Conferences, and formal training programs (e.g. Workface Planning offered at SAIT)

- Executive Director and COAA Office Staff
CONTRACTS COMMITTEE

- a large and active committee for more than 15 years

- representation from the industry stakeholders – Owners, Contractors, Engineers, Lawyers, Consultants

- Purpose – to develop best practices that enhance the drive for efficiency and high performance for all contracting parties on heavy industrial projects in Alberta

- Goal – to provide tools to assist contracting parties
  - clarity on obligations and risks
  - reduce costs associated with contract formation and administration
CONTRACT DOCUMENTS

- EPC Contract (2005)
- EPCM Contract (2008)

- These documents have been declared as Best Practices for the industry by the COAA Board of Directors.
- Philosophy Documents were drafted to guide the Committee in the development of the EPC and EPCM contracts and are available on the website.
CONTRACT PHILOSOPHY

- documents are provided free of copyright
- use of these documents is encouraged as a base document and may be modified by the parties on a project-specific basis
- preferable that changes be made by way of supplementary conditions; care must be taken when editing specific clauses to retain the intent of referring or subsequent clauses
- where possible, definitions are consistent across the contract documents
- goal was to draft contracts that provided flexibility for different contracting strategies, such as types of compensation, and for different company policies or mandates for contracts
- this flexibility is largely achieved through the use of Appendices for project-specific criteria
CONTRACT PHILOSOPHY

- ‘blanks’ in the documents need to be completed on a project-by-project basis, e.g. value for insurance coverage

- Appendices and Forms have been developed for the Contracts; an ongoing and continuous improvement effort

- Philosophy Document should be reviewed in conjunction with the planned application of the respective Contract Document

- Philosophy Documents provide background and context on the key issues addressed by the Contracts Committee in the development of the contract documents

- useful guidelines and checklists that are helpful for completing some of the Appendices are also included in the Philosophy Documents
CONSTRUCTION CONTRACTS SEMINAR

PRESENTER:

W.J. KENNY
1. Three forms of Contract to be considered

• Stipulated Price Contract
• Engineering, Procurement and Construction Contract (EPC)
• Engineering, Procurement and Construction Management Contract
2. These are forms of Contract that are intended for industrial projects
- There is no “Consultant” role
- There is no “Payment Certifier”
- The Owner is in control of the Project, and assumed to have the expertise and management capability to execute the Project
- The Contractor is likewise assumed to have the skill and resources necessary to execute the work
3. The Stipulated Price Contract includes:
   • Bid Conditions
   • General Conditions
   • Schedule “A” Scope of Work
   • Schedule “B” Payment for work
   • Schedule “C” Release and Certificate of Final Payment
   • Schedule “F” Key Personnel, Confidentiality, Proprietary Information and Consent Agreement
4. What you will not find in Contract:
   • The Contractor’s Proposal
   • Separate Articles of Agreement
   • Exhibits and Appendices
   • Supplementary General Conditions although these are contemplated
5. Assumptions:
   • The work is an industrial project
   • The owner has completed the design
   • The owner will provide the site
   • The owner has arranged for timely delivery of owner supplied items
• The Contractor is experienced in executing this type of industrial project and has the resources and supervisory personnel to do so
• The Contractor is familiar with local conditions, including the local labour market, and can staff the Project with adequate skilled labour
6. The Bid Conditions
   • Contemplates exceptions
   • Warrants that the Contractor has satisfied itself of all conditions affecting the work, particularly labour
   • Invites alternatives
   • Contemplates a clarification meeting
   • Reserves the right to award to anyone, not necessarily the low bidder, but will review for commercial and technical merit
7. The General Conditions
   GC 1-Definitions
   1.1.9 *Contract* or *Contract Documents* means this Stipulated Price Contract together with the schedules listed in GC 1.2, *Change Orders*, *Bid Documents* and all drawings, plans and specifications listed therein; [Note to Draft: *Bid Documents* have been included in this definition, but may not be appropriate in each case]
GC 1.1.37 Work

*Work* means all labour, supervision, administration, materials, transportation, supplies, tools, equipment, temporary facilities, storage facilities, and such other work and materials, necessary to be performed or supplied for the work required by the *Contract Documents* including the
GC 1.1.37 – con’t

work described in Schedule "A" - Scope of Work, and including any work which is not expressly described in the *Contract* but which is nevertheless necessary for the proper execution of the work required by the *Contract Documents*;
GC 5.5 Order of Precedence

5.5 In the event of a conflict or inconsistency among or between the *Contract Documents*, the following shall apply:

5.5.1 the *General Conditions*, including the attached schedules shall govern over the *Bid Documents*;

5.5.2 for documents as revised by either party and approved by the *Owner*, the latest revisions shall govern;
5.5.3 figured dimensions on drawings shall govern, even though they may differ from scaled dimensions;
5.5.4 drawings of larger scale shall govern over those of smaller scale of the same date;
5.5.4 specifications issued by the Owner shall govern over all drawings regardless of date; and
5.5.6 the General Conditions shall govern over all other Contract Documents, including the schedules attached hereto.
GC 6-LABOUR

6.1 The *Contractor* shall provide a sufficient number of qualified personnel to enable timely and proper execution and completion of the *Work*. All such personnel shall be competent, literate in English and qualified by education, training, experience and in all other respects capable of carrying out the tasks to which each is assigned.
Acknowledgement of Investigation

7.1 The Contractor accepts the Owner's Site, the Work Site and the obligation to perform the Work in the condition existing at the close of tenders and acknowledges that it has investigated and satisfied itself as to:

7.1.1 the nature of the Work;
7.1.2 the location of and all conditions relating to the Owner's Site and the Work Site including but not limited to accessibility, general character, surface conditions, utilities,
roads, uncertainties of seasonal weather and all other physical, topographical, geographical conditions;
7.1.3 the general character, quality, quantity and availability of equipment and materials required to execute and complete the Work;
7.1.4 all environmental risks, conditions, Law and restrictions applicable to the Contractor or the Work that might affect the Work;
7.1.5 all conditions affecting labour, including, without limitation, availability, productivity and administrative practices, including those relating to safety, prevailing at or applicable to the Work; and

7.1.6 the magnitude of the construction work required to execute and complete the Work; and any failure by the Contractor to discover matters which affect or could affect the Work shall not relieve the Contractor from its obligations under this Contract or otherwise affect the Contract Price.
7.3 Work by Others

The *Owner* reserves the right to award separate contracts to *Other Contractors* to be performed at the *Work Site* and to perform work with its own forces at the *Work Site*, in which case the *Owner* shall co-ordinate and schedule the *Work* with the work of the *Other Contractors* and the *Owner's* own forces, and the *Contractor* shall share access to and use the *Work Site* to accommodate the work of *Other Contractors* and of the *Owner's* own forces.
Warranty of available resources
7.5 The Contractor represents and warranted to the Owner that:
   7.5.1 it has the experience, resources, personnel and capability to expeditiously and diligently perform the Work and this Contract;
GC 8 – Change mechanism

- Owner issues contemplated Change Notice to Contractor
- Contractor provides Change Quotation
- Owner accepts and issues Change Order, or issues Change Directive
- Contractor may request change through a Change Quotation
- Dispute on entitlement resolved under dispute resolution mechanism
GC 8 – Change mechanism – con’t
  • all changes to the Contract must be made by change Order or Directive
  • all impact costs or costs of acceleration are to be included in the Change Quotation
  • materially different subsurface or actual physical conditions merit a Change Order
GC 9 – Completion & Acceptance

• Owner may take partial completed work
• Functional Completion can be for the entire Work or a Component system
• Final Completion notice after all Work completed and all known deficiencies corrected.
GC 9.4 Conditions precedent to Final Completion notice and release of the holdback
GC 18-Force Majeure

- Event of Force Majeure defined 1.1.14
- *Event of Force Majeure* means any occurrence, other than the financial capability of a party or an event constituting a delay under GC 19, which is beyond the control and without the fault or negligence of the party relying on such occurrence, and which by the exercise of
reasonable diligence that party could not at the time of bidding have reasonably contemplated happening and is unable to prevent or provide against;

• If Owner does not agree, revert to change mechanism
• time extension is the remedy for Event of Force Majeure
GC 19 – Delays

- Owner caused delay warrants time and reasonable costs
GC 20 – Suspension Allowed to Owner

• payment of direct costs
• no payment for damages or loss of profit
GC 21 – Termination
• for convenience available to Owner, for all or a portion
GC 25 – Warranties

- from Functional Completion
- that the Work meets the requirement of the Contract Documents
- come back warranty for specified time
- applies to re-performed work
GC 26 – Indemnities
• to Owner for performance or non-performance
• for physical damage caused to the greater of the limit of insurance and an amount to be specified
GC 26.4 Limitation on consequential damages

26.4 Notwithstanding anything else in this Contract, the Contractor, its Subcontractors, Suppliers, and their respective officers, directors, employees, consultants and agents shall not be liable to the Owner, or anyone claiming through or under it, whether by way of indemnity or by reason of breach.
of contract or in tort, including liability for negligence and breach of statutory duty, or on any other legal or equitable basis, for:

26.4.1 special or consequential loss or damage;

26.4.2 loss of use, whether complete or partial, of the Work or existing facilities of the Owner or third parties;

26.4.3 loss of product;
26.4.4 loss of revenue, overhead and profit; or
26.4.5 loss of any contract that may be suffered by the Owner, except to the extent of amounts recoverable under a policy or policies of insurance required to be maintained by the Contractor, or provided by the Owner, pursuant to the provisions of this Contract, provided
however that in the event of the failure by the Contractor to complete the Work by the Contract Time the liability of the Contractor under this GC 26.4 shall be limited only to the greater of the insurance recoverable and $__________________.
GC 26.6 Owners Indemnity to Contractor

The Owner shall indemnify and hold harmless, including indemnity for legal costs on a solicitor and own client (indemnity) basis, the Contractor, its Subcontractors, Suppliers, and their respective officers, directors, employees, consultants and agents from and against all claims, demands, actions and proceedings made or
taken by persons not parties to this *Contract* and which arise on account of and are attributable to the Owner's obligations hereunder, including, without limitation:

26.6.1 a lack of or defect in title or an alleged lack of or defect in title to the *Owner's Site*;

26.6.2 an environmental condition at the *Work Site* which is the responsibility of the Owner;
26.6.3 Hazardous Materials supplied by the Owner and while under its care and control; 26.3.4 an action for which the Owner must indemnify the Contractor pursuant to GC 15.2; or 26.6.5 defective machinery, equipment, products, processes or mechanisms provided by the Owner to the Contractor for the performance of or incorporation into the Work.
In the event that the Owner accepts the responsibility to indemnify the Contractor, its officers, directors, employees, consultants or agents pursuant to GC 26.5, then it shall be entitled to retain and instruct counsel to act for and on behalf of those persons and to settle, compromise and pay any claim, demand, action or proceeding without first obtaining prior approval from the party in whose favour the indemnity has been
provided. The Contractor shall and shall cause any indemnified party to co-operate in all respects in contesting any third party claim for which the Owner has accepted responsibility.
GC 27 – Insurance

- Project Specific
GC 30 – Dispute Resolution

- Project mediator
- Arbitration
Schedule A – Scope of Work
• Describe Scope of Work
• Contractor’s General Responsibilities
• Hours of Work
• Milestone Dates
• Work Schedule
Schedule A – Scope of Work – con’t

- Drawings, Code and Standards
- Connecting Work
- QC Program
- Safety and Loss Management
- Document Submission Requirements
- Progress Reporting and Other Reporting
- Meetings and Reports
Schedule B – Payment for Work

• Invoicing procedure
• Rates for Change Directive Work
Schedule C – Release and Certificate of Final Payment

• payment of Subcontractors and Suppliers
• release of all claims in respect of which notice in writing has not been given
Schedule E – Statutory Declaration
  • payment of all Subcontractors and Suppliers
  • complied with all of its lawful obligations
Schedule F – Key Personnel confidentiality undertaking
ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT (EPC)
1. To the extent possible, definitions and terms are the same as the Stipulated Price Contract.

2. In this Contract, there are 49 Articles and 9 Appendices, as follows:
• Appendix A – Owner’s Requirements
• Appendix B – Compensation
• Appendix C – Policy and Guidelines
• Appendix D – Warranty Items Procedure
• Appendix E – Liquidated Damages
• Appendix F – Incentive Fee
• Appendix G – Forms
• Appendix H – Dispute Resolution Procedure
• Appendix I – Key Personnel [NTD: Use if not in Execution Plan]
3. Definitions:

Construction Work

1.1(e) *Change Order* means a written order signed by both the *Contractor* and the *Owner* authorizing a *Change*;
1.1(s) *Engineering Services* means those services described in the *Owner’s Requirements* and provided by the *Contractor* for the design, planning and engineering of the *Project*, but does not include *Construction Work* or *Procurement Services*;
1.1(rr) *Procurement Services* means the procurement of *Procured Goods* performed by the *Contractor*, which may be performed as agent of the *Owner*, or for the *Contractor* on its own account, as stipulated in the *Owner’s Requirements*;
1.1(kk) Owner’s Requirements means the description of the scope, standards, design criteria, Performance Guarantees, Milestones and the programme of work set out in Appendix A – Owner’s Requirements, as amended by any Changes;
• 1.1(u) *Execution Plan* means the programme developed by the *Contractor* for the *Work* in accordance with Section 4.2 and which shall be updated from time to time as may be required by the *Owner* and which shall include, but not be limited to:
1.1(u) – cont’d

– the organisation to be established by the Contractor for carrying out the Work, including, but not limited to, the identities and curriculum vitae of Key Personnel, or if not yet identified, then the titles of the positions that will be held by Key Personnel;

– the sequences and methods for the performance of the Work; and

– a detailed schedule with dates for the completion of Milestones;
1.1(x) *Functional Completion* means that date when the *Work*, or a *System*:

- has passed the required *Performance Tests* that are stipulated in the *Owner’s Requirements* to be performed before *Functional Completion*; and
- is certified by the *Owner’s Representative* pursuant to Section 19.4 as being complete or ready to be put into service, or being used for the purpose intended and a *Functional Completion Certificate* is issued;
1.1(w) *Final Completion Notice* means that notice in the form contained in Appendix G – Forms issued by the *Owner* to the *Contractor* pursuant to Section 20.2 certifying completion and acceptance of the *Work* under the *Contract*;
4. Article 3 – Owner’s Requirements

3.1 The Owner’s Requirements shall describe the Work.

5. Article 4 – Contractor accepts the conditions at the Owner’s Site, including surfaces, but excluding Subsurface conditions unless disclosed by the Owner. All conditions affecting labour are accepted.
6. Article 5 – Engineering Services
– Contractor shall be responsible for the design and engineering. Owner has a right of inspection and review of design drawings and specifications.
7. Article 7 – Procurement Services
- Contractor to procure from selected vendor lists where specified and use Owner’s Specified Materials and Subcontractors as directed by Owner
- Procurement Services are performed as agent of the Owner
8. Article 8 – Construction Work

8.2 Except for those materials, services and equipment to be provided by the Owner and described in Appendix A – Owner’s Requirements, the Contractor shall supply or cause to be supplied all services, equipment and materials required for the proper execution and completion of the Construction Work.
9. Article 9 – Commissioning

9.1 The duties of the Owner and of the Contractor in relation to Commissioning before Functional Completion and Commissioning after Functional Completion, together with the Milestones to be reached for commissioning, are as set out in the Owner’s Requirements.
10. Article 13 – Changes

Change is to the Owner’s Requirements
Change mechanism is the same format as the Stipulated Price Contract:
  Contemplated Change Notice
  Change Quotation
  Change Order
  Change Directive
11. Article 13.6

If the Owner requests the Contractor to provide a Change Quotation and subsequently elects not to proceed with the Change, the Contractor shall be reimbursed in accordance with Appendix B – Compensation, or as otherwise agreed between the parties, for its reasonable costs incurred including design and engineering services, and the Owner shall issue a Change Order for these costs.
12. Article 15
   – Key Personnel to be identified and not changed without consent

13. Article 17
   – Inspection and Testing
   - Inspection and Test Plan
14. Article 18 – Performance Tests
   - specified in Owner’s Requirements

15. Article 19 – Functional Completion – by system

16. Article 20 – Final Completion
   - after all deficiencies completed
17. Warranty – begins on Functional Completion

18. Article 30 – Proprietary Information
   - technology developed by Contractor is Contractor’s unless resulting from Owner’s Confidential Information
19. Delays, Suspension, Termination, Liability and Indemnity for Third Party Claims, Limitation on Liability follow the same concept, except for the potential of Liquidated Damages, and if no Liquidated Damages, aggregate liability of the Contractor.
• 42.3 Notwithstanding any other provision of the Contract, the Contractor’s total aggregate liability to the Owner shall be limited to $_____________.

• [NTD: Section 42.3 is to be used only where the parties choose not to include Liquidated Damages in the Contract. In addition, if Section 42.3 is to be incorporated, the Committee suggests that the parties negotiate whether the following indemnities obligations of the Contractor should
be carved-out of the cap: Section 28.1 (intellectual property infringement); Section 39.1 (liens); Section 41.1 (third party claims); Section 45.3 (independent contract indemnity); obligations relating to workers’ compensation premiums if the Owner is held accountable; and any taxes payable by the Contractor for which the Owner is held accountable.]
20. Insurance includes professional errors and omissions insurance.

21. Right of audit permitted to confirm compliance with the terms of the Contract.
COAA EPCM CONTRACT
Where possible, definitions used in the COAA Stipulated Price Contract and EPC Contract have been incorporated in this EPCM Contract in an effort to use consistent terms. To accommodate a variety of projects, project-specific information is contained in the Appendices to the EPCM Contract.
The EPCM Contract is intended to serve as a starting point for negotiations and can be modified by the parties with respect to a specific project. It is preferred that changes be made to the EPCM Contract by way of supplementary conditions so that the COAA form remains as a precedent. However, care must be taken in the modification or editing of specific clauses without consideration of changing the intent of referring or subsequent clauses.
Since the COAA Contract forms are intended to be shared with and used by members of COAA, there is no copyright on these documents and members are encouraged to use these Contracts as a basis for industrial work in Alberta.
Risk in Allocation in EPCM Contracting

EPCM contracts require the EPCM Contractor to provide pre-construction to post-construction services. The services start at the front end with engineering, move to procurement and follow through with construction management, which will last to project closeout and sometimes through the construction warranty period.
The Committee recognized that, in some cases, the EPCM Contractor will provide fabrication as part of its scope. The actual construction work is provided by parties referred to as "Works Contractors". The EPCM Contractor would not provide direct-hire construction forces without the Owner's consent.
The EPCM model allows the Owner to be more involved in the design process and this relationship needs to be addressed between the Owner and the EPCM Contractor prior to project commencement. The Owner needs to be realistic as to what involvement to have and what resources are available to provide effective and timely input to the design process. The Owner's expectations and resources should be reflected in Appendix A - Owner's Requirements.
When an EPCM contract is entered into, the definition of the scope may be low though generally understood as the engineering has not yet been performed; yet the Owner is committing to construction.
Low scope definition means that a project can be kicked-off earlier than waiting for scope to be developed and defined. However, it also means that the parties need to be prepared for scope refinement, development and growth. This requires enhanced communication between the Owner and the EPCM Contractor as opposed to other types of project delivery methods. It may also require a more significant Owner team to be available and engaged, especially as compared to EPC construction.
An EPCM Contractor is agent for the Owner both in relation to procurement and Construction Management
Works Contracts

As the EPCM Contractor will be the agent of the Owner, works contracts for the performance of the construction are entered into between the EPCM Contractor, as agent for the Owner, and the Works Contractor. Works Contractors may be recommended by the EPCM Contractor to the Owner, or may be selected by the Owner.
The works contracts can be let on any basis that the contracting plan determines is appropriate for the project (for example: stipulated price, unit price, cost reimbursable, guaranteed maximum price).
CONTRACT APPLICATION: KEY CONSIDERATIONS FOR ALL PARTIES

LAUREN M. TORESON
TIPS:
KEY ISSUES TO ADDRESS

• Form of Contract
• Definition of Scope
• Warranty
• Delay
• Limitation of Liability
• Consequential Damages
• Ownership of Work Product
FORM OF CONTRACT

Form of contract depends on:

Relationships between the parties
Method of payment

Common Mistake: Choosing a form of contract that does not reflect the deal made
RELATIONSHIPS BETWEEN THE PARTIES

Owner: Traditional, as a general contractor, retains a design-builder

Contractor: Traditional, one of many trade contractors, design builder, construction manager, subcontractor

Consultant: Traditional, owner’s outside expert, part of design build team
METHODS OF PAYMENT

Cost Reimbursable
Lump Sum
Unit Price
COAA FORMS OF CONTRACTS


COAA (2005) EPC Contract

COAA (2008) EPCM Contract
COAA (2003) STIPULATED PRICE CONTRACT

Key Features:

Fixed Price Contract between Owner and Contractor

Standard Form Industrial Construction Contract

Contractor responsible for performance and construction of Work described in contract

Not a Design Build Contract
COAA (2005) EPC CONTRACT

Key Features:

Design Build Contract

Contractor responsible for engineering, procurement and construction

Owner’s Requirements sets out obligations of contractor

Schedule B – Compensation, may be fixed price, cost reimbursable, etc.

Inspection and Testing Plan to be developed by party specified in Owner’s Requirements
COAA (2008) EPCM CONTRACT

Key Features:

Engineering, Procurement and Construction Management Contract

Cost Reimbursable Contract

EPCM Contractor develops Execution Plan

Execution Plan – means the program developed by the EPCM Contractor for the Services which shall include the following:
- the organization to be established by EPCM Contractor
- sequences and methods for performing Services
- a contracting plan
- a procurement plan
FORM OF CONTRACT

Things To Remember:

Be familiar with terms of standard form contract and the procedures prescribed within

Ensure procedures in contract reflect actual business procedures employed by parties

Ensure schedules to contract are complete, clear and concise
DEFINITION OF SCOPE

Areas of concern

Responsibility for design

Performance based requirements

Clarity of definition
COAA – WHERE IS SCOPE DEFINED

Stipulated Price Contract – Schedule “A” Scope of Work

EPC Contract – Appendix “A” Owner’s Requirements

EPCM Contract – Appendix “A” Owner’s Requirements, Appendix “B” Owner’s Obligations
COAA – ISSUES TO ADDRESS IN SCOPE

Ensure Work/Services to be provided are fully defined

Ensure Definitions in scope match those in contract

EPC/EPCM Forms – Owner’s Requirements Must Address:

- When is Execution Plan to be provided
- Reports to be provided by Contractor
- Contractors responsibilities to manage the Work
- Procurement, Construction, Commissioning Duties
- Who is responsible for Inspection and Test Plan
- Performance Tests (Key Performance Indicators)
CHECKLIST FOR DRAFTING KEY PERFORMANCE INDICATORS

When and how the performance will be measured?

Who or what will measure performance?

Which party will pay to measure performance?

If the project does not meet the performance criteria when will it be re-measured and at whose expense?

If the project fails to meet the performance specifications on more than one occasion, how many times does the Contractor have the opportunity to re-measure performance?
CHECKLIST FOR DRAFTING KEY PERFORMANCE INDICATORS

If the project cannot or does not meet the performance specifications, how will the Contractor be paid for services rendered:

No amount

An amount based on work performed

An amount without a bonus

Will the Contractor be subject to pay damages? In an amount to be determined at the time or specified liquidated damages?
WARRANTY

The standard warranty usually provides for a defined period, often one year.

The contract may provide for the warranty period to re-commence once warranty work is performed, COAA contracts provide for this.

Unless specifically expressed, the warranty does not exclude implied warranties and does not limit a contractor's liability for negligently performed work, or work not performed in accordance with the contract.

To limit Contractor’s obligations to the warranty clause, very specific language must be used.

COAA contracts do not set forth Warranty Period – Parties must define
Delay

Concerns:

What event triggers the delay clause?

Must the delay result from an event not caused by the party seeking an extension?

Does the delay entitle the innocent party to an extension without compensation, or is compensation also available?

Is the remedy provided on account of the delay the sole and exclusive remedy?
HOW IS DELAY DEALT WITH IN COAA CONTRACTS?

Delays Not Caused by Contractor (SP/EPC) – Contract Time is extended for a reasonable period of time to allow for contractor to make up the delay

Stipulated Price Contract – requires Contractor to provide Owner with a Change Quotation for delay

Delays Caused by Contractor (EPC/EPCM) – Contractor must, at no additional cost to Owner, provide a recovery plan to Owner and perform any acts required by Owner to make up the lost time
LIMITATION OF LIABILITY

Also referred to as “exclusion clauses” or “disclaimer clauses”

Must be clear and unambiguous

Limit liability to:

Amount of fee

Contract value

Specified amount

To available insurance
LIMITATION OF LIABILITY

COAA contracts provide some draft limitation of liability clauses:

Section 42.3 (EPC) – Notwithstanding any other provision of the Contract, the Contractor’s total aggregate liability to the Owner shall be limited to $______________.

Considerations:


Should limits factor in amounts recovered under insurance policies?
LIMITATION OF LIABILITY & CONSEQUENTIAL DAMAGES

Sample Clause (EPC):

“Except to the extent to which coverage is provided by a policy or policies of insurance, as applicable, the Contractor, the Subcontractors, and their respective officers and directors shall not be liable to the Owner, or anyone claiming through or under it, whether by way of indemnity or by reason of breach of contract or in tort, including liability for negligence and breach of statutory duty, or on any other legal or equitable basis for:

special, punitive, indirect, economic or consequential loss or damage;

loss of use, whether complete or partial, of the Work or existing facilities of the Owner or third parties;

loss of product;

loss of revenue, fixed fees, overhead and profit; or

loss of any contract that may be suffered by the Owner”
LIMITATION OF LIABILITY & CONSEQUENTIAL DAMAGES

Considerations:

Should consequential damages clause be mutual?

Should the parties that are protected under consequential damages clause be expanded? Example – To include employees or agents of the Owner or Contractor

Should types of damages excluded be expanded?
OWNERSHIP OF WORK PRODUCT

Who owns the design?

Is the Owner granted a license to use the design? On new projects OR for maintenance and improvements on same project?
OWNERSHIP OF WORK PRODUCT

COAA Contracts – General Principles:

Contractor grants Owner royalty-free license to use any and all patents, trademarks, industrial designs, copyrights and technology related to the Work and to make, have made and use all equipment, machinery and materials supplied by the Contractor under the contract.

Where a technology, process or work method belongs to, or is developed by the Contractor or Subcontractor and is not the result of the Owner’s confidential information, then Contractor or Subcontractor retains ownership.
WHAT MAKES A GOOD CONSTRUCTION CONTRACT?

Complete, clear and concise – Ensure all schedules are complete

The legal terms and conditions actually reflect the deal made

Avoid duplication of terms (in tender and in contract, in specs and in contract, etc.)

Don’t skim on the scope

Not always necessary to re-invent the wheel – standard forms
QUESTIONS?
WRAP-UP

- **Benefits Review**
  - Time is money
  - Common industry terminology avoids confusion

- **Seminar Evaluation Form**

- **Seminar Certificate**
  - Contact Leanne Hawryluk at leanne@coaa.ab.ca

- Interested in joining the **Contracts Committee**?
  - Contract Promotion (includes development of Appendices, review of contract templates, website content management, seminar delivery)
  - Builder’s Lien Act
  - Pre-Qualification

Co-Chairs: Jane Sidnell, Fraser Milner Casgrain LLP (403) 268-3119
          Dan Mowat, AMEC (403) 298-8054
STIPULATED PRICE CONTRACT

Made effective as of the ___ day of ____________, 20__

CONTRACT NO. _______

BETWEEN

______________________________________________
(the "Owner")

and

______________________________________________
(the "Contractor")

COVERING

______________________________________________

______________________________________________
(Work Description)
**TABLE OF CONTENTS**

GC 1 - DEFINITIONS AND INTERPRETATION ................................................................. 1
GC 2 - WORK ................................................................................................................... 5
GC 3 - PAYMENT ......................................................................................................... 5
GC 4 - CONTRACT TIME ............................................................................................ 6
GC 5 - CONTRACT DOCUMENTS .................................................................................. 7
GC 6 - PERSONNEL ..................................................................................................... 8
GC 7 - PERFORMANCE ............................................................................................... 8
GC 8 - CHANGES ......................................................................................................... 10
GC 9 - COMPLETION & ACCEPTANCE ...................................................................... 12
GC 10 - INSPECTION ................................................................................................. 13
GC 11 - COMPLIANCE WITH LAW ....................................................................... 14
GC 12 - SAFETY & LOSS MANAGEMENT .............................................................. 15
GC 13 - WORK AREA & CLEAN UP ........................................................................ 15
GC 14 - TITLE & RESPONSIBILITY ......................................................................... 16
GC 15 - PATENTS & LICENSES ............................................................................. 17
GC 16 - CONFIDENTIAL INFORMATION & PUBLICITY ........................................ 18
GC 17 - PROPRIETARY INFORMATION ................................................................ 18
GC 18 - FORCE MAJEURE ...................................................................................... 19
GC 19 - DELAYS ....................................................................................................... 20
GC 20 - SUSPENSION ............................................................................................... 20
GC 21 - TERMINATION ............................................................................................. 21
GC 22 - TAXES .......................................................................................................... 23
GC 23 - WORKERS' COMPENSATION .................................................................. 24
GC 24 - LIENS ............................................................................................................. 24
GC 25 - WARRANTIES ................................................................................................. 24
GC 26 - LIABILITY & INDEMNIFICATION ............................................................... 25
GC 27 - INSURANCE ................................................................................................. 27
GC 28 - INDEPENDENT CONTRACTOR ................................................................. 29
GC 29 - SUBCONTRACTS & ASSIGNMENTS OF CONTRACT ............................ 30
GC 30 - DISPUTE RESOLUTION ............................................................................. 31
GC 31 - CONFLICT OF INTEREST ......................................................................... 32
GC 32 - AUDIT ACCESS ........................................................................................... 32
GC 33 - REPRESENTATIVES & NOTICES ............................................................... 32
GC 34 - GENERAL .................................................................................................... 34
THIS CONTRACT made effective as of ____________________, 20____

BETWEEN:
____________________________________ a body corporate, registered pursuant to the laws of the Province of Alberta (hereinafter called "the Owner")

and

____________________________________ a body corporate, registered pursuant to the laws of the Province of Alberta (hereinafter called the "Contractor")

STIPULATED PRICE CONTRACT

PREAMBLE:
WHEREAS the Contractor has agreed to perform the Work for the Owner as set out in this Contract, on the terms and conditions contained herein;

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

GC 1-DEFINITIONS AND INTERPRETATION

1.1 The following italicized terms, wherever used in any Contract Document or in any amendment thereto, mean:

1.1.1 Bid Documents means the bid documents issued by the Owner in response to which bids are invited for the performance of the Work;

1.1.2 Camp Accommodation means accommodation, including meals, at any site designated by the Owner;

1.1.3 Change means any change in, addition to, or deletion from the Work;

1.1.4 Change Directive means a written instruction from the Owner directing a Change;

1.1.5 Change Order means a written order signed by both the Contractor and the Owner authorizing a Change;

1.1.6 Change Quotation means a written quotation from the Contractor for an adjustment in the Contract Price or Contract Time, or both;
1.1.7 Commencement Date means the date that the Work is to commence as set out in GC 4.1;

1.1.8 Contemplated Change Notice means a written notice from the Owner of a contemplated Change;

1.1.9 Contract or Contract Documents means this Stipulated Price Contract together with the schedules listed in GC 1.2, Change Orders, Bid Documents and all drawings, plans and specifications listed therein; [Note to Draft: Bid Documents have been included in this definition, but may not be appropriate in each case]

1.1.10 Contract Price means the total amount payable to the Contractor for the performance of the Work, as set out in Schedule "B" - Payment for Work;

1.1.11 Contract Time means the period of time from the Commencement Date to the completion date as set forth in GC 4;

1.1.12 Contractor's Prepared Documents means all plans, shop drawings, other drawings, specifications, calculations, reports, opinions, notes, models, bid documents, software, data and other documents prepared by the Contractor pursuant to this Contract whether written or stored electronically;

1.1.13 Contractor's Representative means that person identified as such in GC 33.3 or an approved replacement;

1.1.14 Event of Force Majeure means any occurrence, other than the financial capability of a party or an event constituting a delay under GC 19, which is beyond the control and without the fault or negligence of the party relying on such occurrence, and which by the exercise of reasonable diligence that party could not at the time of bidding have reasonably contemplated happening and is unable to prevent or provide against;

1.1.15 Final Completion Notice means that notice issued by the Owner to the Contractor pursuant to GC 9.3, certifying completion and acceptance of the Work under this Contract;

1.1.16 Functional Completion means that date when the Work (or a component system thereof as defined in the Contract Documents) has been completed and is ready to be turned over by the Contractor to the Owner in accordance with the Work Schedule and certified by the Owner's Representative as being ready for operation;

1.1.17 General Conditions means the terms and conditions contained in this Stipulated Price Contract and sometimes abbreviated as GC;

1.1.18 Hazardous Material means any substances which are hazardous to persons, animals, property or the environment and includes hazardous substances, hazardous waste, ozone depleting substances and dangerous goods, all as identified or defined under applicable Law, as well as any prescribed product under the Nuclear Energy Act (Canada);
1.1.19 **Key Personnel** means those personnel so identified in Schedule "A" - Scope of Work;

1.1.20 **Law** means the common law, the law of equity and all federal or provincial statutes or municipal by-laws and all regulations, orders, directives, permits and licenses thereunder, which apply to or otherwise affect the Owner or the Contractor with respect to the Work, or the property of the Owner or the Contractor, real or personal, or any part thereof, including but not limited to all environmental, occupational, health and safety laws;

1.1.21 **Milestone Dates** means those dates set out in Schedule "A" - Scope of Work;

1.1.22 **Non-Canadian Workers** means persons other than Canadian citizens, permanent residents or persons who meet the requirements of the exemption provisions set forth in the Immigration Act (Canada) and regulations, as amended from time to time;

1.1.23 **Other Contractors** means any third party contractors, consultants, or engineers retained by the Owner, to perform any work or services, related to the Work Site;

1.1.24 **Owner's Confidential Information** means all information relating to the Work and any process, technology or system relating thereto, the design, construction, operation, maintenance or any other aspect of the Owner's Site, or relating to the nature of the Owner's business and affairs, which the Contractor directly or indirectly receives or acquires from the Owner or the Owner's Representative or anyone on behalf of the Owner or the Owner's Representative, either in writing or verbally, or through observation of the Owner's Site or the Work, except information falling into any one or more of the following categories:

1.1.24.1 information which the Contractor can show was in the Contractor's possession on a non-confidential basis prior to the Contractor's receipt or acquisition thereof from the Owner;

1.1.24.2 information which is lawfully in the public domain at the time of the Contractor's receipt or acquisition thereof from the Owner as aforesaid;

1.1.24.3 information which, after the Contractor's receipt or acquisition thereof from the Owner, becomes part of the public domain through no act of the Contractor or of any third party under an obligation of confidence with respect to such information, but only after such information becomes part of the public domain; or

1.1.24.4 information which, after receipt or acquisition thereof from the Owner, is lawfully obtained by the Contractor from a third party, but only after such information is so received or acquired, and provided such third party is under no obligation of confidence with respect to such information.

Specific information shall not be considered to be within the scope of any of the exceptions listed above merely because it is included with general information within the scope of the above exceptions;
1.1.25 **Owner's Representative** means that person identified as such in GC 33.2 or a designated replacement and may include a consultant hired by the *Owner* if so designated;

1.1.26 **Owner's Site** means the lands municipally described as:

_________________________________________________________________

and legally described as:

_________________________________________________________________

1.1.27 **Project Mediator** means the person appointed pursuant to GC 30.3;

1.1.28 **Proprietary Information** means all inventions, discoveries, improvements and technical information not in the public domain, which the *Contractor*, *Subcontractors* or *Suppliers*, or their respective employees or agents who are performing the *Work*, may conceive of, reduce to practice or develop during the *Contract Time* or within 6 months thereafter, as a result of *Owner's Confidential Information*;

1.1.29 **Records** means both paper and electronic books, statements, records and accounts pertaining to this *Contract* and the performance of the *Work*;

1.1.30 **Site Minutes** means those minutes recorded by the *Owner's Representative* at site meetings attended by the *Owner* and the *Contractor*;

1.1.31 **Specified Substance** has the meaning given in any published *Owner's* regulations, guidelines or publications applicable to the *Work* issued for the use and disposal of substances;

1.1.32 **Subcontractors** means any contractors or consultants hired by the *Contractor* in accordance with this *Contract* to perform any portion of the *Work*;

1.1.33 **Suspended Work** has the meaning ascribed thereto in GC 20.1;

1.1.34 **Suppliers** means any third party retained by the *Contractor* to supply equipment, materials or both for any portion of the *Work*;

1.1.35 **Warranty** means those warranties set forth in GC 25;

1.1.36 **Warranty Period** means that period of time set forth in GC 25.2;

1.1.37 **Work** means all labour, supervision, administration, materials, transportation, supplies, tools, equipment, temporary facilities, storage facilities, and such other work and materials, necessary to be performed or supplied for the work required by the *Contract Documents* including the work described in Schedule "A" - Scope of Work, and including any work which is not expressly described in the *Contract* but which is
nevertheless necessary for the proper execution of the work required by the Contract Documents;

1.1.38  *Work Day* means any day, except for a Saturday, Sunday, statutory holiday or a holiday which is observed in the construction industry generally in the area of the *Work Site* or defined as a holiday in a collective agreement pertaining to the *Work Site* [Note to Draft: This definition may be subject to change depending on the project requirements];

1.1.39  *Work Schedule* means a detailed schedule for performance of the *Work* as referred to in GC 7.10;

1.1.40  *Work Site* means the site(s) or location(s) where all or any of the *Work* is to be performed on the *Owner's Site*.

1.2  The following schedules attached hereto shall form part of and are incorporated in this *Contract*:

   Schedule "A" - Scope of Work
   Schedule "B" - Payment for Work
   Schedule "C" - Release and Certificate of Final Payment
   Schedule "D" - Technical Specifications
   Schedule "E" - Statutory Declaration
   Schedule "F" – Key Employee Confidentiality, Proprietary Information and Consent Agreement

   [Note to Draft: List any additional schedules]

**GC 2 - WORK**

2.1  The *Contractor* shall perform the *Work* in accordance with the *Contract Documents*. The *Contractor* shall supply or cause to be supplied all services, equipment and materials required for the proper execution of the *Work* and shall comply with, observe and perform all provisions of the *Contract* applicable to the *Contractor*.

**GC 3 - PAYMENT**

3.1  As full and complete compensation for performance of the *Work*, the *Owner* shall pay the *Contractor* the *Contract Price* in accordance with Schedule "B" - Payment for Work.

3.2  The *Contractor* shall prepare and submit invoices for all *Work* performed hereunder, in accordance with Schedule "B" - Payment for Work.
3.3 The Owner shall retain from all payments due and payable to the Contractor hereunder an amount equal to 10% of the value of the Work actually done and materials furnished by the Contractor according to the provisions of the Builders Lien Act of Alberta.

3.4 If:

3.4.1 a certificate of substantial performance is issued for a subcontract,

3.4.2 the period designated for the release of holdback pursuant to the Builders' Lien Act has expired from the date of issue of that certificate of substantial performance, and no builders' lien has been registered against the title to the Owner's Site,

the amount that the Owner is required to retain under GC 3.3 is reduced by 10% of the value of the Work actually done and materials actually furnished under the subcontract at the date of issue of the certificate of substantial performance in respect thereof.

3.5 If:

3.5.1 a certificate of substantial performance is issued for the Contract,

3.5.2 the period designated for the release of holdback pursuant to the Builders' Lien Act has expired from the date of issue of the certificate of substantial performance, and

3.5.3 no builders' lien has been registered against the title to the Owner's Site, the amount the Owner shall retain under GC 3.3 shall be reduced by 10% of the value of the Work actually done and materials actually furnished under the Contract at the date of issue of the certificate of substantial performance.

3.6 Should either party fail to make payments as they become due under the terms of the Contract or in an award of arbitration or judgment of a court, interest at ___ % per cent per annum, compounded semi-annually on any unpaid amounts shall also become due and be payable.

**GC 4 - CONTRACT TIME**

4.1 The Contractor shall commence the Work on _____________, ____, and, perform the Work in accordance with the Work Schedule and shall achieve the Milestone Dates set out in Schedule "A" - Scope of Work, and except as otherwise provided herein, shall finally complete the Work on or before ________________, ___.

4.2 The provisions of this Contract shall survive the completion of the Work.
GC 5 - CONTRACT DOCUMENTS

5.1 Each of the parties shall promptly and fully inform each other of any errors, omissions or inconsistencies in the Contract Documents, and of any inconsistencies between the Contract Documents and the Law, of which they become aware. The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions which could result in any such inconsistencies. If the Contractor discovers any inconsistencies in the Contract Documents, or between the Contract Documents and the Law, it shall resolve all such inconsistencies with the Owner before proceeding with the affected portion of the Work.

5.2 Subject to GC 26.3 and GC 26.4, if any of the Contractor's Prepared Documents are incorrect or inconsistent with any of the other Contract Documents or the Law, then the Contractor shall be liable to and shall indemnify the Owner for all losses, costs, damages and expenses whatsoever which the Owner may incur as a result of any errors or inconsistencies therein.

5.3 Subject to Changes made in accordance with GC 8, the Contractor shall not deviate from the specifications or requirements stated in the Contract Documents.

5.4 Subject to the provisions of GC 5.5 and GC 8.7, all conflicts in these Contract Documents including, but not limited to those contemplated in GC 5.1, may, in the Owner's sole discretion be resolved solely by the Owner's Representative. The Contractor shall not work on that portion of the Work which is affected until the conflict has been resolved and the Owner has authorized the Contractor to proceed with such Work.

5.5 In the event of a conflict or inconsistency among or between the Contract Documents, the following shall apply:

5.5.1 the General Conditions, including the attached schedules shall govern over the Bid Documents;

5.5.2 for documents as revised by either party and approved by the Owner, the latest revisions shall govern;

5.5.3 figured dimensions on drawings shall govern, even though they may differ from scaled dimensions;

5.5.4 drawings of larger scale shall govern over those of smaller scale of the same date;

5.5.5 specifications issued by the Owner shall govern over all drawings regardless of date; and

5.5.6 the General Conditions shall govern over all other Contract Documents, including the schedules attached hereto.

[Note to Draft: If Supplementary General Conditions are used, then replace 5.5.6 and add 5.5.8]
5.5.7  subject to GC 5.5.7, the General Conditions shall govern over all other Contract Documents, including the schedules attached hereto; and

5.5.8  supplementary general conditions shall govern over the General Conditions.

**GC 6 - PERSONNEL**

6.1  The Contractor shall provide a sufficient number of qualified personnel to enable timely and proper execution and completion of the Work. All such personnel shall be competent, literate in English and qualified by education, training, experience and in all other respects capable of carrying out the tasks to which each is assigned.

6.2  The Contractor shall employ, or cause to be employed, only supervisory personnel who are appropriately qualified, trained and experienced in safety, efficiency and quality of work supervision, and if requested by the Owner, accredited, or enrolled in a program for accreditation, in the manner specified by the Owner in the Contract Documents.

6.3  At the Owner's request, the Contractor shall reassign, replace or remove personnel who, in the Owner's sole discretion, do not meet the requirements of GC 6.1 or GC 6.2, or who have committed a violation of the Owner's regulations and procedures, including but not limited to safety, security, camp or site regulations or procedures.

6.4  Prior to the Commencement Date, the Contractor shall submit a proposed organizational chart for the Owner's approval. The organizational chart shall show the Key Personnel and the other supervisory and staff personnel who shall be executing the Work, together with their respective job titles. The Contractor shall not, without the Owner's consent, make any changes to the Key Personnel on an organizational chart that has been approved by the Owner. If any Key Personnel leave the Contractor's workforce, the Contractor shall forthwith replace such Key Personnel with personnel suitable to the Owner and of at least comparable qualifications.

6.5  The Contractor shall not employ or continue to employ Non-Canadian Workers in Canada, except in compliance with the Immigration Act (Canada) and regulations, as amended from time to time. The Contractor shall obtain and produce to the Owner's Representative valid and subsisting employment authorizations with respect to all Non-Canadian Workers to be used to perform the Work.

**GC 7 - PERFORMANCE**

7.1  The Contractor accepts the Owner's Site, the Work Site and the obligation to perform the Work in the condition existing at the close of tenders and acknowledges that it has investigated and satisfied itself as to:

7.1.1  the nature of the Work;

7.1.2  the location of and all conditions relating to the Owner's Site and the Work Site including but not limited to accessibility, general character, surface conditions, utilities, roads, uncertainties of seasonal weather and all other physical, topographical, geographical conditions;
7.1.3 the general character, quality, quantity and availability of equipment and materials required to execute and complete the Work;

7.1.4 all environmental risks, conditions, Law and restrictions applicable to the Contractor or the Work that might affect the Work;

7.1.5 all conditions affecting labour, including, without limitation, availability, productivity and administrative practices, including those relating to safety, prevailing at or applicable to the Work; and

7.1.6 the magnitude of the construction work required to execute and complete the Work;

and any failure by the Contractor to discover matters which affect or could affect the Work shall not relieve the Contractor from its obligations under this Contract or otherwise affect the Contract Price.

7.2 The Contractor and the Owner shall co-operate fully with each other and Other Contractors and Suppliers, and all other parties with whom the Contractor and the Owner may be involved during the performance of the Work.

7.3 The Owner reserves the right to award separate contracts to Other Contractors to be performed at the Work Site and to perform work with its own forces at the Work Site, in which case the Owner shall co-ordinate and schedule the Work with the work of the Other Contractors and the Owner's own forces, and the Contractor shall share access to and use the Work Site to accommodate the work of Other Contractors and of the Owner's own forces.

7.4 The Contractor agrees that it shall:

7.4.1 efficiently and expeditiously perform all Work in a good and workman-like manner and in accordance with this Contract;

7.4.2 exercise in its performance of the Work, that standard of care and skill normally exercised by contractors performing this type of construction work; and

7.4.3 perform the Work in a safe and environmentally sound manner and in compliance with applicable Law.

7.5 The Contractor represents and warrants to the Owner that:

7.5.1 it has the experience, resources, personnel and capability to expeditiously and diligently perform the Work and this Contract;

7.5.2 it is duly incorporated and validly existing under the laws of the Province of Alberta; [Note to Draft: To be deleted if Contractor is not incorporated]

7.5.3 it has all required permits, licenses and authorizations necessary to carry on its business and to be obtained by it to conduct the Work; and
7.5.4 the title to any and all materials, supplies and equipment which are to be provided by the Contractor for incorporation into the Work shall upon delivery to the Work Site be free from any and all claims, liens, charges, encumbrances or security interests of any kind whatsoever.

7.6 The Contractor shall supervise its employees, Subcontractors and Suppliers and inspect their work to ensure that such work and the Work conforms in each and every respect to the Contract Documents and to good and proper construction practices.

7.7 Neither acceptance of any part of the Work by the Owner, nor payment to the Contractor, shall relieve the Contractor from its responsibilities under this Contract, whether pursuant to any of the warranties or guarantees expressed or implied herein, or otherwise.

7.8 The Contractor shall provide the Owner with verbal or written reports in reasonable detail promptly upon the reasonable request of the Owner, and shall attend meetings as required by the Contract Documents, or as otherwise requested by the Owner's Representative.

7.9 The Contractor shall ensure that no activities or actions are undertaken in the performance of the Work by the Contractor, its Subcontractors or Suppliers, which would adversely affect, restrict or limit in any way, the continued operation of the Owner's facilities or plant which are in operation, unless required to perform the Work and done in accordance with the Work Schedule or otherwise authorized by the Owner's Representative.

7.10 Prior to the Commencement Date, and when otherwise requested by the Owner's Representative, the Contractor shall prepare a detailed Work Schedule satisfactory to the Owner, acting reasonably, for the performance of all or any part of the Work required under the Contract Documents. The Contractor shall control the progress of the Work to achieve compliance with the Work Schedule.

GC 8 - CHANGES

8.1 The Owner shall have the right, at any time, to make Changes.

8.2 When a Change is proposed or required, the Owner shall provide a Contemplated Change Notice to the Contractor describing the proposed Change.

8.3 The Contractor, upon receipt of a Contemplated Change Notice, shall promptly provide the Owner's Representative with a Change Quotation which shall include a method of adjustment or an amount of adjustment to the Contract Price, if any, and the adjustment in the Contract Time, if any, for the proposed Change.

8.4 The Owner shall promptly following receipt of the Change Quotation either agree to the adjustments in the Contract Price and Contract Time or to the method to be used to determine the adjustments, or give the Contractor notice that the Change Quotation is not acceptable. If the Change Quotation is agreed to, then the Owner shall immediately issue a Change Order recording the Change, which shall be signed by the Owner and the Contractor. The value of Work performed as a result of a Change Order shall be included in invoices for payment given in accordance with the terms of payment in Schedule "B" - Payment for Work.
8.5 If the Owner requires the Contractor to proceed with the Change before the Owner and the Contractor agree, or where the Owner and Contractor have failed to agree upon the adjustment in Contract Price and Contract Time, the Owner shall issue a Change Directive.

8.6 Upon receipt of a Change Directive, the Contractor shall proceed promptly with the Change, and:

8.6.1 the Contractor shall keep daily records signed by the Owner's Representative of the time, materials and equipment employed in the Change; and

8.6.2 the Contract Price shall be adjusted in accordance with Schedule "B" - Payment for Work for Changes and Change Directives; and

8.6.3 the Contract Time shall be equitably adjusted by agreement between the Owner and Contractor, and if agreement cannot be reached, then the dispute shall be settled in accordance with GC 30.

8.7 If, during the performance of the Work, the Contractor is of the opinion that any instruction, interpretation, decision or direction from the Owner should have but has not resulted in a Contemplated Change Notice or Change Directive being issued, the Contractor shall give the Owner _____ Work Days notice with a Change Quotation requesting any adjustment in the Contract Price and Contract Time required. The Owner shall promptly consider the Change Quotation and immediately issue a Change Order, Change Directive or advise the Contractor that the Contractor's request is denied. If the Contractor disputes the Owner's decision, the Contractor shall, before proceeding with the Work, provide notice to the Owner disputing the Owner's decision, but shall promptly proceed to perform the Work. The Contractor shall keep daily records, to be signed by the Owner's Representative, of the time, materials and equipment employed in respect of the disputed Work. The Contractor's entitlement to an adjustment in the Contract Price and Contract Time shall then be resolved under GC 30.

8.8 No modification, additions, deletions or other revisions to this Contract, including Schedules "A" - Scope of Work, "B" - Payment for Work and "D" - Technical Specifications, shall be binding on either party unless set out in a Change Order or required by a Change Directive. Neither the keeping of daily records in respect of disputed work nor the signing of those records by the Owner's Representative shall be considered as an admission of entitlement to payment by the Owner but shall constitute a record of the time, materials and equipment employed in respect of the work for which a Change Directive has been issued or the Contractor has given notice of a dispute.

8.9 The Contractor shall include in its Change Quotation all costs and changes in Contract Time reasonably expected to result from a Change including any impact costs or costs of acceleration.

8.10 If the Contractor encounters actual subsurface or other concealed physical conditions at the Work Site which are materially different from the conditions represented to exist in the Contract Documents, then the Contractor shall provide notice to the Owner within 5 Work Days of encountering the conditions and shall allow the Owner the opportunity for inspection before the conditions are further disturbed.
8.11 The Owner shall promptly investigate the conditions described by the Contractor and if the actual conditions encountered by the Contractor at the Work Site differ materially from the conditions represented in the Contract Documents so as to substantially increase the cost to the Contractor or the time to perform the Work, then the Owner shall issue a Change Order to cover the increased cost and changed time to perform the Work.

GC 9 - COMPLETION & ACCEPTANCE

9.1 Upon notice to the Contractor, the Owner shall have the right to take possession of and use for any purpose any partially completed portion of the Work. The taking of possession or use shall not be deemed to be the Owner's acknowledgement of completion and acceptance of that portion of the Work or the Owner's concurrence that such Work conforms to the Contract and shall not limit or waive the Contractor's responsibility with respect thereto pursuant to this Contract or otherwise.

9.2 When the Contractor has completed the Work, or a component system thereof as defined in the Contract Documents ready to be turned over to the Owner for operation in accordance with the Work Schedule, it may give the Owner's Representative notice that the Work, or a component system thereof, has achieved Functional Completion. Within ____ Work Days of receipt of that notice, the Owner's Representative shall either issue a Functional Completion certificate or give notice to the Contractor of the reasons why the Work, or component system thereof, has not achieved Functional Completion. Neither certification by the Owner's Representative that the Work, or a component system thereof, has reached Functional Completion or the acceptance by the Owner of the Work, or a component system thereof, as being ready for operation shall relieve the Contractor of any of its obligations under this Contract, or otherwise.

9.3 After the Contractor has completed all Work under this Contract and corrected all known deficiencies, it shall give the Owner's Representative notice that the Work has been finally completed. Within ____ Work Days of receipt of that notice, the Owner's Representative shall either issue a Final Completion Notice, or give notice to the Contractor of the deficiencies to be remedied before a Final Completion Notice can be issued. In the latter case, the foregoing procedure with respect to the deficiencies shall be repeated until the Owner's Representative issues the Final Completion Notice. Notwithstanding the foregoing, the Owner's issuance of the Final Completion Notice shall not relieve the Contractor of any of its obligations under this Contract, or otherwise.

[Note to Draft: The following General Condition 9.4 is optional and places an onus on the Contractor that is higher than required by the previous draft]

9.4 The parties agree that it is a condition precedent to the issuance of a Final Completion Notice and to the release of the holdback that the Contractor satisfy each of the following requirements:

9.4.1 the Work has been fully completed in accordance with the terms and conditions of this Contract;
9.4.2 all deficiencies with respect to the Work have been remedied to the satisfaction of the Owner;

9.4.3 all obligations to other parties in relation to the Work for which the Owner or the Contractor could in any way be held responsible have been fully satisfied; and

9.4.4 the Contractor has delivered to the Owner the following:

9.4.4.1 a statutory declaration in the form included in Schedule "E" - Statutory Declaration and modified as required to include the following:

   (a) the amount of final sums payable;
   (b) the date the Contractor completed the Work, to evidence the expiration of the term for filing liens;
   (c) the full payment of all payrolls and other similar indebtedness, and all other sums and obligations whatsoever incurred by the Contractor in carrying out the Work, including, without limitation, payments to contractors or for materials or equipment; and
   (d) compliance of the Contractor with all Law;

9.4.4.2 a Workers' Compensation Board clearance certificate;

9.4.4.3 any as-built drawings and operations manuals for which the Contractor is responsible;

9.4.4.4 assignments of any warranties provided by manufacturers or suppliers of materials;

9.4.4.5 written evidence of good standing from union representatives, if any; and

9.4.4.6 a release in the form provided in Schedule "C" - Release and Certificate of Final Payment of all claims against the Work and the Owner arising under and by virtue of this Contract other than such claims, if any, as may with the consent of the Owner be specifically excepted by the Contractor in the preparation of such release, in amounts which shall be set forth therein.

**GC 10 - INSPECTION**

10.1 At all times during the progress of the Work, the Owner shall have the right to inspect or witness any part of the Work.

10.2 The Contractor shall inspect and be solely responsible for the inspection of all workmanship, materials and equipment furnished by the Contractor, Subcontractors or Suppliers in respect of the Work, to ensure conformity in each and every respect to the requirements of the Contract Documents and the Law and to ensure that good and proper construction practices are followed and that the Work is performed in a safe and environmentally sound manner.
10.3 If the Law requires testing of any part of the Work, the Contractor shall provide the Owner with sufficient advance notice of the arrangements for the test.

10.4 If the Contract Documents require any test to be performed or witnessed by the Owner, the Contractor shall provide the Owner's Representative with sufficient advance notice of its readiness for the test and the Owner shall then promptly perform or witness the test. If the Owner fails to witness the test when scheduled, any re-testing required by the Owner shall constitute a Change. If any portion of the Work is closed or covered by the Contractor without the Owner's permission and before the Owner has been given the opportunity to perform or witness a required test, then if requested by the Owner, that portion of the Work shall be opened or uncovered for testing and re-closed or re-covered, all at the Contractor's expense.

10.5 The Contractor shall ensure that all tools, equipment, temporary facilities and other items used in accomplishing the Work, whether purchased, rented or otherwise, provided by the Contractor, Subcontractors or Suppliers, are in a safe, environmentally sound and good condition, capable of performing the functions for which they are intended and used. The Owner shall have the right to inspect all tools and equipment brought on to the Owner's Site at any time during the progress of the Work. If any tool or item of equipment is, in the Owner's sole judgment, acting reasonably, unsafe, environmentally unsound or incapable of doing the work for which it is intended, the Contractor shall repair or replace it with a safe, environmentally sound and capable tool or item of equipment at the Contractor's expense.

10.6 Any Work which must be tested shall not be considered ready for inspection by the Owner until the Contractor has satisfied itself and notified the Owner's Representative, that in the Contractor's opinion, that Work can successfully pass the test.

10.7 Any inspection, testing or witnessing of any of the Work or tests by the Owner, or omission or failure on the part of the Owner to inspect or test any of the Work shall not be construed to be an acceptance of any such Work or as relieving the Contractor of its responsibilities pursuant to this Contract or otherwise.

**GC 11 - COMPLIANCE WITH LAW**

11.1 The Contractor shall comply with and shall ensure that its employees and agents comply with and shall contractually require its Subcontractors and Suppliers and their respective employees and agents to comply with all applicable Law in connection with the Work.

11.2 Subject to GC 26, the Contractor shall:

11.2.1 be liable for; and, in addition

11.2.2 indemnify and hold harmless the Owner and its officers, directors, employees, consultants and agents from and against,

any liability, claims, damages, costs and expenses arising from the failure of the Contractor, Subcontractors or Suppliers, or their respective employees or agents to comply with the Law, including but not limited to any additional costs for Work to be redone as a result of the breach of Law.
11.3 The Contractor shall obtain from governmental authorities or other third parties, and pay for those licenses, permits and approvals required by the Law or by the Contract for the Work, except those licenses, permits and approvals required with respect to the land-use aspects of the Work to be performed on the Owner’s Site, and except for those licenses, permits and approvals to be obtained by the Owner as listed in Schedule "A" - Scope of Work.

11.4 If the Contractor discovers any variance between the Law and any materials purchased or supplied by the Contractor, Subcontractors or Suppliers, then the Contractor shall promptly notify the Owner before proceeding with the part of the Work affected, and shall make the necessary revisions to the materials to comply with the Law, at the Contractor's expense.

GC 12 - SAFETY & LOSS MANAGEMENT

12.1 The parties are committed to safety and the application of loss management principles in the performance of the Work. The Contractor shall perform the Work in a safe manner so as to comply in all respects with the safety, emergency and loss management regulations, guidelines and publications communicated by the Owner to the Contractor as part of the Bid Documents or otherwise for use by the Contractor in preparing its bid. The Owner shall make available to the Contractor, its published safety, emergency and loss management regulations, guidelines and publications, including, but not limited to, any Owner's loss management publication, and the Contractor shall perform the Work in a safe manner so as to comply therewith in all respects.

12.2 The Contractor shall place the highest importance on safety, emergency and loss management at all times during the performance of the Work. Accordingly, the Contractor shall at all times be responsible for safety and loss management in the performance of the Work, including, but not limited to, protecting the employees of the Owner, the Contractor, Subcontractors, Suppliers and Other Contractors and the general public from injury or death and protecting the Owner's property and the property of third parties from loss or damage. Without limiting the generality of the foregoing, the Contractor shall comply with all other safety requirements, if any, as specified in Schedule "A" - Scope of Work.

12.3 All employees of the Contractor, Subcontractors and Suppliers must successfully complete any Owner's safety orientation courses and other similar courses as the Owner may require, before being allowed access to the Owner's Site, and it shall be the Contractor's responsibility to ensure that they have done so.

GC 13 - WORK AREA & CLEAN UP

13.1 The Owner may designate space at the Owner's Site for the Contractor's working and storage areas. The Contractor shall be responsible for keeping these areas clean, orderly and secure.

13.2 The Owner is not responsible for theft, loss or damage to the Contractor's tools, equipment or materials howsoever caused, except for the negligent act or omission of the Owner or those for whom in Law it is responsible.
13.3 The Contractor shall not, and shall ensure that its Subcontractors and Suppliers do not use, transport, or store Hazardous Material on the Owner's Site except with the prior approval of the Owner's Representative. All Hazardous Material used, transported or stored shall be dealt with in accordance with the Law, the Contract and all of the Owner's published regulations, guidelines or publications regarding Hazardous Material. The Contractor shall also comply with the Contract and the Owner's published regulations, guidelines or publications in respect of on-site use and disposal of Specified Substances at the Owner's Site.

13.4 During the performance of the Work, the Contractor shall comply fully with the Contract and the Owner's safety and emergency regulations, guidelines and publications regarding clean up. The Contractor shall clean up, remove and dispose of all surplus materials, containers, trash and debris from the Work. Upon completion of the Work, or earlier termination of this Contract, the Contractor shall promptly clean up and remove all of its equipment, tools and surplus materials from the Work Site as specified by the Owner and shall leave the Work Site clean and ready for the Owner's use and occupancy.

GC 14 - TITLE & RESPONSIBILITY

14.1 All of the Contract Documents and Contractor's Prepared Documents shall belong to the Owner, and accordingly the Contractor shall have no proprietary right or interest in the Contract Documents or Contractor's Prepared Documents. The Contractor shall not use, copy or disclose any of the Contract Documents and Contractor's Prepared Documents for any purpose other than performing the Work. Subject to the foregoing, the Contractor may retain for its own records a copy of the Contract Documents and the Contractor's Prepared Documents.

14.2 Notwithstanding GC 14.1 or any other provision of this Contract, the Contractor shall be responsible for possession of all Contractor's Prepared Documents completed or in progress until received by the Owner. If any of the Contractor's Prepared Documents are lost, damaged or destroyed prior to receipt by the Owner, then such Contractor's Prepared Documents shall be promptly redone and replaced by the Contractor, at the Contractor's expense unless the loss, damage or destruction was caused by the Owner or persons for whom in Law it is responsible.

14.3 Subject to the Owner's rights pursuant to GC 29.4, the Owner agrees that it shall not sell to third parties any of the Contractor's Prepared Documents nor shall it distribute any of the Contractor's Prepared Documents to third parties except for the purpose of operating, maintaining, repairing, replacing, re-building or renovating the Owner's property resulting from the Work.

14.4 The title to all Work completed or in the course of construction at the Owner's Site and the title to all materials, equipment and supplies furnished or fabricated by the Contractor in connection with the Work, except tools and equipment owned or rented by the Contractor or Subcontractors and not intended to be incorporated into the Work, shall become the property of the Owner upon the earlier of payment therefor or delivery to the Work Site.

14.5 Notwithstanding the provisions of GC 14.4, and except for any portion of the Work for which the Owner has taken possession as contemplated by GC 9.1, the Contractor shall retain all risk with respect to and be responsible for:
14.5.1 all items furnished by the Contractor, Subcontractors or Suppliers which are to be incorporated into the Work or used in the performance of the Work;

14.5.2 all items supplied by the Owner to the Contractor for incorporation into the Work or for use in performing the Work;

14.5.3 all temporary structures or facilities used in the performance of the Work; and

14.5.4 any Work completed or in progress until the Owner has issued either a Functional Completion certificate or a Final Completion Notice, in which case the risk shall pass to the Owner with respect to the Work covered thereby.

14.6 No materials, supplies or equipment incorporated into the Work shall be subject to any general security agreement, chattel mortgage, financing contract or other agreement by which an interest therein is retained by the seller or supplier thereof.

**GC 15 - PATENTS & LICENSES**

15.1 The Contractor shall indemnify and save the Owner harmless from all proceedings, claims, losses, damages and expenses whatsoever, including solicitor and own client (indemnity) costs arising out of any patent, trademark, copyright or industrial design infringement pertaining to any equipment, machinery, materials, compositions, processes, methods or designs supplied by the Contractor, its Subcontractors or Suppliers, in the performance of the Work.

15.2 The Owner shall indemnify and save the Contractor harmless from all proceedings, claims, losses, damages and expenses whatsoever, including solicitor and own client (indemnity) costs arising out of any patent, trademark, copyright or industrial design infringement pertaining to any equipment, machinery, materials, compositions, processes, methods or designs supplied or specified for use by the Owner to the Contractor for use in connection with the Work.

15.3 The Contractor shall promptly give notice to the Owner if the Contractor has or acquires knowledge of any patent, trademark, copyright or industrial design or similar right under which an action could reasonably be expected to be maintained because of the use or purchase by the Owner of equipment, machinery, materials, compositions, processes, methods or designs incorporated or to be incorporated by the Contractor as part of the Work. Following notification to the Owner, the Contractor shall not incorporate any such equipment, machinery, materials, compositions, processes, methods or designs into any plans, drawings, specifications or other documents, or use the same in connection with the Work without the Owner's prior approval.

15.4 The Contractor grants the Owner a non-exclusive, royalty-free, perpetual, irrevocable license:

15.4.1 to use any and all patents, industrial designs, copyrights and technology related to the Work, that the Contractor owns or controls, subject to the Contractor's legal right to do so; and
15.4.2 to make, have made and use the equipment, machinery, materials, compositions, designs, methods and processes supplied by the Contractor under this Contract, subject to the Contractor's legal right to do so.

**GC 16 - CONFIDENTIAL INFORMATION & PUBLICITY**

16.1 The Contractor shall keep all of the Owner's Confidential Information in confidence and shall not disclose it to others without the prior approval of the Owner's Representative. The Contractor shall not use the Owner's Confidential Information, except in performance of the Work.

16.2 Notwithstanding GC 16.1, the Contractor may disclose the Owner's Confidential Information to those of its employees, Subcontractors and Suppliers and their respective employees to whom disclosure is required in order for the Contractor to perform the Work, provided the Contractor shall ensure that its employees and agents comply with and shall contractually require its Subcontractors and Suppliers and their respective employees and agents to comply with GC 16.1.

16.3 The Contractor shall have all Key Personnel execute Schedule "F" – Key Employee Confidentiality, Proprietary Information and Consent Agreement within 10 Work Days of the Contractor executing this Contract.

16.4 The Contractor shall not disclose any of the Contract Documents or the Contractor's Prepared Documents to others without the prior approval of the Owner's Representative, except as necessary to perform the Work.

16.5 The Contractor shall not use the Owner's name, registered or unregistered trademarks or any of the Owner's slogans in any advertising or promotional materials or publicity releases, and shall not take or permit to be used, any photographs of the Owner's Site, without the prior written approval of the Owner's Representative.

**GC 17 - PROPRIETARY INFORMATION**

17.1 The Contractor shall promptly disclose all Proprietary Information to the Owner, shall assign all of its right, title and interest in and to the Proprietary Information to the Owner, and shall execute all such documents and take such other actions as the Owner may consider necessary or desirable with respect to the Proprietary Information.

17.2 The Contractor shall keep and maintain adequate and current records of all Proprietary Information.

17.3 The Contractor shall keep all Proprietary Information in confidence, shall not use it, or any part of it except in the performance of the Work and shall not disclose it to others, without the Owner's prior written consent.
17.4 Notwithstanding GC 14.1, or anything provided in GC 17, where a technology, process or work method has been developed by the Contractor, Subcontractor or Supplier, arising out the Work, that is not the result of Owner's Confidential Information, the proprietary rights to that technology, process or work method shall remain with the Contractor, Subcontractor or Supplier, as the case may be. Where proprietary rights remain with a party other than the Owner, the Owner shall, and is hereby granted the right to have and to retain a copy for its own use and to use any drawings, Contractor's Prepared Documents or other information in respect thereof, for the purpose of the Work or the operation, repair, maintenance, replacement, re-building or renovation of the Work.

**GC 18 - FORCE MAJEURE**

18.1 Either the Owner or Contractor may claim that an Event of Force Majeure has taken place, by giving the other party verbal notice within 24 hours of the Event of Force Majeure, and notice, together with a proposed plan of corrective action in writing to resolve or minimize the effect of the Event of Force Majeure, within 48 hours of the Event of Force Majeure.

18.2 If the Owner has given notice of an Event of Force Majeure or agrees with the Contractor that the Work or any portion thereof is affected as a result of an Event of Force Majeure, then the Owner shall:

18.2.1 cause the Contractor to complete the Work, with such adjustments to Contract Time as are required by the Event of Force Majeure;

18.2.2 suspend the Work or any portion thereof in accordance with GC 20; or

18.2.3 terminate this Contract or any portion thereof in accordance with GC 21.1 and GC 21.5.

18.3 If the Owner does not agree that the Work or any portion thereof is affected as a result of an Event of Force Majeure for which the Contractor has given notice under GC 18.2, then the Contractor shall complete the Work in accordance with the Work Schedule and may request an adjustment to the Contract Price and Contract Time in the manner provided in GC 8.7.

18.4 If an Event of Force Majeure exists and continues for a period in excess of ____ continuous Work Days and results in substantially all of the Work being stopped or suspended during that period the Contractor may terminate the Contract and the Owner shall pay the Contractor for the Work performed to the date of termination.

18.5 Any delay or failure on the part of either the Owner or the Contractor, which is a result of an Event of Force Majeure, shall not constitute default hereunder or give rise to any claim for damages. Subject to GC 18.4, an Event of Force Majeure shall not result in any increase to the Contract Price.
GC 19 - DELAYS

19.1 If the Contractor is delayed in the performance of the Work by an act or omission of the Owner or anyone employed or engaged by the Owner directly or indirectly, contrary to the provisions of the Contract Documents, or by the Owner taking possession of or using any partially completed portion of the Work pursuant to GC 9.1 ahead of the Work Schedule, then the Contract Time shall be extended for such reasonable time as may be necessary to allow the Contractor to make up the delay. The Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay.

19.2 If the Contractor is delayed in the performance of the Work by an order issued by a court or other public authority having jurisdiction and providing that such order was not issued as the result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, then the Contract Time shall be extended for such reasonable time as the Owner may recommend in consultation with the Contractor. The Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay.

19.3 No claim for delay and no extension of time on account of delay shall be made for delay unless notice with a Change Quotation is given to the Owner not later than ___ Work 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.

GC 20 - SUSPENSION

20.1 In addition to any other rights that the Owner may have pursuant to this Contract, or in Law, the Owner may in the exercise of its sole discretion, at any time or times, by notice to the Contractor specifying the effective date of the suspension, require the Contractor to suspend the Work or any portion thereof (the "Suspended Work"). Upon receiving notice, the Contractor shall discontinue the Suspended Work, place no further purchase orders or subcontracts with respect to the Suspended Work, and promptly make reasonable efforts to obtain suspension terms satisfactory to the Owner with respect to all purchase orders, subcontracts, supply contracts and rental agreements related to the Suspended Work. The Contractor shall continue to perform all Work which is not Suspended Work.

20.2 The Owner may at any time authorize resumption of the Suspended Work or any part thereof, by giving the Contractor reasonable notice specifying the part of the Suspended Work to be resumed and the effective date of such resumption. The Contractor shall resume the Suspended Work on the date and to the extent specified in the notice provided that if the date for resumption is more than ___ days after the date of suspension, the Contractor may, by Change Quotation, given within ___ days of receipt of the notice of resumption, request a Change Order in the manner provided in GC 8.7 deleting the Suspended Work from the Contract and adjusting the Contract Price and Contract Time on account of the suspension and deletion of the Suspended Work.
20.3 The Contractor shall use its employees, equipment and materials in such manner, and take such other steps as may be necessary or desirable to minimize the costs associated with the Suspended Work. During the period of suspension of the Work, the Contractor shall secure and protect the Suspended Work and all materials and equipment to be used or incorporated therein.

20.4 The Owner shall issue a Change Order to reimburse the Contractor for those direct costs reasonably incurred by the Contractor as a result of the Suspended Work. Except where the Suspended Work has been deleted as set forth in GC 20.2, under no circumstances shall the Owner be liable for any damages or loss of profits on account thereof.

**GC 21 - TERMINATION**

21.1 In addition to any other rights that the Owner may have pursuant to this Contract, or in Law, the Owner may at any time, in the exercise of its sole discretion, terminate this Contract, the Work or any portion thereof by giving notice to the Contractor specifying the Work or portion thereof to be terminated and the effective date of the termination. Upon receipt of such notice, the Contractor shall discontinue the Work in accordance with the notice, and shall take such whatever steps may be necessary or desirable to minimize the costs associated with the termination of the Work. The Contractor shall continue to perform all portions of the Work not terminated, if any, in accordance with this Contract. Except in the event that this Contract is terminated in accordance with GC 18, 21.2 or 21.3, the Owner shall reimburse the Contractor for those costs reasonably incurred by the Contractor as a direct result of the termination of this Contract, the Work, or any portion thereof.

21.2 Not so as to limit the generality of GC 21.1, the Owner may in its sole discretion terminate this Contract by notice to the Contractor, in any of the following circumstances:

21.2.1 if the Contractor becomes insolvent or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the Contractor;

21.2.2 if an order is made or resolution is passed for the winding up or liquidation of the Contractor;

21.2.3 if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the Contractor or any of the Contractor's property;

21.2.4 if the Contractor ceases to carry on in the ordinary course of business;

21.2.5 if a creditor takes possession of any of the Contractor's property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the Contractor; or

21.2.6 if the Contractor fails or refuses at any time to comply with the provisions of GC 11 or GC 12.

Upon receipt of such notice, the Contractor shall discontinue the Work in accordance with the notice, and shall take such steps as may be necessary or desirable to minimize the costs to the Owner associated with the termination of the Work.
21.3 In addition to any rights the Owner may have at Law, if the Contractor is in default in carrying out any of the terms, conditions, covenants or obligations of this Contract, or has made a false representation, declaration or warranty, the Owner may give the Contractor notice of default. The Contractor shall have ___ Work Days following receipt of the notice, or such longer time as the Owner has specified in the notice of default, within which to remedy the default. If the Contractor fails to rectify the default in the time required, the Owner may, by notifying the Contractor, terminate the whole or any part of the Contract.

In the case of any default which would reasonably require more than the time allowed to rectify the default, the Contractor shall be deemed to have rectified the default if, within the allowed time, it has submitted to the Owner a schedule for rectification of the default which the Owner has accepted and the Contractor has commenced rectification and thereafter promptly and diligently and continuously proceeded with the rectification of the default, in accordance with the approved schedule. If the Owner does not accept the schedule of rectification, the Contract shall be terminated in accordance with the notice of termination provided by the Owner to the Contractor. If the Owner accepts the schedule of rectification, but the Contractor does not complete the rectification of the default within Owner-approved schedule, the Owner may, by ___ Work Days notice in writing to the Contractor, terminate the whole or any part of the Contract.

Upon receiving a notice of termination, the Contractor shall discontinue the Work in accordance with the notice and shall take such steps as may be necessary or desirable to minimize the costs to the Owner associated with the termination of the Work. The Owner shall not be liable for those costs incurred by the Contractor as a result of the termination of the Work.

21.4 In the event this Contract or any portion of the Work is terminated, the Owner may complete or have others complete the Work. Subject always to GC 3.3, if this Contract is terminated pursuant to GC 21.2 or GC 21.3, the Owner shall pay the Contractor for all Work satisfactorily performed to the date of termination, less the sum of all monies already paid to the Contractor and all costs the Owner must pay in excess of the Contract Price to obtain satisfactory completion of the Work by others.

21.5 Upon termination of this Contract or the Work or any part thereof, the Contractor shall execute and deliver to the Owner all documents required by the Owner, and shall take all steps required by the Owner, to assign to and fully vest in the Owner all right, title and interest of the Contractor under existing agreements with the Contractor's Subcontractors and Suppliers, which are related to the Work.

21.6 The Owner shall not be liable for any penalties, damages or loss on account of anticipated profits as a result of the termination of the Work or this Contract by the Owner. The rights and remedies provided in this GC 21 are in addition to the rights and remedies provided by the Law, or under any other provision of this Contract.

21.7 If the Owner becomes insolvent or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the Owner, the Contractor may, without prejudice to any other right or remedy it may have, by giving the Owner written notice, immediately terminate the Contract.
21.8 If the Owner fails to make a payment to the Contractor when due and payable under this Contract, the Contractor may give the Owner notice of default. If the Owner has not cured the default within 5 Work Days, or is not contesting the Contractor's entitlement to payment in good faith, then the Contractor may suspend the further performance of the Work, without prejudice to all other rights and remedies it may have at Law. In the event that the Owner remains in default of payment for a further period of 14 Work Days after suspension of the Work by the Contractor, the Contractor may terminate the Contract, without prejudice to all other rights and remedies it may have at Law. The Owner shall be liable for and pay to the Contractor all amounts on account of Work performed to the date of suspension hereunder, the Contractor's reasonable charges incurred during the period that the Work was suspended, and, in the event of termination, the Contractor's loss of profit on the balance of the uncompleted Work.

**GC 22 - TAXES**

22.1 The Contractor shall be responsible for the payment of:

22.1.1 all taxes imposed by reason of the performance or completion of the Work including but not limited to license, permit and registration fees and the Contractor's income, profit, franchise, business, and personal property taxes;

22.1.2 all employment taxes and contributions imposed by the Law or required to be paid on behalf of the employees of the Contractor, Subcontractors or Suppliers, including but not limited to taxes and contributions for income tax, workers' compensation, unemployment insurance, old age benefits, welfare funds, pensions and annuities and disability insurance; and

22.1.3 all customs, sales and excise taxes and duties owing with respect to any labour, machinery, materials and equipment supplied by the Contractor for use in the performance of or to be incorporated into the Work, except for goods and services tax payable by the Owner with respect to payments due to the Contractor.

22.2 Any increase in taxes and charges described in GC 22.1.1 and GC 22.1.2 shall be the sole responsibility of the Contractor. In the event of a change in taxes or charges described in GC 22.1.3, a Change Order shall be issued changing the Contract Price to account for the difference between the amount of tax that would have been payable by the Contractor as of the effective date of this Contract and the actual amount of tax that becomes payable as a result of the change in the tax.

22.3 The Contractor shall indemnify and hold harmless the Owner from any liability resulting from the Contractor's, Subcontractors' or Suppliers' failure to make timely payments of the items referred to in this GC 22 or such similar items for which the Contractor is responsible. Any interest, penalties or other liabilities arising from such failure shall be the sole responsibility of and be paid for by the Contractor.
GC 23 - WORKERS' COMPENSATION

23.1 The Contractor shall at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to the Workers’ Compensation Act of Alberta and upon failure to do so, the Owner, in addition to any other rights it may have at Law or under this Contract, may retain the amount of such assessment or contribution from the Contract Price.

23.2 Prior to the Commencement Date, before release of the holdback, and at any other time at the Owner's request, the Contractor shall arrange to have the Workers' Compensation Board of Alberta send a clearance letter to the Owner's Representative, verifying that all required assessments and contributions have been paid, or such assessments and contribution are not required to be paid, by the Contractor, Subcontractors and Suppliers.

GC 24 - LIENS

24.1 The Contractor shall at all times reimburse, protect, indemnify and save free and harmless the Owner, the Owner's Site and the other lands and property of the Owner from and against all liens, claims made or liability incurred by the Owner on account of the Work performed or materials supplied by Subcontractors or Suppliers, or on account of an exaggerated lien filed by the Contractor including, without limitation, legal fees on a solicitor and own client (indemnity) basis. The Contractor shall cause any such lien or claim which may be filed or made, to be released and discharged forthwith at the expense of the Contractor. If the Contractor fails to release or obtain the release and discharge any such lien or claim, then the Owner may, but shall not be obliged to, discharge, release or otherwise deal with the lien or claim, and the Contractor shall pay any and all costs and expenses incurred by the Owner in so releasing, discharging or otherwise dealing with the claim or lien, including but not limited to, legal fees on a solicitor and own client (indemnity) basis. Any amounts so paid by the Owner may be deducted from any amounts due the Contractor whether under this Contract or otherwise.

GC 25 - WARRANTIES

25.1 The Contractor represents and warrants that:

25.1.1 all Work performed by the Contractor or any of its Subcontractors shall:

25.1.1.1 comply with the Contract Documents and the instructions of the Owner;

25.1.1.2 be performed in a safe and environmentally sound manner in compliance with applicable Law; and

25.1.1.3 be performed in accordance with all time schedules set out in or called for by the Contract Documents; and

25.1.2 all materials and equipment furnished by the Contractor, Subcontractors or Suppliers shall:

25.1.2.1 meet the specifications in the Contract Documents if so specified, and if not specified then be of the quality best suited for the required operating conditions
and intended use and purpose of the materials and services and of sufficient size and capacity for the Work; and

25.1.2.2 be safe and environmentally sound.

25.2 The Contractor warrants that, for a period of ___ years (or such other time as provided in Schedule "A" - Scope of Work) from the earlier of the date of Functional Completion or the date of the Final Completion Notice, the Work (or the component system in the case of a Functional Completion Notice issued in respect of a component system) is and shall be free from any and all defects and deficiencies in workmanship performed and, materials and equipment supplied by the Contractor, its Subcontractors or Suppliers.

25.3 During the Warranty Period, the Contractor shall promptly repair, replace and make good all defects in the Work and correct all deficiencies, errors, omissions and mistakes with respect to the Work (or any component system) at its own cost by re-performing the Work or repairing or replacing any materials or equipment, if any, which do not comply with the Contract. The Contractor shall do so in a manner that minimizes disruptions to the Owner's continued operations. Notwithstanding the foregoing, the Owner may, in the case of emergency or the failure of the Contractor to perform the requested warranty work in a timely manner, make or cause to be made the necessary corrections, repairs or replacements and charge the cost of the same to the Contractor provided that where practical, the Owner shall provide the Contractor with the opportunity to make the necessary corrections, repairs or replacements.

25.4 The Contractor shall immediately advise the Owner's Representative of any defects in workmanship, materials or equipment and of all deficiencies, errors, omissions or mistakes in the Work that it discovers or becomes aware of during the Contract Time and Warranty Period.

25.5 The Warranty given hereby shall apply to the re-performance of any Work or the repair or replacement of materials or equipment pursuant to GC 25.3, and the Warranty Period shall again run from the time of the completion of the work performed under Warranty.

25.6 If this Contract or any part of the Work is terminated pursuant to GC 21, then this GC 25 shall survive such termination, and the Warranty Period with respect to completed Work shall commence upon the effective date of termination.

**GC 26 - LIABILITY & INDEMNIFICATION**

26.1 The Contractor shall be liable to the Owner, its officers, directors, employees, consultants and agents for all losses, damages and expenses whatsoever which they or any of them may incur and in addition shall indemnify, and hold harmless, the Owner, its officers, directors, employees, consultants and agents from and against all proceedings, claims, losses, damages and expenses whatsoever, including solicitor and own client (indemnity) costs, which may be brought against or incurred by the Owner, or any of its officers, directors, employees, consultants and agents, as a result of claims, demands, actions or proceedings made or taken by persons not party to this Contract for:
26.1.1 any acts or omissions in connection with the performance, purported performance or non-performance of this Contract or of the Work by the Contractor, Subcontractors, Suppliers or their respective employees or agents; or

26.1.2 any acts or omissions of the Owner, Other Contractors or their respective employees or agents, or in connection with such acts or omissions, while acting under the direction and control of the Contractor, Subcontractors, Suppliers or their respective employees or agents.

26.2 The Contractor shall be liable to and shall indemnify the Owner for all losses, damages and expenses on account of:

26.2.1 all physical damage caused by the Contractor, its Subcontractors or Suppliers or their respective employees or agents to property of the Owner or Other Contractors, or property under the care, custody or control of the Owner or Other Contractors; and

26.2.2 the cost to repair or make good any and all damage to roads, bridges, railroads, highways, land adjacent to the Owner's Site or facilities or equipment relating thereto caused by or resulting from the actions howsoever of the Contractor, its Subcontractors or Suppliers, or their respective employees or agents,

to the limit of the greater of the extent of amounts recoverable under a policy or policies of insurance required to be maintained by the Contractor, or provided by the Owner, pursuant to the provisions of this Contract, and $_______________, and the Contractor shall have no liability on this account for any loss, damage and expense in excess thereof.

26.3 Except to the extent to which indemnity is provided by a policy or policies of insurance, neither the Contractor nor its Subcontractors, Suppliers or their respective employees or agents shall have any liability to the Owner, its officers, directors, employees, consultants and agents, whether in tort (including but not limited to negligence or breach of statutory duty) or otherwise unless a notice has been given to the Contractor in writing within a period of 10 years from the date of the Final Completion Notice setting forth details of the intended claim and the identity of the parties against whom it is to be made.

26.4 Notwithstanding anything else in this Contract, the Contractor, its Subcontractors, Suppliers, and their respective officers, directors, employees, consultants and agents shall not be liable to the Owner, or anyone claiming through or under it, whether by way of indemnity or by reason of breach of contract or in tort, including liability for negligence and breach of statutory duty, or on any other legal or equitable basis, for:

26.4.1 special or consequential loss or damage;

26.4.2 loss of use, whether complete or partial, of the Work or existing facilities of the Owner or third parties;

26.4.3 loss of product;

26.4.4 loss of revenue, overhead and profit; or
26.4.5 loss of any contract that may be suffered by the Owner,

except to the extent of amounts recoverable under a policy or policies of insurance required to be maintained by the Contractor, or provided by the Owner, pursuant to the provisions of this Contract, provided however that in the event of the failure by the Contractor to complete the Work by the Contract Time the liability of the Contractor under this GC 26.4 shall be limited only to the greater of the insurance recoverable and $___________.

[Note to Draft: Optional]

26.5 In the event of a sale by the Owner of the Owner's Site, the Owner agrees to cause the purchaser to enter into an agreement whereby the purchaser covenants to be bound by, and to afford the Contractor the benefit of, GC 26.4.

26.6 The Owner shall indemnify and hold harmless, including indemnity for legal costs on a solicitor and own client (indemnity) basis, the Contractor, its Subcontractors, Suppliers, and their respective officers, directors, employees, consultants and agents from and against all claims, demands, actions and proceedings made or taken by persons not parties to this Contract and which arise on account of and are attributable to the Owner's obligations hereunder, including, without limitation:

26.6.1 a lack of or defect in title or an alleged lack of or defect in title to the Owner's Site;

26.6.2 an environmental condition at the Work Site which is the responsibility of the Owner;

26.6.3 Hazardous Materials supplied by the Owner and while under its care and control;

26.6.4 an action for which the Owner must indemnify the Contractor pursuant to GC 15.2; or

26.6.5 defective machinery, equipment, products, processes or mechanisms provided by the Owner to the Contractor for the performance of or incorporation into the Work.

26.7 In the event that the Owner accepts the responsibility to indemnify the Contractor, its officers, directors, employees, consultants or agents pursuant to GC 26.5, then it shall be entitled to retain and instruct counsel to act for and on behalf of those persons and to settle, compromise and pay any claim, demand, action or proceeding without first obtaining prior approval from the party in whose favour the indemnity has been provided. The Contractor shall and shall cause any indemnified party to co-operate in all respects in contesting any third party claim for which the Owner has accepted responsibility.

GC 27 - INSURANCE

27.1 Without in any way limiting the liability of the Contractor or its obligation to indemnify the Owner under this Contract, the Contractor shall, at its own expense, obtain prior to the Commencement Date and maintain during the Contract Time, the following types of insurance coverage, naming the Contractor as the insured, in the following minimum amounts:
27.1.1 automobile liability insurance which provides coverage to a minimum limit of $2,000,000.00 per occurrence against any and all claims for bodily injury including, without limitation, passenger hazard and property damage for all vehicles used by the Contractor, its employees or agents in connection with the Work, including non-owned vehicles;

[Optional - Use only if Section 27.6 has been deleted]

27.1.2 course of construction including transit insurance covering the Work against physical loss or damage equal to the current value of the Contract and the value of all materials, equipment and supplies delivered to the Work Site for incorporation into the Work, subject to policy terms, conditions and exclusions, and subject to a $_____________ deductible. This policy shall identify the Owner, the Contractor, Subcontractors and Suppliers and their respective officers, employees and agents as additional named insureds with respect to the Work to be performed pursuant to this Contract, and shall cover loss or damage to the Work, including all materials, equipment and supplies delivered to the Work Site for incorporation into the Work;

[Optional]

27.1.3 aircraft and watercraft liability insurance with respect to owned and non-owned aircraft and watercraft if used directly or indirectly in the performance of the Work, with limits of liability of not less than $2,000,000.00 for the accidental injury or death of one or more persons or damage to or destruction of property as a result of one accident or occurrence; and

27.1.4 insurance covering loss or damage to construction machinery, tools and equipment used by the Contractor for the performance of the Work. Subject to satisfactory proof of financial capability by the Contractor for self-insurance, the Owner may, in writing, waive the equipment insurance requirement.

[Optional for Owner or Contractor]

27.2 The Owner [or Contractor] shall maintain during the Contract Time a comprehensive general liability insurance policy, including completed operations for a period of not less than 12 months from the date of the Final Completion Notice, naming the Owner, Contractor, Subcontractors, Suppliers and their respective employees and agents as named insureds. The policy shall contain a "cross-liability" clause so that the Owner, Contractor, Subcontractors, Suppliers and their respective officers, employees and agents are insured in the same manner and to the same extent as if individual policies had been issued to each.

[Optional – Use if Owner provides CGL coverage]

27.3 Subject always to the specific wording of the policy, the definitions, limits, coverage and exclusions contained therein, the policy referred to in GC 27.2 shall, in general terms, include the following features:
27.3.1 a combined single limit of not less than $__________ for each occurrence or accident;

27.3.2 coverage for damages due to bodily injury (including death at any time resulting therefrom) and personal injuries sustained by any person as well as injury to or destruction of property arising out of any operations in connection with this Contract; and

27.3.3 a deductible amount of no more than $_______________ per occurrence.

27.4 The Contractor agrees that notification of any claim or possible claim to be made relating to the insurance provided by the Owner shall be provided by the Contractor to the Owner's Representative as soon as possible and in any event not more than 3 Work Days after the Contractor becomes aware of the occurrence of the event to which the claim relates.

27.5 The Owner and the Contractor agree and the Contractor shall ensure that its Subcontractors agree that the insurer has the right to make such investigation, negotiation and settlement of any claim or suit relating to the policy discussed in GC 27.2 as may be deemed expedient by the insurer.

[Optional]

27.6 The Owner shall provide course of construction including transit insurance covering the Work against physical loss or damage equal to the current value of the Contract, subject to policy terms, conditions and exclusions, and subject to a $__________ deductible. This policy shall identify the Owner, the Contractor, Subcontractors and Suppliers and their respective officers, employees and agents as additional named insureds with respect to the Work to be performed pursuant to this Contract, and shall cover loss or damage to the Work including all materials, equipment and supplies delivered to the Work Site for incorporation into the Work.

27.7 The deductibles for the insurance policies referred to above, shall, unless otherwise specified, be standard deductibles for such policies and the party causing the loss shall be solely responsible for payment of the amount of any deductible.

27.8 The Contractor shall provide certified copies of the insurance policies it is required to place and maintain under this Contract if requested by the Owner's Representative.

GC 28 - INDEPENDENT CONTRACTOR

28.1 For the purposes of this Contract and the Work, the Contractor shall be an independent contractor and not the agent or employee of the Owner. Accordingly, all persons employed or retained by the Contractor in connection with the performance of its obligations hereunder shall be its employees or those of its Subcontractors or Suppliers, as the case may be, and not the employee or agent of the Owner in any respect.

28.2 The Contractor shall have no authority whatsoever to make any statement, representation or commitment of any kind, nor to take any action, which may be binding on the Owner, except as may be expressly provided for herein, or as expressly authorized in writing by the Owner.
GC 29 - SUBCONTRACTS & ASSIGNMENTS OF CONTRACT

29.1 The Contractor shall provide notice to the Owner of its intention to subcontract the performance of any Work or the supply of equipment and materials and of the intended Subcontractor or Supplier before entering into any subcontract. The Owner may for reasonable cause object to the use of a proposed Subcontractor or Supplier and require the Contractor to obtain another Subcontractor or Supplier. Any reviews or approvals by the Owner pursuant to the provisions of this GC 29 or elsewhere in this Contract shall not release or relieve the Contractor of any of its obligations under this Contract or create any contractual relations between the Owner and any Subcontractor or Supplier. The Contractor shall require any Subcontractor or Supplier to agree to be bound by these General Conditions and Schedule "A" - Scope of Work and to abide by the Owner's requirements for safety and loss management.

29.2 Prior to the Commencement Date, the Contractor shall provide the Owner's Representative with a list of the names and addresses of all Subcontractors, Suppliers and others who have performed or shall perform any of the Work. The Contractor shall provide the Owner's Representative with any proposed changes to this list during the Contract Time. The Contractor shall, upon the request of the Owner, assign to the Owner all warranties provided by Subcontractors and Suppliers.

29.3 The Contractor shall be fully responsible for any part of the Work performed by Subcontractors or Suppliers and for the acts or omissions of Subcontractors and Suppliers and all persons either directly or indirectly employed by them, to the same extent as the Contractor is for its own acts or omissions. Without in any way limiting the Contractor's obligations pursuant to the provisions of this GC 29 or elsewhere under this Contract, the Contractor shall secure compliance with and enforce, at its own expense, for the benefit of the Owner, each of the contracts concluded by the Contractor with Subcontractors and Suppliers.

29.4 The Contractor shall not assign this Contract or any part thereof without the prior approval of the Owner. The Owner may assign this Contract including all rights and obligations hereunder, at any time without the prior agreement of the Contractor, provided that the assignee agrees to be bound by this Contract.

29.5 The Contractor shall enforce the warranty obligations of its Subcontractors and Suppliers. All contracts between the Contractor and its Subcontractors and Suppliers shall provide that warranties given by the Subcontractor or Supplier shall be given to both the Contractor and the Owner and the warranties may be enforced by either the Contractor or the Owner.

29.6 The Contractor shall request and use its best efforts to obtain for the benefit of the Owner, the best warranties and guarantees that it is possible to secure from its Subcontractors and Suppliers and, as a minimum, shall obtain and provide to the Owner the warranties required by the Contract Documents. The Contractor shall do all things and provide all assistance reasonably necessary to enable the Owner to enforce warranties and guarantees provided by its Subcontractors and Suppliers.
GC 30 - DISPUTE RESOLUTION

30.1 In the event of disagreement between the parties as to the performance of the *Work* or the interpretation, application or administration of the *Contract Documents*, the *Contractor* shall perform the *Work* as directed by the *Owner's Representative*. All differences between the parties not resolved by the decision of the *Owner's Representative* and all disputes and claims of either party arising out of the *Contract* and its performance shall be settled in accordance with this GC.

30.2 The parties shall make all reasonable efforts to resolve all disputes and claims by negotiation and agree to provide, without prejudice, open and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

30.3 Either party shall be entitled by notice to the other to call for the appointment of a *Project Mediator*, in which case the parties shall within 10 *Work Days* thereafter jointly nominate a *Project Mediator*. If the parties do not agree on the appointment of a *Project Mediator*, then either party may request the Chair of the Alberta Arbitration and Mediation Society to appoint a *Project Mediator*, who when so appointed shall be deemed acceptable to the parties and to have been appointed by them.

30.4 The parties shall submit in writing their dispute to the *Project Mediator*, and afford to the *Project Mediator* access to all records, documents and information the *Project Mediator* may request. The parties shall meet with the *Project Mediator* at such reasonable times as may be required and shall, through the intervention of the *Project Mediator*, negotiate in good faith to resolve their dispute. All proceedings involving a *Project Mediator* are agreed to be without prejudice, and the cost of the *Project Mediator* shall be shared equally between the parties.

30.5 If the dispute has not been resolved within ___ days after the appointment of the *Project Mediator* either party may by notice to the other withdraw from the mediation process.

30.6 All disputes, claims and differences not settled as herein provided, arising out of or in connection with the *Contract* or in respect of any defined legal relationship associated with it or derived from it, shall be referred to and finally resolved by arbitration in accordance with the Alberta Arbitration Act. The arbitral tribunal shall be composed of one arbitrator where the subject of the dispute, claim or difference relates primarily to whether work required to be performed is within the scope of the *Work* or the *Contractor* has met the required specifications of the *Contract*, and the *Work* has not yet been completed when the matter is referred to arbitration. In all other cases the arbitral tribunal shall be composed of 3 arbitrators, one appointed by each party who shall select the third who shall act as chair.
GC 31 - CONFLICT OF INTEREST

31.1 The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with the Owner's best interests. This obligation shall apply to the activities of the Contractor, Subcontractors and Suppliers and their respective employees and agents, in their relations or dealings with the employees of the Owner and their families, and other third parties, arising from this Contract or the performance of the Work. The efforts made by the Contractor in this regard shall include, but shall not be limited to, establishing reasonable precautions to prevent its employees or agents from offering, or providing entertainment, gifts, loans, payments or other considerations to the Owner's employees, consultants and agents or their family members.

GC 32 - AUDIT ACCESS

32.1 The Contractor shall keep and preserve the Records during the Contract Time and for a period of 4 years thereafter.

32.2 For the purposes of determining the Contractor's compliance with all of the terms of this Contract, including, but not limited to GC 8, 19 and 21 and for verification of all Work performed and all reimbursable costs and other charges payable under this Contract, including but not limited to, claims and suspension or termination charges, the Contractor shall permit authorized representatives of the Owner to review the Records, at all reasonable times during the Contract Time, and for a period of 4 years thereafter. The provisions of this GC 32.2 pertain only to the determination of the Contractor's compliance with the Contract and with verification of reimbursable costs and charges payable under this Contract and do not apply to any fixed price portion of the Contract.

GC 33 - REPRESENTATIVES & NOTICES

33.1 Any and all of the Owner's approvals are required to be in writing and to be given by the Owner's Representative.

33.2 The Owner's Representative is ____________________. The Owner's Representative has the authority to bind the Owner on all matters relating to the Work and the Contract, and all communications to or with the Owner's Representative shall be deemed to be communications to or with the Owner.

33.3 Contractor's Representative is ____________________. Contractor shall not change the Contractor's Representative, except with the prior approval of the Owner. The Contractor's Representative has the authority to bind the Contractor on all matters relating to the Work and the Contract, and all communications to or with Contractor's Representative shall be deemed to be communications to or with the Contractor.
33.4 Unless otherwise specifically indicated in this Contract, all notices, approvals, consents, authorizations and other communications required or permitted pursuant to this Contract, shall be in writing and shall be delivered personally to the Contractor's Representative or the Owner's Representative, as the case may be, faxed or electronically transmitted, where such electronic transmission meets the minimum requirements set forth in any legislation governing the electronic transmission of documents pursuant to this Contract, to the other party at the addresses shown below:

33.4.1 Contractor:

__________________________________________
__________________________________________
__________________________________________
__________________________________________
Attention: _________________________________
Telephone: _________________________________
Fax: ________________________________

33.4.2 Owner:

__________________________________________
__________________________________________
__________________________________________
__________________________________________
Attention: _________________________________
Telephone: _________________________________
Mail Drop: _________________________________
Fax: ________________________________

33.5 Either party may change its address or fax number for notice by providing the other party with 10 days notice.

33.6 Invoices and all supporting documentation shall be mailed or delivered to the address shown below:

__________________________________________
__________________________________________
__________________________________________
__________________________________________
Attention: _________________________________
Telephone: _________________________________
Fax: ________________________________
GC 34 - GENERAL

34.1 No failure or delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

34.2 No waiver of any right, power or privilege by a party shall limit or affect that party's rights with respect to any breach of this Contract by the other party.

34.3 Each of the parties hereto shall execute such further documents and give such further assurances as are required to give effect to this Contract.

34.4 If a court of competent jurisdiction determines that any provision of this Contract is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions of this Contract.

34.5 Time is and shall continue to be of the essence of this Contract.

34.6 All of the covenants and agreements herein contained on the part of either party shall apply to, enure to the benefit of and be binding upon their respective legal representatives, successors and assigns.

34.7 Each of the parties hereby represents and warrants that it has the power and authority to carry on its business and to enter into this Contract and to perform all of its obligations hereunder.

34.8 This Contract constitutes the entire agreement between the parties with respect to the Work and supersedes all previous communications, representations, warranties and agreements, either written or verbal.

34.9 Unless the context otherwise requires, words importing the singular shall include the plural and vice-versa and words importing gender shall include the masculine, feminine and neuter genders.

34.10 The terms "herein", "hereunder", "hereto" and similar expressions refer to this Contract, and not to any particular GC or paragraph of this Contract.

34.11 Where reference is made to a "schedule", the reference is to a schedule of this Contract and all schedules shall be deemed to be a part hereof.

34.12 Where reference is made to a "day", "week", "month" or "year", the reference is to a calendar day, week, month or year, unless the context indicates otherwise.

34.13 The headings and sub-headings of GC's contained herein are used for convenience and ease of reference only and in no way define, limit, describe or interpret the scope or intent of this Contract or any of its provisions.
34.14 Any terms, covenants, provisions or conditions of this Contract which expressly or by their nature survive the termination of this Contract shall continue in full force and effect subsequent to and notwithstanding such termination, and shall not be merged with the termination, until such terms, covenants, provisions and conditions are satisfied or by their nature expire.

34.15 This Contract shall be governed by and construed in accordance with the laws of the Province of Alberta, and the parties attorn to the jurisdiction of the Courts of the Province of Alberta.

34.16 This Contract shall be executed by the parties, or their representatives, in person with original signatures. Subsequent Contract Documents may be executed by the parties, or their representatives, and such execution may be by way of facsimile or electronic transfer.

IN WITNESS WHEREOF the parties have duly executed this Contract as of the date on the first page of this Contract.

Per: __________________________

Per: __________________________

Contractor: ________________ c/s

Per: __________________________

Per: __________________________

Contractor: ________________ c/s
**TABLE OF CONTENTS**

<table>
<thead>
<tr>
<th>Article Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE 1 - INTERPRETATION</td>
<td>1</td>
</tr>
<tr>
<td>ARTICLE 2 - SUBMISSION OF BIDS</td>
<td>2</td>
</tr>
<tr>
<td>ARTICLE 3 - EXCEPTIONS TO REQUEST FOR BID</td>
<td>3</td>
</tr>
<tr>
<td>ARTICLE 4 - ALTERNATIVES</td>
<td>4</td>
</tr>
<tr>
<td>ARTICLE 5 - DELIVERY OF BID</td>
<td>4</td>
</tr>
<tr>
<td>ARTICLE 6 - MODIFICATION AND WITHDRAWAL OF BIDS</td>
<td>4</td>
</tr>
<tr>
<td>ARTICLE 7 - AWARD OF CONTRACT</td>
<td>5</td>
</tr>
<tr>
<td>ARTICLE 8 - BIDDER'S BUSINESS ORGANIZATION</td>
<td>6</td>
</tr>
<tr>
<td>ARTICLE 9 - PROPOSED SUBCONTRACTORS AND SUPPLIERS</td>
<td>7</td>
</tr>
<tr>
<td>ARTICLE 10 - BIDDERS' INSURANCE</td>
<td>8</td>
</tr>
<tr>
<td>ARTICLE 11 KEY PERSONNEL</td>
<td>9</td>
</tr>
<tr>
<td>ARTICLE 12 - SAFETY AND LOSS MANAGEMENT</td>
<td>10</td>
</tr>
<tr>
<td>ARTICLE 13 WORK/SERVICES EXECUTION PLAN</td>
<td>11</td>
</tr>
<tr>
<td>ARTICLE 14 - QUALITY ASSURANCE PROGRAM</td>
<td>11</td>
</tr>
<tr>
<td>ARTICLE 15 - BID EXECUTION</td>
<td>12</td>
</tr>
</tbody>
</table>
BID CONDITIONS

ARTICLE 1- INTERPRETATION

1.1 In these Bid Conditions the words defined below shall have the following meanings:

1.1.1 Any word defined in the Stipulated Price Contract shall be given the same meaning in these Bid Conditions and the Bid. Any rule of interpretation set out in the Stipulated Price Contract shall apply to these Bid Conditions and the Bid;

1.1.2 "Addenda" means any written addenda to the Bid Conditions issued by the Owner;

1.1.3 "Bid" means the bidder's response to the RFB and shall consist of the following documents:

- a duly executed copy of these Bid Conditions;
- the List of Exceptions;
- the List of Alternatives;
- all attachments required by these Bid Conditions, including, as applicable electronic data;
- [Add any other documents considered necessary]

1.1.4 "Due Date" means 2:00 p.m. on ●;

1.1.5 "List of Exceptions" means that list prepared by the bidder, in the form attached as Attachment 1 in accordance with Article ●; and

1.1.6 "Request for Bid" or "RFB" means the request for bid no. ● which includes the following documents:

- The Bid Conditions
- The General Terms and Conditions
- Schedule "A" - Scope of Work
- Schedule "B" - Payment for Work
- Schedule "C" - Release and Certificate of Final Payment
- Schedule "D" - Technical Specifications
- Schedule "E" - Statutory Declaration
• Addenda, if any
• [Add any other documents considered necessary]

and all attachments to any of the above;

1.2 The bidder shall base its Bid on the RFB.

1.3 The bidder shall not disclose any part of the RFB or the Bid to any third party except as required to its proposed Subcontractors and Suppliers, without the Owner’s prior written consent. The bidder shall ensure that all proposed Subcontractors and Suppliers comply with this Article 1.3.

ARTICLE 2 - SUBMISSION OF BIDS

2.1 The bidder is responsible for reviewing the RFB. If the bidder finds any errors or discrepancies in, or omissions from, the RFB, or if any part of the RFB appears unclear or ambiguous, the bidder is responsible for requesting clarification or interpretation before submitting the Bid.

2.2 The bidder is responsible for inspecting the Work Site and for making whatever inquiries or arrangements are necessary for it to become fully informed of the nature of the Work Site and of the Work to be performed, and by the submission of its Bid acknowledges that it has investigated and satisfied itself as to:

2.2.1 the nature of the Work;

2.2.2 the location of and all conditions relating to the Owner’s Site and the Work Site including, but not limited to accessibility, general character, surface conditions, utilities, road, uncertainties of seasonal weather and all other physical, topographical and geographical conditions;

2.2.3 the general character, quality, quantity and availability of equipment and materials required to execute and complete the Work;

2.2.4 all environmental risks, conditions, Law and restrictions applicable to the bidder or the Work that might affect the Work;

2.2.5 all conditions affecting labour, including, without limitation, availability, productivity and administrative practices, including those relating to safety, prevailing at or applicable to the Work; and

2.2.6 the magnitude of the construction work required to execute and complete the Work.
2.3 The Owner is not responsible for undertaking any investigations to assist the bidder. Any information, plans, drawings, reports or other documents which are not included or referred to in this RFB, form no part of this Bid. The Owner assumes no responsibility of any kind whatsoever arising from or relating to its failure to include or refer to such information, plans, drawings, reports or other documents. Bidders who obtain or rely upon such information, plans, drawings, reports or other documents, do so entirely at their own risk.

2.4 All requests for clarifications or interpretations concerning the RFB, or requests to inspect the Work Site shall be directed to [phone #].

2.5 The bidder shall sign all copies of the Bid Conditions and submit them as part of the Bid. The bidder shall provide satisfactory evidence of the authority of the bidder's signatory if requested by the Owner. The bidder shall include a separate summary list of all attachments submitted with the Bid Conditions.

2.6 Where electronic documents or data are included in the Bid Conditions, the bidder shall provide, in the format requested by the Owner, all of the information requested. The Bid will include the completed electronic documents or data.

2.7 If Addenda are issued they will be issued simultaneously to all parties to whom the Owner has sent a copy of the RFB. All Addenda will be issued by the Owner.

ARTICLE 3 - EXCEPTIONS TO REQUEST FOR BID

3.1 If the bidder takes exception to anything in the RFB, it shall identify in the list of exceptions:

3.1.1 each General Condition or the article of the schedule to which exception is taken; and

3.1.2 a description of the exception and any proposed substitution.

3.2 The bidder shall submit the completed list of exceptions as a part of the Bid. To the extent that the bidder has not identified, in the list of exceptions, an exception to a provision of the RFB, it shall be deemed to have accepted that provision of the RFB. If the bidder has no exceptions to the RFB then it shall so indicate on the list of exceptions and submit it as a part of the Bid.

3.3 Not so as to limit the generality of Article 3.1, the bidder shall identify in the list of exceptions any supplies, material or equipment which it proposes to substitute for items specified in the RFB.

3.4 The Owner, in its sole discretion, may accept or may refuse to accept any Bid containing exceptions.
ARTICLE 4 - ALTERNATIVES

4.1 The bidder shall list in a list of alternatives, any alternative material, equipment, schedule time, specified or required work method or execution strategy or time for performance of the Work that it proposes.

4.2 Where the bidder submits alternatives, the bidder shall also bid in accordance with the Contract Documents and submit a Contract Price without the proposed alternatives.

4.3 Where alternatives are proposed, the bidder shall clearly indicate the impact of each alternative separately and the aggregate impact of all alternatives on the Contract Price, the Work Schedule, and the Contract Time.

4.4 The Owner in its sole discretion, may refuse to accept any or all of the alternatives identified in the list of alternatives, or may accept the Bid without any alternatives, or may accept the Bid with some or all of the alternatives included.

ARTICLE 5 - DELIVERY OF BID

5.1 The Bid must be placed in an envelope which is to be sealed and to which the enclosed self-addressed label must be affixed. Failure to follow these instructions may, in the Owner's sole discretion, be cause for rejection of the Bid.

5.2 The original plus _____ copies of the Bid shall be delivered to the Owner at the following address:

[Owner's Address]

Attention:
Telephone:

5.3 The Bid must be received by the Owner prior to the Due Date. Bids received later than the Due Date may, in the Owner's sole discretion, be rejected. Bids received after the other Bids have been opened shall be rejected.

5.4 The Bid will not be returned to the bidder by the Owner. The bidder shall return those documents and attachments included in the RFB requested by the Owner's contract administrator.

ARTICLE 6 - MODIFICATION AND WITHDRAWAL OF BIDS

6.1 In consideration of the Owner providing the Request for Bid to the bidder, the bidder agrees that its Bid shall remain open for acceptance and valid up to and including ●, 20● unless extended by mutual written agreement.
6.2 The bidder may modify its Bid prior to the Due Date by delivery in writing or by fax or electronic transfer sent to the number set forth below, provided that the change communicated by such means does not disclose the modified total Bid price, but shall only indicate the change in the payment item as set forth in Section 3.1 of Schedule "B" – Payment for Work and the resulting total change to the Bid price [Note: Use this form in the case of a stipulated price contract. Amend this section to refer to the unit prices in the case of a unit price contract]. Where multiple fax or electronic changes are submitted, the last fax or electronic change shall govern and all previously submitted changes shall be null and void. No communication by electronic means will be considered unless the means is capable of producing a time-dated hard copy and, as applicable, complies with any legislation that may govern electronic transmissions in Alberta.

6.3 The bidder shall take complete responsibility for ensuring that all fax or electronic changes are received prior to the Due Date, and the Owner shall not be responsible for the proper operation or functioning of incoming fax or electronic equipment and gives no assurance that modifications sent by such means will be received by it prior to the Due Date, even if sent before the Due Date.

6.4 The bidder may withdraw the Bid by written notice to the Owner's contract administrator which notice may also be sent by fax or electronic transfer, provided that such notice is received by the Owner's contract administrator prior to the Due Date.

6.5 The fax and electronic transfer numbers to which communications may be sent are as follows:

Fax number:
Electronic address:

ARTICLE 7 - AWARD OF CONTRACT

7.1 After the Due Date the Owner may invite one or more bidders to a bid clarification meeting. If as a result of clarifications, or otherwise, the Bid is clarified, amended, increased or decreased the bidder agrees that the clarified or amended Bid shall constitute its Bid hereunder which shall remain open for acceptance by the Owner for the time and in the manner herein provided for the acceptance of a Bid.

7.2 The Owner will evaluate all of the Bids on the basis of commercial and technical merit but reserves the right to accept, in its sole discretion, any one or more of the Bids. The Owner also reserves the right, in its sole discretion, to not award a contract to the lowest or to any of the bidders, with respect to the Work, and to waive any irregularities, omissions or errors in any Bid.
7.3 If the Owner selects the bidder's Bid, it will issue a letter of acceptance to the bidder accepting the bidder's Bid. The Owner will then provide the bidder with execution copies of the Contract which the bidder agrees to execute and return to the Owner's contract administrator, together with all other documentation and information required by the RFB, the Contract Documents or by the Owner's contract administrator.

**ARTICLE 8 - BIDDER'S BUSINESS ORGANIZATION**

**BIDDER INFORMATION**

8.1 The bidder shall:

- indicate below its form of business organization; and
- provide the information requested for such form:

8.1.1 ___ Corporation

Legal name of corporation: ________________________________

Jurisdiction of incorporation

___ Alberta
___ Canada
___ Other province: ________________________________
___ U.S. state: ________________________________
___ Other country: ________________________________

Any other business name to be used in the Contract:

____________________________________________________________________

8.1.2 ___ Division of corporation

Name of division: ________________________________

Legal name of parent corporation: ________________

Jurisdiction of incorporation of parent corporation

___ Alberta
___ Canada
___ Other province: ________________________________
8.1.3 ___ Partnership

Legal name of partnership: ________________________

Any other business name to be used in the Contract:

8.1.4 ___ Limited Partnership

Legal name of limited partnership: ________________________

Any other business name to be used in the Contract:

The bidder shall provide a copy of the Limited Partnership Agreement upon request by the Owner.

8.1.5 ___ Joint Venture

Legal names of the joint venturers:

_______________________________________________________________

_______________________________________________________________

_______________________________________________________________

Any other business name of the Joint Venture to be used in the Contract:

The bidder shall provide a copy of the Joint Venture Agreement upon request by the Owner.

**ARTICLE 9 - PROPOSED SUBCONTRACTORS AND SUPPLIERS**

9.1 The bidder shall submit within 24 hours of the Due Date the following information with respect to all of its proposed Subcontractors and Suppliers, [optional] and shall indicate whether they are local, native or both:

<table>
<thead>
<tr>
<th>Subcontractors / Suppliers</th>
<th>Work or Services Materials / Equipment</th>
<th>[optional] Local / Native / Both</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
ARTICLE 10 - BIDDERS' INSURANCE

10.1 The Stipulated Price Contract sets out the insurance coverage required by the Owner. The bidder shall indicate below the amount of the deductibles for each category of insurance required:

10.1.1 automobile liability insurance

- required coverage of $2,000,000.00 per occurrence
- the amount of the deductible is $___________.

10.1.2 course of construction, including transit insurance

- required coverage of $__________ per occurrence
- the amount of the deductible is $___________.

[Optional for Contractor or Owner to provide - GC 27]

10.1.3 comprehensive general liability insurance

- required coverage of $● per occurrence
• the amount of the deductible is $\bullet$.

[Optional for Owner or Contractor to provide - GC 27]

ARTICLE 11 KEY PERSONNEL

11.1 The bidder shall list below, as Key Personnel, the names and titles of those whom the bidder considers to be important in ensuring that the Work is performed in accordance with the Contract Documents:

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<tr>
<th>Title</th>
<th>Name</th>
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11.2 The bidder shall attach for each of the Key Personnel the following information:

• a current resume (including copies of trade certificates if applicable);
• recent client references;
• present work location; and
• a consent signed by the individual agreeing to the release of personal information to the Owner.
11.3 The bidder shall attach its proposed organization chart showing the Key Personnel and the other supervisory and staff personnel that will be executing the Work, together with their respective job titles.

**ARTICLE 12 - SAFETY AND LOSS MANAGEMENT**

12.1 The bidder shall submit as part of the Bid its safety and loss management policy with particular reference to implementation, communication and ensuring compliance.

12.2 The bidder shall submit as part of the Bid the details of its safety and loss management program to be used in the performance of the Work, including, but not limited to the following:

12.2.1 names of safety and loss management personnel;

12.2.2 an organizational chart showing reporting relationships of safety and loss management personnel;

12.2.3 safety and loss management training programs;

12.2.4 training and safety meeting schedules;

12.2.5 incident and accident reporting and investigation;

12.2.6 incident and accident follow-up; and

12.2.7 program for monitoring Subcontractors and Suppliers compliance with the bidder's safety and loss management program.

12.3 The bidder shall provide its injury frequency rate and its injury severity rates for the past 2 years in accordance with the following formulae:

\[
\text{Injury Frequency Rate} = \frac{\text{number of medical aids} + \text{number of disabling injuries} \times 200,000}{\text{actual manhours worked}}
\]

\[
\text{Injury Frequency Rate} = \frac{\text{number of days loss} \times 200,000}{\text{actual manhours worked}}
\]

\[
\text{Injury Severity Rate} = \frac{\text{number of days loss} \times 200,000}{\text{actual manhours worked}}
\]

\[
\text{Injury Severity Rate} = \frac{\text{number of medical aids} + \text{number of disabling injuries} \times 200,000}{\text{actual manhours worked}}
\]
12.4 In the selection of a successful bidder, the Owner may consider the bidder's commitment to safety and loss management as demonstrated by the information provided by the bidder.

**ARTICLE 13 WORK/SERVICES EXECUTION PLAN**

13.1 The bidder shall indicate below its estimate of the manual and non-manual hours required to complete the Work. Such estimate shall not relieve the bidder of its responsibility to complete the Work for the Contract Price:

<table>
<thead>
<tr>
<th>Description</th>
<th>On-site</th>
<th>Off-site</th>
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<tbody>
<tr>
<td>Manual hours</td>
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<tr>
<td>Non-manual</td>
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Total hours: ________________

13.2 The bidder shall submit a proposed schedule for the Work to comply with the following:

13.2.1 start Work by ________________, 20___;

13.2.2 complete all Work by ________________, 20___; and

13.2.3 achieve the Milestone Dates.

Such schedule shall include all significant activities required to perform the Work and all corresponding Milestone Dates. The bidder shall outline its execution plan for the Work.

**ARTICLE 14 - QUALITY ASSURANCE PROGRAM**

14.1 The bidder shall attach a description of the quality assurance and quality control programs it proposes to carry out to ensure the quality of the Work. Such description shall include the procedures, inspection routines, quality control manuals and testing methods to be used in performance of the Work. Such description shall include but not limited to details on the following:

14.1.1 a statement by the bidder as to what their policy on quality is;

14.1.2 types of test and calibration equipment used and the procedures for the proper use and care of that equipment;

14.1.3 the procedures used for the identification of non-compliance to standards and codes, and for the correction of such non-compliance;
14.1.4 procedures for obtaining approvals for engineering and design changes;

14.1.5 inspection and test sheets that will be used to record all data from inspections and tests; and

14.1.6 travel sheets for critical inspections.

**ARTICLE 15 - BID EXECUTION**

15.1 The bidder shall list below, and hereby acknowledges receipt, understanding and full consideration of all of the listed Addenda.

Addenda Numbers: ●

15.2 The bidder accepts all of the terms and conditions of the RFB, except as indicated in the list of exceptions. The bidder shall provide all information requested in the RFB, and failure to do so may result in rejection of the Bid.

15.3 The bidder hereby offers to perform the Work in accordance with the RFB, subject to the list of exceptions.

15.4 The undersigned hereby represents and warrants that they have the authority to execute the Bid on behalf of the bidder.

The bidder hereby duly executes the bid on the ● day of ●, 20●.

______________________________________________________________
PER:                                                                 TITLE:

______________________________________________________________
PER:                                                                 TITLE:
### ATTACHMENT 1 - LIST OF EXCEPTIONS

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<th>ARTICLE</th>
<th>DESCRIPTION OF EXCEPTION</th>
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# ATTACHMENT 2 - LIST OF ALTERNATIVES

<table>
<thead>
<tr>
<th>Technical Specifications Section</th>
<th>Description of Proposed Alternative</th>
<th>Impact on <em>Contract Price, Work Schedule or Contract Time</em></th>
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*CONSTRUCTION OWNERS ASSOCIATION OF ALBERTA*
INDEX

ARTICLE 1 - GENERAL................................................................................................................1
  1.1 Part of Contract Documents..........................................................................................1
  1.2 Definitions....................................................................................................................1

ARTICLE 2 - SCOPE OF WORK.................................................................................................1
  2.1 Description of Scope of Work......................................................................................1
  2.2 Technical Specifications..............................................................................................1

ARTICLE 3 - CONTRACTOR'S GENERAL RESPONSIBILITIES ..................................................1
  3.1 Provision of Materials and Equipment not otherwise specified.........................1
  3.2 Taking Delivery of Materials and Equipment............................................................1
  3.3 Temporary Utility Connections..................................................................................1
  3.4 Curing of Materials and Protection of the Work.........................................................2
  3.5 Key Personnel............................................................................................................2

ARTICLE 4 - OWNER'S GENERAL RESPONSIBILITIES..........................................................2
  4.1 Owner Supplied Items................................................................................................2
  4.2 The following licenses, permits and approvals have been or shall be obtained by the Owner:..................................................................................................................................3

ARTICLE 5 - HOURS OF WORK, MILESTONE DATES AND WORK SCHEDULE ..............3
  5.1 Hours of Work............................................................................................................3
  5.2 Milestone Dates..........................................................................................................3
  5.3 Work Schedule...........................................................................................................4

ARTICLE 6 - DRAWINGS, CODES AND STANDARDS ...........................................................4
  6.1 Contractor Review......................................................................................................4
  6.2 Issued for Construction Drawings and Prepared Documents.....................................5
  6.3 Permission to Proceed shall not Constitute Acceptance or Approval of Prepared Documents..........................................................................................................................5
  6.4 Files............................................................................................................................5
  6.5 Contractor's Prepared Documents..............................................................................5
  6.6 Review of Contractor's Prepared Documents...........................................................5

ARTICLE 7 - CONNECTING WORK...........................................................................................6
  7.1 Lines, Grades and Elevations.....................................................................................6
  7.2 Notification of Discrepancy or Defect .......................................................................6
  7.3 Connections and Integration.......................................................................................6
  7.4 Continuous Operation................................................................................................6

ARTICLE 8 - QUALITY CONTROL PROGRAM........................................................................6
  8.1 Contractor's Quality Control Program........................................................................6
  8.2 Subcontractor's Quality Control.................................................................................7
  8.3 Re-performed Testing ................................................................................................7
  8.4 Inspection Plan for the Work.......................................................................................8
  8.5 Completion of Work...................................................................................................9
ARTICLE 9 - SAFETY AND LOSS MANAGEMENT ...............................................................10
  9.1 Introduction ..............................................................................................................10
  9.2 Prime Contractor ......................................................................................................10
  9.3 Prevention and Reporting of Injuries .......................................................................10
  9.4 Programs and Manuals .............................................................................................11
  9.5 Safe Work Permits ...................................................................................................11
  9.6 Safety Inspections for Drug and Alcohol Abuse ......................................................12
  9.7 Documentation and Reports to Owner ......................................................................12
  9.8 Employee Job Orientation ........................................................................................12
  9.9 Safety Equipment and Requirements .......................................................................13

ARTICLE 10 - DOCUMENT SUBMISSION REQUIREMENTS, PROGRESS REPORTING AND OTHER REPORTING .........................................................................................................15
  10.1 Transmittals ..............................................................................................................15
  10.2 Shop Drawings .........................................................................................................15
  10.3 Drawings ..................................................................................................................16
  10.4 Samples ....................................................................................................................17
  10.5 Certificates ...............................................................................................................17
  10.6 Progress Recording and Reporting ...........................................................................18

ARTICLE 11 - MEETINGS AND REPORTS ..............................................................................18
  11.1 The Contractor shall participate in the following meetings and any and all other meetings as required by the Owner on reasonable notice to the Contractor: .....................18
  11.2 The Contractor shall provide the Owner with the following reports: ......................18

ARTICLE 12 - TURNOVER .........................................................................................................19
  12.1 As-Built Drawings ....................................................................................................19
  12.2 Operating Maintenance Manuals .............................................................................19
ARTICLE 1 - GENERAL

1.1 Part of Contract Documents

This is Schedule "A" - Scope of Work referred to in the General Conditions made as of _____________, 20__. 

1.2 Definitions

Capitalized terms used and not defined in this Schedule, shall have the same meaning as given in the General Conditions where so defined.

ARTICLE 2 - SCOPE OF WORK

2.1 Description of Scope of Work

The general scope of Work is (briefly describe):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

2.2 Technical Specifications

Schedule "D" - Technical Specifications contains the technical specifications for the Work, together with references to codes, standards, specifications and other documents applicable to the Work.

ARTICLE 3 - CONTRACTOR'S GENERAL RESPONSIBILITIES

3.1 Provision of Materials and Equipment not otherwise specified

The Contractor shall provide all materials and equipment necessary for the performance of the Work not otherwise specified to be provided by the Owner or Other Contractors.

3.2 Taking Delivery of Materials and Equipment

The Contractor shall receive, load, transport to the Work Site and care for all materials, tools and equipment and other items provided by the Owner from and FOB the location designated in the Contract Documents.

3.3 Temporary Utility Connections

Where the Owner provides utilities the Contractor shall provide all temporary distribution facilities required to extend those utilities from the point(s) of outlet designated by the Owner to the point(s) of use required by the Contractor. Upon completion and acceptance of the Work, the
Contractor shall remove all materials, facilities and equipment used in connection with the extension of any utilities and repair any damage caused as a result.

3.4 Curing of Materials and Protection of the Work

The Contractor shall provide all required heating, lighting, ventilation, coverings and enclosures for the curing of materials and protection of the Work from moisture, condensation, extremes of temperature and other deleterious conditions which could affect the Work.

3.5 Key Personnel

The following persons are key to the performance of the Work by the Contractor:

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
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ARTICLE 4 - OWNER'S GENERAL RESPONSIBILITIES

4.1 Owner Supplied Items

In addition to any materials and equipment specified in Schedule "D" - Technical Specifications, or elsewhere in the Contract, to be supplied by the Owner, or by Other Contractors, the Owner shall provide, or make available as the case may be, to the Contractor the items listed below for the performance of the Work by the Contractor:

4.1.1 materials supplied: __________________________________________

location: ______________________________________________________

[examples: all bulk piping 2" diameter and under; etc.]

4.1.2 utilities provided: __________________________________________

[examples: water for hydrotest; AC power; etc.]

4.1.3 facilities provided: _________________________________________

[examples: water for hydrotest; AC power; etc.]
4.1.4 construction equipment provided: ____________________________

location: ______________________________________________________

4.1.5 services provided: __________________________________________

________________________________________________________________

________________________________________________________________

4.2 The following licenses, permits and approvals have been or shall be obtained by the Owner:

Licenses: _______________________________________________________

________________________________________________________________

Permits: _________________________________________________________

________________________________________________________________

Approvals: ______________________________________________________

________________________________________________________________

ARTICLE 5 - HOURS OF WORK, MILESTONE DATES AND WORK SCHEDULE

5.1 Hours of Work

Normal working hours for a Work Day for the performance of the Work at the Work Site shall be as follows: ______________________________________________________________

______________________________________________________________________

______________________________________________________________________

(here describe hours of work)

5.2 Milestone Dates

The Milestone Dates referred to in GC 4.1 are as follows:

<table>
<thead>
<tr>
<th>Milestone Dates</th>
<th>Commencement Date</th>
<th>Completion Date</th>
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</thead>
<tbody>
<tr>
<td>Mobilize to the Work Site</td>
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</table>
## Milestone Dates

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<th>Milestone Dates</th>
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<tr>
<td>Commence Work</td>
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<tr>
<td>List other Milestone Dates</td>
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<td>No. 1</td>
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<td>No. 2</td>
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<tr>
<td>No. 3</td>
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<tr>
<td>Functional Completion of Work</td>
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<tr>
<td>Final Completion Notice</td>
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<tr>
<td>Demobilize from the Work Site</td>
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### 5.3 Work Schedule

The Contractor shall provide to the Owner's Representative a Work Schedule:

- **5.3.1** detailing the sequence in which the Contractor intends to perform the Work;
- **5.3.2** start and completion dates for all separate portions of Work;
- **5.3.3** manpower forecasts by trade or discipline;
- **5.3.4** key materials and equipment procurement and delivery dates; and,
- **5.3.5** other relevant data and information;

and shall record the actual progress of the Work on the Work Schedule. The Contractor shall not revise or change the Work Schedule without the express prior written consent of the Owner.

### ARTICLE 6 - DRAWINGS, CODES AND STANDARDS

#### 6.1 Contractor Review

The Contractor shall review and compare the list of all drawings identified in Schedule "D" - Technical Specifications with the drawings received by the Contractor and notify the Owner immediately of any shortages, inconsistencies in drawing numbers, revisions and omissions and discrepancies in these drawings.
6.2 Issued for Construction Drawings and Prepared Documents

The Contractor shall perform the Work only in accordance with approved drawings marked "Issued for Construction", and any subsequent revisions thereto, and with those Prepared Documents submitted by the Contractor and reviewed by the Owner.

6.3 Permission to Proceed shall not Constitue Acceptance or Approval of Prepared Documents

No permission given by the Owner to the Contractor to proceed with the Work shall constitute acceptance or approval of Prepared Documents, design details, calculations, analyses, test methods, certificates or materials developed or selected by the Contractor, or relieve the Contractor of any obligation under the Contract.

6.4 Files

The Contractor shall maintain a file of the current Contract Documents and Contractor's Prepared Documents at the Work Site, and at all times the Contractor shall allow the Owner access thereto.

6.5 Contractor's Prepared Documents

The Contractor shall provide the Owner with an acceptable schedule for submitting the Contractor's Prepared Documents and other data specified herein and shall submit all Contractor's Prepared Documents in sufficient time to allow for their review by the Owner without delaying the Work. The following requirements shall also apply to all Contractor's Prepared Documents:

6.5.1 engineering documents shall be checked and initialled by the responsible designers and checkers prior to submission to the Owner;

6.5.2 all field measurements, field construction criteria, catalogue numbers and similar data must be correct prior to submission to the Owner; and

6.5.3 no Work which requires review of Prepared Documents shall be commenced, until the Owner has returned the Prepared Documents with a review stamp and initials or signatures affixed, indicating the review has been completed.

6.6 Review of Contractor's Prepared Documents

Work performed by the Contractor prior to return of the Contractor's Prepared Documents which are to be reviewed by the Owner shall be changed by the Contractor if the Owner's review of the drawings indicates changed requirements.
ARTICLE 7 - CONNECTING WORK

7.1 Lines, Grades and Elevations

Wherever performance of the Work is dependent upon existing lines, grades, elevations or work performed by the Owner or Other Contractors (referred to in this Article as "Existing Work") and before proceeding with the Work, ordering materials or preparing fabrication drawings, the Contractor shall verify by all necessary means, including an inspection of the Work Site and of the equipment, materials and other items that are to be provided by the Owner or Other Contractors, that the Work is suitable for connection to the Existing Work.

7.2 Notification of Discrepancy or Defect

The Contractor shall notify the Owner in writing, before proceeding with the Work, of any discrepancy or defect that would prevent, hinder or impair the connection of the Work to Existing Work. Failure to do so shall be deemed as acceptance by the Contractor as to the suitability for connection between the Work and the Existing Work, and the Contractor shall be responsible for the removal, repair, replacement or reconstruction of any part of the Work that does not meet the requirements of the Contract Documents, or any increased costs or delay occasioned as a result.

7.3 Connections and Integration

The Contractor shall perform all cutting and fitting of the Work and of Existing Work that may be required to make all component parts fit together properly and to fit the Work to receive or be received by the Existing Work, as shown on or reasonably implied by the drawings and specifications. The Contractor shall not cut, undercut or alter the Existing Work, including cutting, boring, removing or otherwise modifying or impairing the integrity of any structural or load-bearing member of the Owner's existing plant without the express prior written approval of the Owner.

7.4 Continuous Operation

Where the Contractor connects the Work to Existing Work, the Contractor shall, to the extent necessary, preserve the safety, integrity, performance and continuous operation of the Owner's existing plant.

ARTICLE 8 - QUALITY CONTROL PROGRAM

8.1 Contractor's Quality Control Program

8.1.1 When requested by the Owner, the Contractor shall submit its quality control manual (the "Manual") procedures and programs to the Owner for review.

8.1.2 The Manual and quality control programs shall, as a minimum requirement hereof, cover all standards of quality required under the Contract, Law and codes and standards applicable to the Work. If the Contractor's quality control program does not conform fully with the requirements of the Contract, the Contractor shall provide
the Owner with an itemized plan of corrective actions by the Contractor to ensure that the Contractor's quality control program for the Work conforms with the Contract, including the dates for implementation of each item.

8.1.3 Where approval of the Contractor's, Subcontractors' or Suppliers' quality control programs is required by regulatory bodies ("Regulatory Bodies") (e.g., pressure equipment, piping and structural steel), the Contractor shall ensure that quality control programs for the Work are approved by the appropriate Regulatory Bodies, in a timely manner so as to not delay the Work, and evidence of such approvals are provided to the Owner upon the Owner's request but in any case no later than 3 days after the Contractor's receipt of such approvals.

8.1.4 The Contractor is responsible for the quality control of the Work, including the Work performed by its Subcontractors and Suppliers.

8.1.5 Various requirements for quality control of the Work are specified in Schedule "D" - Technical Specifications. The Contractor acknowledges that these are the minimum requirements for the quality control of the Work and the Contractor agrees to perform as many inspections and tests as are necessary to ensure that the Work conforms to the requirements of the Contract.

8.1.6 The Contractor shall perform testing of the Work in accordance with and as required by all applicable codes, regulations and Law or by plan and approval authorities, safety codes officers or accredited agencies, as the case may be.

8.2 Subcontractor's Quality Control

8.2.1 The Contractor shall provide the Owner's Representative with details of the program for supervising and monitoring the Work to be performed by Subcontractors and Suppliers and with details of Subcontractors' and Suppliers' quality control programs and procedures for controlling the quality of all portions of the Work that are to be performed by Subcontractors or Suppliers.

8.2.2 The Contractor shall promptly process and distribute all required copies of test reports and test information and related instructions to all its Subcontractors and Suppliers to ensure that all necessary repairs, replacements and retesting can proceed without delay.

8.2.3 The Contractor shall promptly provide the Owner with copies of all test results.

8.3 Re-performed Testing

8.3.1 If tests performed by Owner upon a portion of the Work not previously tested by the Contractor identify a non-conformance to the requirements of the Contract, the Contractor has the option to either arrange an independent re-performance of the test or correct the non-conforming part of the Work and re-perform the test.
8.3.2 Where tests by either the Owner or the Contractor on products, materials or completed Work identify Work which does not meet the requirements of the Contract, the Contractor shall submit details of proposed remedial work to the Owner for review and approval prior to the Contractor performing remedial work on the affected item. The Contractor shall repair and replace products and materials, correct any deficiencies and re-perform all tests as may be necessary to ensure that the Work meets the requirements of the Contract.

8.3.3 The Contractor shall submit the results of re-performed tests on Work which fails to meet the requirements of the Contract to the Owner within a practical and reasonable time following the re-performed test.

8.4 Inspection Plan for the Work

8.4.1 Prior to the commencement date of the test, the Contractor shall provide the Owner's Representative with a detailed inspection and test plan ("ITP") for the test. The Owner shall provide the Contractor with written notice of any request to make alterations to the test plan.

8.4.2 Following receipt and review of the ITP, the Owner shall advise the Contractor of hold points in the Work at which the Owner wishes to perform or witness tests or witness production or quality control activities performed by the Contractor or any Subcontractors or Suppliers ("Owner's Hold Points"). The Contractor shall give reasonable, but in any event, not less than 24 hours, notice to the Owner of all tests to be conducted at the Owner's Hold Points and the Contractor shall adhere to the requirement for the Owner's Hold Points unless specifically waived by the Owner's Representative.

8.4.3 The Contractor shall ensure that all quality control activities, including testing and inspections at Owner's Hold Points which have been witnessed by the Owner, are recorded in the quality control file for that part of the Work, prior to the end of the same work shift in which the quality control activity occurred.

8.4.4 The Contractor shall compile a quality control file or job file which shall include the following, or so many thereof as may be applicable:

(a) Alberta Labour - applicable Safety departments - accepted (stamped) drawings;
(b) manufacturer's specification sheets;
(c) manufacturer's data reports;
(d) name plate tracing;
(e) applicable purchase orders;
(f) radiographic film;
(g) interpretation sheets and all other Non-Destructive Examination ("NDE") reports;
(h) welder qualifications;
(i) non-conformance reports;
(j) mill test certificates;
(k) travel sheets;
(l) drawings showing NDE, weld traceability points;
(m) pressure test record & test gauge calibration sheets;
(n) heat treatment procedures and time / temperature charts;
(o) repair procedures;
(p) completion of construction form & inspection release notices;
(q) repair / alteration reports; and
(r) as built drawings.

8.4.5 The Contractor shall provide the Owner with inspection release notices on Work which has been inspected and accepted on or off the Work Site.

8.5 Completion of Work

As part of the acceptance criteria of the Work, the Contractor shall submit a consolidated record of all quality control data including the items in the table below and other documents specified or referenced therein, and submit the documents to the Owner's Representative:
ARTICLE 9 - SAFETY AND LOSS MANAGEMENT

9.1 Introduction

9.1.1 The Owner's principles of safety and loss management employ a thorough and systematic approach towards a goal of elimination of all downgrading incidents to personnel, production, equipment, materials and the environment. The Contractor shall perform the Work safely and in accordance with the requirements of the Contract and the Owner's principles of safety and loss management and the Occupational Health and Safety Act and regulations thereunder.

9.1.2 All Contractors, Subcontractors, Suppliers, and their respective personnel are responsible for the SAFETY OF THEMSELVES AND THEIR CO-WORKERS. They are responsible for understanding the hazards of the Work, and complying with all safe work permits, procedures, safe work plans, and safe work practices pertinent to the Work. In addition, they are responsible for understanding the Occupational Health and Safety Act and regulations and shall identify any hazards or potential hazards to their own or any of the Owner's supervisors.

9.2 Prime Contractor

The ________________ [fill in either "Contractor" or "Owner"] shall be the "prime contractor", as that term is defined in the Occupational Health and Safety Act, for the purposes thereof and shall comply with the provisions of the said Act and regulations thereunder.

9.3 Prevention and Reporting of Injuries

9.3.1 The Contractor shall make best efforts to prevent any injuries to any personnel at the Work Site. However, if injuries are sustained by any of the Contractor's employees or agents or those of the Subcontractors or Suppliers, the Contractor shall record and report all injuries according to the Occupational Health and Safety Act and regulations and this Article 9.

9.3.2 The Contractor shall record and report all injuries to the Owner's Representative.
9.3.3 The Contractor shall make best efforts to prevent any occurrences in the following incident categories:

(a) fire
(b) damage to equipment or facilities
(c) production loss
(d) environmental damage; and
(e) breach of security.

9.4 Programs and Manuals

9.4.1 The Contractor shall maintain a Safety and Loss Management Program which shall include as a minimum the following:

(a) a loss control reporting system;
(b) an incident investigation procedure;
(c) an inspection procedure;
(d) established work standards and procedures;
(e) established emergency procedures;
(f) procedures for monitoring Subcontractor performance; and
(g) safety meetings and communications.

9.4.2 The Contractor shall maintain a safety manual containing the programs required by this Schedule "A" - Scope of Work. This manual is to be made available to all of the Contractor's employees, Subcontractors, and Suppliers.

9.5 Safe Work Permits

9.5.1 The Contractor shall ensure that no Work proceeds until the appropriate safe work permit has been issued.

9.5.2 The Contractor shall apply for safe work permits in accordance with the schedules issued at the Contract kick-off meeting.

9.5.3 Prior to issuing a safe work permit, the Owner may request, or the Contractor may identify a need for a detailed for safe execution of the Work from the Contractor, complete with a list of personnel involved, or any other information that the Owner requires to properly assess the Work for safety and constructability.
9.5.4 The Contractor shall fully understand all aspects of the safe work permit prior to starting the Work. In addition, the Contractor shall fully communicate the safe work permit information to all its employees and the employees of its Subcontractors prior to starting the Work.

9.6 Safety Inspections for Drug and Alcohol Abuse

The Owner reserves the right, in the interest of worker safety, to require the Contractor to have all of its employees and all employees of its Subcontractors, at the Owner's expense, to submit to and pass a panel ____ drug and alcohol test in the event there exists in the opinion of the Owner's Representative reasonable apprehension or suspicion that there is or will exist a hazard or danger to safety at the Work Site or an accident has occurred, or the employee is or has been under the influence of alcohol of drugs while on the Work Site, and to deny access to the Work Site to any employee who has failed to take or pass the required test.

9.7 Documentation and Reports to Owner

The Contractor shall maintain and submit the following documentation to the Owner's Representative as required:

9.7.1 loss control reports (within 24 hours of an incident); and
9.7.2 incident investigation reports (within 24 hours of an incident);

9.8 Employee Job Orientation

The Contractor is responsible for ensuring that all Contractor and Subcontractor site personnel, and all Suppliers attending at the Work Site, understand the following:

9.8.1 an overview of the Work Site, including locations of all key facilities;
9.8.2 a general overview of the Work;
9.8.3 emergency call-out procedures;
9.8.4 first aid procedures;
9.8.5 explanation of emergency assembly areas;
9.8.6 traffic rules on the Work Site (access, speed limits, etc.);
9.8.7 loss control reporting requirements and system;
9.8.8 the need for compliance to all of Owner's safe work permits, safe work plans, policies, procedures, Occupational Health and Safety Act regulations and all other procedures specified in this Schedule "A" -Scope of Work;
9.8.9 Work Site hazards;
9.8.10 the existence and location of any Hazardous Material or Specific Substances and the method of dealing with the same;

9.8.11 Workplace Hazardous Materials Information System (WHMIS);

9.8.12 waste management guidelines;

9.8.13 personnel protection equipment requirements;

9.8.14 Owner's smoking policy;

9.8.15 employee's responsibilities;

9.8.16 employee's rights / responsibility to refuse unsafe work; and

9.8.17 Owner's butane open mechanism lighter policy.

9.9 Safety Equipment and Requirements

The Contractor shall ensure that all of its employees, invitees, Subcontractors and Suppliers attending at the Work Site are equipped with the following equipment and adhere to the requirements listed in the table below:

[Insert list of equipment and requirements]
<table>
<thead>
<tr>
<th>Description</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PERSONAL PROTECTIVE EQUIPMENT</strong></td>
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<td></td>
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<tr>
<td>Steel Toed Boots</td>
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<tr>
<td>High Top Boots</td>
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<tr>
<td>Safety Glasses with Side Shields</td>
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<tr>
<td>Hard Hat</td>
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<tr>
<td>Hearing Protection</td>
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<tr>
<td>Long Sleeves</td>
<td></td>
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<tr>
<td>Fire Resistant Clothing</td>
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<tr>
<td>Face Shields</td>
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<tr>
<td>Respiratory Protection - as required</td>
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<tr>
<td>Fall Protection, including flotation devices and life lines</td>
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<td></td>
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<tr>
<td><strong>PERMITS</strong></td>
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<tr>
<td>Cold Work Permit</td>
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<td>Hot Work Permit</td>
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<tr>
<td>Excavation Permit</td>
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<tr>
<td>Confined Space Entry Permit</td>
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<tr>
<td>Person Hoisting Permit</td>
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<tr>
<td>Vehicle Access Permit</td>
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<tr>
<td>Lunch / Office Trailer Smoking Permit</td>
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<tr>
<td><strong>TRAINING</strong></td>
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<tr>
<td>Contractor Safety Orientation</td>
<td></td>
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<tr>
<td>Permit Receiving Course</td>
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<tr>
<td>Confined Space Entry / Standby Person</td>
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<tr>
<td>Description</td>
<td>Yes</td>
<td>No</td>
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<td>--------------------------------------------------</td>
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</tr>
<tr>
<td>Self Contained Breathing Apparatus (SCBA)</td>
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<tr>
<td>MISCELLANEOUS</td>
<td></td>
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<tr>
<td>Fulltime Safety Officer</td>
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<tr>
<td>Hair and Beard Policy</td>
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<tr>
<td>Smoking Policy</td>
<td></td>
<td></td>
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<tr>
<td>Flame Proof Tarps</td>
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<td></td>
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<tr>
<td>Gas Monitoring</td>
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</tbody>
</table>

**ARTICLE 10 - DOCUMENT SUBMISSION REQUIREMENTS, PROGRESS REPORTING AND OTHER REPORTING**

10.1 Transmittals

The Contractor shall submit all required documents for review with a transmittal letter which shall identify:

(a) date;

(b) project title;

(c) number of each shop drawing, product data and sample submitted;

(d) Contractor's pertinent data; and

(e) other pertinent data.

10.2 Shop Drawings

Shop drawing submissions shall include:

(a) date and revision dates;

(b) project title;

(c) name of:

1. Contractor

2. Subcontractor
3. Supplier

4. separate detail(s) when pertinent;

(d) identification of product or material;

(e) relation to adjacent structure or materials;

(f) field dimensions clearly identified as such;

(g) specification section number;

(h) applicable standards, such as CGSB or CSA numbers; and

(i) Contractor's stamp initialled or signed, certifying review of submission, verification of field measurements and compliance with the Contract.

10.3 Drawings

10.3.1 Where the Contractor is required to provide drawings for:

(a) fabricating materials and equipment to be provided by the Contractor;

(b) installing materials and equipment to be provided by the Contractor; or

(c) planning and performing the Work,

the Contractor shall submit 1 reproducible photocopy vellum and two print copies of the drawings before fabricating, installing or performing that part of the Work, allowing at least ___ Work Days for review by the Owner, unless otherwise shown on the Work Schedule. This requirement shall extend to drawings required for activities such as match marks, erection diagrams and other details for field connections for proper installation, erection of equipment and performance of the Work.

10.3.2 Drawings of a specific piece of equipment shall identify components with the manufacturer's part number or reference drawing number clearly indicated. The Contractor shall submit all drawings in a sequence that shall ensure that all information is available for reviewing each drawing when it is received by the Owner.

10.3.3 All drawings submitted by the Contractor shall be certified by the Contractor, by stamp and dated signature of an authorized and qualified person, to be correct in all respects as to field measurements, field construction criteria, materials, catalogue and product data, the requirements of the Contract and conditions of performing the Work; and all fabrication drawings shall be certified by stamp and dated signature of a Professional Engineer licensed to practice in the Province of Alberta.
10.3.4 Following the Owner's review of the Contractor's drawings, 1 set, print stamped and marked with one of the following coded notations shall be returned to the Contractor. The Contractor shall allow a clear space of not less than 75 mm x 150 mm on the face of all drawings for the Owner's stamp.

<table>
<thead>
<tr>
<th>OWNER'S NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>DRAWINGS / DESIGN/DATA REVIEW</td>
</tr>
<tr>
<td>A-REVIEWED: Suitable, proceed with fabrication &amp; submit certified mylar.</td>
</tr>
<tr>
<td>B-REVIEWED: Modify as noted, may proceed with fabrication &amp; submit final drawing.</td>
</tr>
<tr>
<td>D-REVIEWED: Review not required or for information only.</td>
</tr>
<tr>
<td>E-REVIEWED: Final certified data, no further resubmittal required.</td>
</tr>
<tr>
<td>BY:______________________________ REV.________________</td>
</tr>
<tr>
<td>DATE: __________________________</td>
</tr>
</tbody>
</table>

10.4 Samples

10.4.1 Where samples of materials to be incorporated into the Work are required, the Contractor shall provide the Owner with the samples for review, not less than ____ Work Days prior to incorporation of the materials represented by the samples into the Work. All samples are subject to review by the Owner, and no materials represented by the samples shall be incorporated into the Work without the Owner's review.

10.4.2 The Contractor shall attach a label to each sample showing the Contractor's name, the Contract number, name of sample item, and as appropriate, the manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing number, technical specification section and paragraph number.

10.4.3 Samples which have been reviewed by the Owner may, at the Owner's option, be retained by the Owner, or returned to the Contractor for incorporation into the Work.

10.5 Certificates

10.5.1 Where certificates for materials and equipment to be incorporated into the Work are required, the Contractor shall provide the Owner with signed original and 3 copies of each certificate for review, not less than ____ Work Days prior to incorporation of the materials or equipment represented by the certificates into the Work. These certificates shall be subject to review by the Owner, and no materials represented by
these certificates shall be fabricated, delivered to the Work Site or incorporated into the Work without the Owner's review.

10.5.2 All Certificates shall clearly identify the item certified and shall include at least the following information: the Contractor's name, the Contract number, name of the item, manufacturer's name, and reference to the appropriate drawing, technical specification section and paragraph number.

10.6 Progress Recording and Reporting

10.6.1 The Contractor shall record and report progress of all elements of the Work by a method and format that is acceptable to the Owner.

10.6.2 Once in each month, or at other reasonable times as may be required by the Owner, but in any event prior to submission of an invoice for the Work performed the Contractor shall present a written report of progress of the Work to the Owner for review.

ARTICLE 11 - MEETINGS AND REPORTS

11.1 The Contractor shall participate in the following meetings and any and all other meetings as required by the Owner on reasonable notice to the Contractor:

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.1.1 contract kick-off meeting</td>
<td></td>
<td></td>
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<tr>
<td>11.1.2 safe work plan meetings</td>
<td></td>
<td></td>
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<tr>
<td>11.1.3 daily safety meetings</td>
<td></td>
<td></td>
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<tr>
<td>11.1.4 weekly progress review meetings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.1.5 safety and loss management meetings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.1.6 accident / incident investigation meetings</td>
<td></td>
<td></td>
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<tr>
<td>11.1.7 potential problem analysis meeting</td>
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<td></td>
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</tbody>
</table>

11.2 The Contractor shall provide the Owner with the following reports:

<table>
<thead>
<tr>
<th>Report</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.2.1 daily force report;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.2.2 daily LEM's (if applicable);</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.2.3 daily / weekly activity report;</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
11.2.4 weekly safety activity report;  
11.2.5 weekly schedule report;  
11.2.6 weekly construction work plan and 2 week projection;  
11.2.7 contractor loss control report (within 24 hours);  
11.2.8 incident investigation report (within 24 hours); and  
11.2.9 any and all other reports as required by the Owner.

ARTICLE 12 - TURNOVER

12.1 As-Built Drawings

12.1.1 During the Contract Time, the Contractor shall maintain records at the Work Site of the changes and differences between the drawings and the actual condition of the Work as built, by marking and recording these changes and differences on 2 sets of drawings identified by the stamped notations "AS BUILT" (the "As-Built Drawings").

12.1.2 Upon completion and acceptance of the Work, the Contractor shall give the two complete sets of the As-Built Drawings, including any As-Built Drawings on which no changes are recorded, to the Owner.

12.1.3 During the term of the Contract, the Contractor shall allow the Owner access to the As-Built Drawings for the purpose of auditing their correctness.

12.2 Operating Maintenance Manuals

12.2.1 As part of the criteria for acceptance of the Work and issuance of either a Function Completion Notice or Final Completion Notice, as may be applicable, the Contractor shall submit ___ legible sets of operating manuals and maintenance instructions bound in 3-ring loose leaf binders, with hard covers, and labelled with project name, date of issue and table of contents.

12.2.2 Operating maintenance manuals shall include at least the following information:

(a) maintenance instructions for finished surfaces and materials;
(b) copy of hardware paint schedules and finish schedules;
(c) description, installation, operation and maintenance instructions for equipment and systems, including complete list of equipment and parts;
(d) maintenance and lubrication schedules and troubleshooting charts;
(e) nameplate information such as make, model, size, serial number, capacity and catalogue number;

(f) names, addresses and phone numbers of Subcontractors and Suppliers;

(g) one complete set of final reviewed shop drawings and material submission indicating corrections and changes made during fabrication and installation; and

(h) [add any other required information].

12.2.3 Refer to sections of Schedule "D" - Technical Specifications for detailed requirements for operating and maintenance manuals.
INDEX

ARTICLE 1 - GENERAL ...........................................................................................................................................1
ARTICLE 2 - INVOICING .........................................................................................................................................1
ARTICLE 3 - CONTRACT PRICE ..........................................................................................................................3
ARTICLE 4 - CHANGES AND CHANGE DIRECTIVE RATES .................................................................................3
ARTICLE 5 - MISCELLANEOUS ............................................................................................................................6
TABLE I - LABOUR RATES FOR CONTRACTOR AND ITS SUBCONTRACTORS' LABOUR FORCE .......................8
TABLE II - PAYMENT FOR WORK EQUIPMENT RENTAL RATES ......................................................................9
ARTICLE 1- GENERAL

1.1 This is Schedule "B" - Payment for Work referred in the General Conditions, and forming a part of the Contract Documents made as of the _____ day of ____________, 20__.

1.2 Definitions

   Capitalized terms used and not defined in this Schedule "B" - Payment for Work shall have the meaning given thereto in the General Conditions where so defined.

1.3 As full and complete payment for the performance of the Work and the discharge of all obligations of the Owner under the Contract, the Owner shall pay the Contractor the Contract Price as set forth in Article 3 of this Schedule "B" - Payment for Work.

ARTICLE 2- INVOICING

2.1 Monthly Invoicing

2.1.1 The Contract Price shall be paid based on the progress of the Work to the end of each pay period. The Contractor shall submit invoices based on the percentage of Work performed including materials and equipment delivered to the Work Site for incorporation into the Work. At the end of each month, or such other date as may be agreed upon between the Contractor and the Owner, the Owner's Representative and the Contractor's Representative shall agree on the progress of the Work to the end of the preceding month and failing agreement, the progress of the Work shall be determined pursuant to GC 30 of the General Conditions.

2.1.2 At the end of each month, or such other date as may be agreed upon between the Contractor and the Owner, the Contractor shall submit an invoice and an "Application for Payment", in the form attached hereto, covering work performed to the end of the previous month.

2.1.3 The Owner's Representative shall within 5 Work Days of receipt by the Owner of the Contractor's invoice and Application for Payment review and approve the Contractor's invoice, or advise the Contractor in writing of any reason why the invoice or any portion thereof is not approved.

2.1.4 The Owner shall pay approved invoice amounts or approved portions thereof within 30 days of receipt of the invoice and conditional upon:

   (a) there being no builders' liens registered against title to the Owner's Site arising out of the Work; and

   (b) the Contractor having provided the Owner with a true Statutory Declaration in the form attached as Schedule "E" - Statutory Declaration hereto.
2.2 All invoiced amounts shall be net of the 10% builders' lien holdback required to be retained pursuant to GC 3.

[Note to draft: the following is substantially duplicated in the General Conditions if the new GC 9.4 were incorporated as an amendment]

2.3 The final payment under the Contract, including release of the major lien fund shall become due and be payable 46 days after issuance by the Owner of the Final Completion Notice, and conditional upon there being no builders' liens registered against the title to the Owner's Site, or arising out of the Work, and the Contractor having provided to the Owner the following:

(a) an invoice and Application for Payment in the form attached hereto;

(b) a clear Workers' Compensation Board Clearance Certificate; and

(c) a Release and Certificate of Final Payment in the form attached as Schedule "C" - Release and Certificate of Final Payment confirming that there are no outstanding claims in respect of the Work for which notice has not been provided to the Owner in writing, and that there are no builders' liens registered against title to the Owner's Site or claims in respect of which rights to file builders' liens against the Owner's Site exist.

2.4 The following information shall be included by the Contractor in each invoice:

(a) total contract price for each item;

(b) percentage complete for each item;

(c) previous progress invoice amount for each item;

(d) this progress invoice amount for each item; and

(e) total progress invoice amount for each item.
ARTICLE 3- CONTRACT PRICE

[To be used in Stipulated Price Contract]

3.1 The Contract Price, subject to change in accordance with the General Conditions, at the date of the Contract is as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Labour</th>
<th>Material</th>
<th>Equipment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Mobilization / de-mobilization</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Structural</td>
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<tr>
<td>3.3</td>
<td>Piping</td>
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<tr>
<td>3.4</td>
<td>Mechanical</td>
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<tr>
<td>3.5</td>
<td>Electrical</td>
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<td>3.6</td>
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<td>3.7</td>
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<td>3.8</td>
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<tr>
<td>3.9</td>
<td>Instrumentation</td>
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<tr>
<td>3.10</td>
<td>Fire Protection</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>3.11</td>
<td>Total Contract Price</td>
<td></td>
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</tr>
</tbody>
</table>

[Optional - To be used in Unit Price Contract ● insert Unit Price Table]

ARTICLE 4- CHANGES AND CHANGE DIRECTIVE RATES

4.1 The following rates (for labour and equipment) and markup (for material) shall be used by the Contractor:

4.1.1 as a basis for quoting prices for Changes; and

4.1.2 as a basis for payment under Change Directives issued under GC 8, General Conditions.

4.2 Labour Rates

Labour rates for the Contractor's and Subcontractor's labour force shall be as stated on Table I attached. The rates, which are payable for actual hours worked, shall be all-inclusive billing rates including but not limited to:
4.2.1 wages, taxes, union and government assessments;

4.2.2 welfare benefits and all insurance premiums;

4.2.3 home office support, long distance telephone calls;

4.2.4 tools of the trade, normal consumables, small tools and equipment and personal protective equipment (up to a value of $______________ each);

4.2.5 timekeepers and time keeping facilities (time alleys, time clocks etc.) tool crib facilities and attendants; and

4.2.6 overhead and profit, including costs for supervisory personnel (general foreman and above).

4.3 Equipment Rental Rates

4.3.1 Rental rates for tools and equipment (owned by Contractor having an actual purchase price in excess of $______________ each as of January 1, 20___) shall be as stated in Table II of this Schedule "B" - Payment for Work.

4.3.2 The equipment rental rates as set out in Table II of this Schedule "B" - Payment for Work are all-inclusive rates including, but not limited to the cost of fuel, lubricants, repair parts and service, maintenance, cost of broken tools and accessories, applicable taxes, overhead and profit. Operators shall be paid for under Article 4.2 above.

4.3.3 The Contractor shall be reimbursed at the equipment rental rates set out in Table II of this Schedule "B" - Payment for Work for actual hours equipment is used, excluding downtime for repairs or servicing.

4.3.4 Equipment rental rates shall include all industry-standard accessories, hoses, cables and all other items necessary for proper performance of the Work.

4.3.5 The equipment rental rates are based on a standard work week and 4 weeks per month. The Contractor shall provide a monthly summary of all daily equipment usage hours.

4.3.6 The equipment rental rate to be charged (i.e. hourly, daily, weekly, monthly) for tools and equipment shall be invoiced at the end of each month. Contractor shall provide a monthly summary sheet listing all equipment. If an item is chargeable for less than a month, or a week, or a day, the rate to be charged shall be the weekly, daily or hourly rate, respectively. In no event shall the Contractor be reimbursed more than the monthly rate for an item of equipment used less than 1 month.

4.3.7 The move-on / move-off charge shall be paid for each occurrence, only if authorized by the Owner. Move-in / move-off charges shall not apply to equipment relocation on or within the Work Site.
4.3.8 Upon proper authorization by the Owner's Representative, the Contractor shall be paid for all time it is required to maintain its equipment on the Work Site on standby. In the event of such a request, the Contractor shall be paid for all time equipment is maintained on standby at ____% of the equipment rates set out in Table II of this Schedule "B" - Payment for Work.

4.4 Third Party Equipment and Subcontractors

4.4.1 The Contractor shall be reimbursed for equipment required to complete the Work and supplied by Subcontractors, at actual cost to Contractor including transportation to the Work Site, plus the following percentage markup which shall cover the aggregate of Contractor's overhead and profit.

Cost Plus _______%

4.4.2 Third party equipment already listed in Table II shall be paid for at the rates listed in Table II, and no markup shall apply.

4.5 Materials

4.5.1 The Contractor shall be reimbursed for material (other than consumables) required to complete the Work, at actual cost to Contractor, including transportation to the Work Site, as substantiated by invoices or by such documentation as may be required by the Owner, plus the following percentage markup which shall cover the aggregate of Contractor's overhead and profit.

Material Cost Plus _______%

4.6 Time Sheets

For all Work performed on a time and material basis, Contractor shall submit daily time sheets, equipment and material time sheets for approval by the Owner, which shall detail all work activity, all hours worked, materials installed and tools and equipment used and be submitted as support to the Contractor's monthly invoice.
ARTICLE 5- MISCELLANEOUS

5.1 Neither the Contract Price nor the Change and Change Directive rates are subject to escalation.

5.2 All overtime must be approved in advance by the Owner.

5.3 The Contract Price shall include all of the Contractor's and its Subcontractors', and any Suppliers who attend at the Work Site, cost of safety and loss management required under the Contract Documents.

5.4 Mobilization / Demobilization

   (a) Mobilization and demobilization include the Contractor's cost of mobilization at the commencement of Work on the Work Site and demobilization upon completion of Work.

   (b) Mobilization shall include but not be limited to:

      (i) transportation of labour and shipment of materials and equipment to the Work Site; and

      (ii) setting up temporary facilities and all preparation necessary for performing the Work including all costs associated with Contractor's personnel attending the Owner's safety courses.

   (c) Demobilization shall include but not be limited to preparation and submission of operation and maintenance manuals, removal of all materials and equipment and clean up of the Work Site upon completion of Work.

   (d) Payment to Contractor for mobilization / demobilization shall be as follows:

      (i) ________ % of unit price for mobilization / demobilization as part of Contractor's first invoice after the Contractor has fully mobilized to the Work Site;

      (ii) ________ % of unit sum price for mobilization / demobilization as part of Contractor's final invoice.

5.5 The Contract Price shall be payable in Canadian currency.

5.6 Payment of invoices shall be deemed advances and are subject to adjustment at any time prior to final payment.

5.7 Interim measurements are subject to change on final measurement following completion of the Work and any payment based on an interim measurement shall be considered an advance only and subject to final adjustment upon final measurement being performed.
SCHEDULE "B"

PAYMENT FOR WORK

TABLE I
LABOUR RATES FOR CONTRACTOR
AND ITS SUBCONTRACTORS’ LABOUR FORCE

The labour rates as defined in Article 4 of this Schedule "B" – Payment for Work entitled "Labour Rates" are as follows:
SCHEDULE "B"

PAYMENT FOR WORK

TABLE II
PAYMENT FOR WORK EQUIPMENT RENTAL RATES

The equipment rental rates, as defined in Article 4 of this Schedule "B" – Payment for Work entitled "Equipment Rental Rates" are as follows:

<table>
<thead>
<tr>
<th>Equipment Description (Examples)</th>
<th>Equipment Code</th>
<th>Moveon / Moveoff</th>
<th>Hourly Rate</th>
<th>Daily Rate</th>
<th>Weekly Rate</th>
<th>Monthly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>½ ton truck</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>¾ ton truck</td>
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<td></td>
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<td>80 ton mobile crane</td>
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<td>tractor and trailer</td>
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<td>Backhoe</td>
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<tr>
<td>Compressor</td>
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<tr>
<td>diesel welder</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generator</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE "C" - RELEASE AND CERTIFICATE OF FINAL PAYMENT

This is Schedule "C" - Release and Certificate of Final Payment referred to in the General Conditions of Contract made as of __________, _____.

Capitalized terms used and not defined in this Schedule, shall have the meaning given thereto in the General Conditions where so defined.

In consideration of $1.00, the sufficiency of which is hereby acknowledged:

The Contractor solemnly declares that:

(a) the Contractor has made full payment, or will make full payment from the final payment to be received from the Owner, of all costs, charges and expenses incurred by the Contractor or on its behalf for the work, labour, services, materials and equipment supplied in connection with this Contract or otherwise used in connection with the Work;

(b) to Contractor's best knowledge and belief, each of its Subcontractors and Suppliers have made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labour, services, materials and equipment in connection with the Contract or otherwise used by them in connection with the Work;

(c) all assessments, levies and charges under the Unemployment Insurance Act, the Workers' Compensation Act and other legislation in respect of the Contract have been paid and, to the Contractor's best knowledge and belief, each and all of its Subcontractors have paid such assessments, levies and charges on their own account; and

(d) the Contractor unconditionally releases and forever discharges the Owner, the Owner's Site and all property of the Owner from all builder's liens and liens of whatsoever kind or nature arising out of or in connection with the performance of the Contract;

(e) the Contractor unconditionally releases and forever discharges the Owner from any and all claims, demands, actions or proceedings arising out of the performance of the Work of which it has knowledge, and in respect of which notice in writing has not, by the date hereof, been given by the Contractor to the Owner. The Contractor acknowledges and agrees that nothing herein contained relieves it of any obligations under the provisions of the Contract which by their nature survive completion of the Work including, without limitation, warranties, guarantees and indemnities.

The Contractor makes this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at ________, in the Province of Alberta, this ___ day of ____________, 20__.  

A Commissioner for Oaths in and for the Province of Alberta.

Name of Contractor
(Contractor’s Representative)

CONSTRUCTION OWNERS ASSOCIATION OF ALBERTA
SCHEDULE E

STATUTORY DECLARATION

IN THE MATTER OF a Contract bearing no. ______________________ and 
dated the _____ day of ______________, 20___ between ________________
____________________________________________
(Insert full name of Owner) and 
____________________________________________
(Insert full name of Contractor)

hereinafter referred to as the Contractor,

for _________________________________________
(Description and location of work)

___________________________________________,

and IN THE MATTER OF (INDICATE BY checkmark in APPLICABLE BOX)

☐ the CERTIFICATE OF SUBSTANTIAL PERFORMANCE relating 
thereto.

☐ the FINAL COMPLETION NOTICE of the work thereunder.

WITNESS:

I, ______________________________, of ______________________________
(Print or type name of Declarant)                       (Declarant's address)

do solemnly declare:

(1) that I am ______________________________________________________________
(Print or type Declarant's title or position with the Contractor)

and as such have personal knowledge of the Contract and of the facts and matters stated herein.

(INdicate BY checkmark in APPLICABLE BOX)

☐ that, up to the date of the attached progress claim, the CONTRACTOR 
has complied with all its lawful obligations to its workers in respect of 
the Work contracted for and has discharged all of its lawful obligations 
to its Subcontractors and Suppliers except for the amounts owing which 
total $_________________ (if nil, state nil).  A detailed explanatory 
statement of the amounts owing, including any amounts in dispute must 
be attached as part of this Statutory Declaration; or

☐ that, up to the date hereof, the CONTRACTOR has complied with all 
its lawful obligations to its workers, its Subcontractors and Suppliers in 
respect of the Work contracted for and to all tax authorities respecting 
the payment of all applicable taxes arising from or related to the 
performance of the Work under the Contract, except for the amounts
owing which total $__________________ (if nil, state nil). A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration; or

☐ that, up to the FINAL COMPLETION NOTICE, the CONTRACTOR has complied with all its lawful obligations to its workers, its Subcontractors and Suppliers in respect of the Work contracted for and discharged and satisfied all lawful claims against it that arose out of the performance of this Contract except for the amounts owing which total $__________________ (if nil, state nil). A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration.

And I make this SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the CANADA EVIDENCE ACT.

DECLARED before me at _________________
this ______day of ____________, 20___.

(Signature of person before whom the Declaration is made)

(Print name of person before whom the Declaration is made)  (Signature of Declarant)

A Notary Public, Commissioner, etc. __________

(Please state authority for receiving Declarations Notaries to affix Notarial Seal)

NOTICE

If this Declaration is not complete in every detail, it will be returned for completion and payment will be delayed.

Those sections of the Criminal Code of Canada which deal with offenses relating to affidavits are hereby brought to the attention of the Declarant.
SCHEDULE “F”

KEY PERSONNEL CONFIDENTIALITY, PROPRIETARY INFORMATION AND CONSENT AGREEMENT

Dated effective _____________, 20__

TO: __________________________

(the "Contractor")

AND TO: __________________________

(the "Owner")

I, ___________ (the "Employee"), in consideration of the Owner consenting to my participation in the performance of certain work (the "Work") by the Contractor for the Owner pursuant to an agreement (the "Agreement") made between the Owner and the Contractor dated as of ___________ with respect to ___________; and for the further consideration of $1.00, from each of the Contractor and the Owner, the receipt and the sufficiency of which are hereby acknowledged, do hereby agree, separate and apart from the Contractor, as follows:

1. I have had my role and responsibilities explained to me by the Contractor, or I have reviewed a copy of the Agreement and agree to observe the terms and conditions that relate to subcontractors of the Contractor.

2. I acknowledge that the Owner has an interest in securing the performance of the Work by the Contractor and that the ability of the Contractor to perform the Work primarily depends on my continued employment with the Contractor.

3. I shall perform for the Contractor such duties as may be assigned to me by the Contractor from time to time pertaining to the Work. I agree that all inventions, copyright, copyrightable works, discoveries, improvements, industrial designs and other intellectual and proprietary rights conceived, originated or prepared by me, arising directly or indirectly from the performance of the Work, are and shall be the exclusive property of the Owner.

4. I shall not, without the prior written consent of the Contractor and the Owner, either during or for a 5 year period after my employment by the Contractor, utilize or disclose any information acquired by me in the course of or by reason of my participation in the performance of the Work, nor will I disclose to any person not in the employ of the Contractor any such information, including, without limitation, any information as to technology, policies, operations, processes or formulae used, owned or supervised by the Owner or by any of its affiliates. At the termination of the Agreement or earlier if so requested, I shall forthwith return to the Owner all Confidential Information (as that term is defined in the Agreement).

I agree that, if any provision in this undertaking is found to be invalid or otherwise unenforceable at law, such provision shall be severed, and the remaining provisions shall continue in full force and effect.

Witness

Employee

CONSTRUCTION OWNERS ASSOCIATION OF ALBERTA

Schedule F - Key Personnel Confidentiality Proprietary Information and Consent Agreement
COAA Best Practices Contract
Page 1 of 1
COAA EPC Contract Philosophy
COAA EPC Contract Committee, March 2005

1. Introduction

The COAA EPC Contract Committee has developed a standard form EPC Contract for use in industrial projects. This EPC Contract is intended to serve as a base document and can be modified by the parties with respect to a specific project. Where possible, definitions used in the COAA Stipulated Price Contract (2003) have been incorporated in this EPC Contract in an effort to standardise terms. This EPC Contract should be considered to be an industry benchmark and a document that can be modified on a project-specific basis.

The Committee has tried to use plain language and avoid legalese. In addition, the defined terms have been italicised throughout the document so that readers are made aware that a term has a specific meaning.

Since the EPC Contract is intended to be shared with and used by members of the COAA, there is no copyright in this document and members are encouraged to use the EPC Contract as a basis for industrial work.

The Committee recognized that there are considerable differences between lump sum and cost reimbursable contracts. However, the goal was to draft a contract with the flexibility of different types of compensation for the Contractor. This flexibility has been achieved by referencing an Appendix that may be drafted to provide for compensation based on a lump sum, unit rate, cost reimbursable basis, or a combination of compensation terms.

To make the EPC Contract as flexible as possible, the Committee has tried to make project-specific criterion fit into the Appendices which can be attached on a project-by-project basis. In addition, there are a number of blanks left in the document that can be completed on a project-by-project basis. These blanks are primarily in relation to identifying specific notice periods or insurance coverage amounts.

2. Appendices

As noted above, the Appendices are designed to make this contract flexible to many users and among projects for each user. The following points are suggestions for the contents of some of the Appendices:

- Appendix A – Owner’s Requirements
  - Scope of the Work
  - Systems (components) to be identified
  - Design Basis Memoranda
  - Validation of the Owner’s data, if necessary
  - Commissioning before Functional Completion
  - Commissioning after Functional Completion
  - Inspection and Test Plan
- Performance Guarantees
- Performance Tests
- Operation and Maintenance Manuals requirements
- Payment for Procurement Services
- Materials, Services and Equipment provided by Owner
- Owner’s Specified Materials & Subcontractors
- Designation of “prime contractor” for the purposes of the OH&S Act
- Requirements for the preparation of a safety management plan
- Communication Protocol and Coordination Procedures
- Reporting requirements
- Specified Substances, if any
- Milestones
- Owner’s Requirements for delivery, storage and handling of Goods on-site

Appendix B – Compensation
- Cash Flow Schedule

Appendix G – Forms
- Key Personnel Confidentiality, Proprietary Information and Consent Agreement
- Change Order
- Change Directive
- Functional Completion Notice
- Final Completion Notice
- Release and Certificate of Final Payment
- Statutory Declaration

The Committee has provided drafts of the following Appendices which may be used, or not, as the need arises:

Appendix D – Warranty Items Procedure

Appendix G – Forms
- Key Personnel Confidentiality, Proprietary Information and Consent Agreement
- Release and Certificate of Final Payment
- Statutory Declaration

Appendix H – Dispute Resolution Procedure
3. **Key Milestones**

The Committee looked at the key *Milestones* that would be incorporated into the EPC Contract. The relevant *Milestones* are dependent on the plans for each project and the particular *Owner* requirements; however, the *Milestones* in the following chart were chosen by the Committee in an effort to provide certainty and flexibility in the *Contract*:

![Milestones Chart]

4. **Procurement**

Given that in some projects procurement is provided by the *Contractor* as agent and in other projects procurement is performed by the *Contractor* for the *Contractor*’s own account (this also typically follows whether the *Contractor* is paid on a cost reimbursable basis or lump sum basis), this EPC Contract incorporates both concepts.

5. **Owner Specified Material and Subcontractors**

The *Contractor* must review and determine whether or not the *Owner’s Specified Material and Subcontractors* are acceptable for the *Work*. If the *Contractor* determines they are not acceptable, then the *Owner* must be notified and the *Owner* remains liable for the *Owner’s Specified Material and Subcontractors*. If the *Owner’s Specified Material and Subcontractors* are accepted by the *Contractor*, then the *Contractor* is liable for the *Owner’s Specified Material and Subcontractors*, just as it is for any other material or equipment procured by the *Contractor*.
6. **Functional Completion**

The *Functional Completion Certificate* is issued when the *Owner* takes over the *Work* and, as of the date in the *Functional Completion Certificate*, the care, custody, and control of the *Work* is handed from the *Contractor* to the *Owner*. This point also triggers the commencement of the *Warranty Period*.

The EPC Contract contemplates that a *Functional Completion Certificate* may be issued for either a *System* or the entire *Work*.

7. **Management of the transition from Construction to Operation**

The steps from construction through commissioning and start-up to operation can be challenging because the *Owner* takes over control of the *Work* and yet *Deficiencies* are still being recorded. It is anticipated that the *Owner* may begin to modify the *Work* upon possession, without the consent, or even the knowledge, of the *Contractor*.

*Deficiencies* identified prior to issuance of a *Functional Completion Certificate* must be rectified by the *Contractor*, whereas after issuance of a *Functional Completion Certificate*, a defect must first be attributed to the *Contractor’s* performance before it can be categorised as a *Warranty Item*.
8. **Appendix D – Warranty Items Procedure**

Because of the wide variety of methods for dealing with the management of *Warranty Items*, an *Appendix* has been created where the parties can attach a project specific procedure for the management of *Warranty Items*.

Rather than provide a detailed procedure that may not be applicable to each project, a flow chart is contained in the *Appendix* which describes a procedure for the management of *Warranty Items*. This flow chart is meant to be a discussion point for parties entering into the EPC Contract and can be modified for different project requirements, or written out as a procedure. It is recommended that the detailed procedure specify a time limit whenever one party must give notice to the other party.

The underlying premises of the flow chart are:

- The *Owner* has taken possession of the facilities and now has the task and the incentive to achieve an effective start-up.
- The *Owner* and the *Contractor* will maintain open and prompt lines of communication on *Warranty Item* matters, however the *Owner’s* operations and maintenance personnel will take whatever actions are necessary to succeed in the startup, which may include modifying the facilities as necessary, whether the *Contractor* has provided input or not.
- During commissioning and startup, it often becomes necessary to act first and settle the accounting later. The rate at which issues arise and require resolution can easily exceed the rate at which the two parties are able to respond with mutually agreeable settlements.
9. **Pre-Commissioning and Commissioning**

The Committee recognized that there are a variety of definitions that are used in the industry for “pre-commissioning” and “commissioning”. Rather than try to define something that can be owner and industry specific, the Committee differentiated the commissioning responsibilities by determining when those responsibilities take place. Therefore the commissioning responsibilities are set out as the responsibilities of both the Contractor and the Owner before and then after the issuance of the Functional Completion Certificate.

10. **Liability and Indemnity and Insurance**

The objectives of the allocation of risk in the COAA EPC Contract are as follows:

- avoiding conflict (providing wrap-up insurance);
- avoiding premium duplication; and
- covering all risks.

Since deductions are project and party specific, deductibles in relation to Contractor and Subcontractor obtained insurance are to be approved by the Owner.

With regard to deductibles it was agreed that rather than going forward on a fault basis (which requires investigation and root cause analysis to determine fault), it would be preferable to avoid conflict between the parties and therefore deductibles should be covered by the party most able to, but not necessarily who can, control the risk. Therefore it was agreed by the majority of the Committee that the deductibles would be covered as follows:

- Contractor's auto - to be covered by the Contractor;
- Contractor's owned equipment - to be covered by Contractor;
- Contractor's leased equipment - to be covered by the Owner;
- damage to the Owner's property - to be covered by the Owner;
- damage to the Work until a Functional Completion Certificate is issued (care, custody and control with Contractor) – to be covered by the Contractor; and
- damage to the Work after Functional Completion Certificate is issued (care, custody and control with Owner) – to be covered by the Owner.

With regard to the Owner's obligations for insurance, it was agreed that as the Owner is providing insurance for the benefit of the Contractor, the Owner should be under the same obligations to provide evidence of renewal and a 30 day notice of material change just as the Contractor is required to do.
The Committee recommends that the Owner provide copies of the insurance policies before requiring the Contractor to sign the EPC Contract. It was agreed that, since these actions will take place prior to the signing of the Contract, it is not appropriate to have the requirements in the Contract. However, it was recognized by the Committee that as the Owner is purchasing insurance for the benefit of the Contractor, and in order that the Contractor not purchase that insurance and duplicate the cost of premiums, that the Contractor ought to have the opportunity to satisfy itself that the insurance obtained is satisfactory for its needs.

11. **Appendix H – Dispute Resolution Procedure**

It was agreed by the Committee that the dispute resolution provisions would mirror those found in the COAA Stipulated Price Contract (2003).

The dispute resolution procedures have been placed in a separate schedule to make the Contract easier to be used by industry and the dispute resolution procedures can easily be replaced for company specific procedures as necessary.

12. **Parent Guarantee**

The Committee decided not to include a parent guarantee in this EPC Contract as such an obligation is project and party specific.
COAA EPC Contract
(Engineering, Procurement and Construction Contract)

Between

* - and - *

Effective Date: *

Note to Users: This EPC Contract contains a number of blanks to be completed on a project-specific basis. These blanks are indicated by: *. There are also notes within the text which require further consideration of the specific project requirements before completing.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Introduction:</td>
<td>1</td>
</tr>
<tr>
<td>1</td>
<td>Definitions and Interpretation</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Interpretation and Order of Precedence</td>
<td>8</td>
</tr>
<tr>
<td>3</td>
<td>Owner’s Requirements</td>
<td>8</td>
</tr>
<tr>
<td>4</td>
<td>General Requirements of the Work</td>
<td>9</td>
</tr>
<tr>
<td>5</td>
<td>Engineering Services</td>
<td>11</td>
</tr>
<tr>
<td>6</td>
<td>Owner’s Specified Materials and Subcontractors</td>
<td>12</td>
</tr>
<tr>
<td>7</td>
<td>Procurement Services</td>
<td>13</td>
</tr>
<tr>
<td>8</td>
<td>Construction Work</td>
<td>14</td>
</tr>
<tr>
<td>9</td>
<td>Commissioning</td>
<td>15</td>
</tr>
<tr>
<td>10</td>
<td>Contractor’s Representations</td>
<td>15</td>
</tr>
<tr>
<td>11</td>
<td>Contract Time</td>
<td>16</td>
</tr>
<tr>
<td>12</td>
<td>Payment</td>
<td>16</td>
</tr>
<tr>
<td>13</td>
<td>Changes</td>
<td>17</td>
</tr>
<tr>
<td>14</td>
<td>Personnel</td>
<td>20</td>
</tr>
<tr>
<td>15</td>
<td>Key Personnel</td>
<td>20</td>
</tr>
<tr>
<td>16</td>
<td>Subcontracts and Assignment</td>
<td>21</td>
</tr>
<tr>
<td>17</td>
<td>Inspection and Testing</td>
<td>22</td>
</tr>
<tr>
<td>18</td>
<td>Performance Tests</td>
<td>23</td>
</tr>
<tr>
<td>19</td>
<td>Functional Completion</td>
<td>25</td>
</tr>
<tr>
<td>20</td>
<td>Final Completion</td>
<td>26</td>
</tr>
<tr>
<td>21</td>
<td>Liquidated Damages</td>
<td>27</td>
</tr>
<tr>
<td>22</td>
<td>Incentive Fee</td>
<td>28</td>
</tr>
<tr>
<td>23</td>
<td>Warranty</td>
<td>28</td>
</tr>
<tr>
<td>24</td>
<td>Compliance with Law</td>
<td>29</td>
</tr>
<tr>
<td>25</td>
<td>Safety and Loss Management</td>
<td>29</td>
</tr>
<tr>
<td>26</td>
<td>Work Area and Clean Up</td>
<td>30</td>
</tr>
<tr>
<td>27</td>
<td>Title and Responsibility</td>
<td>31</td>
</tr>
<tr>
<td>28</td>
<td>Patents and Licenses</td>
<td>32</td>
</tr>
<tr>
<td>29</td>
<td>Confidential Information and Publicity</td>
<td>33</td>
</tr>
<tr>
<td>30</td>
<td>Proprietary Information</td>
<td>34</td>
</tr>
<tr>
<td>31</td>
<td>Force Majeure</td>
<td>34</td>
</tr>
</tbody>
</table>
Article 32 - Delays Caused by the Contractor .................................................................35
Article 33 - Delays not Caused by the Contractor .........................................................35
Article 34 - Suspension.................................................................................................36
Article 35 - Termination for Convenience.................................................................37
Article 36 - Termination for Cause ............................................................................37
Article 37 - Taxes ........................................................................................................39
Article 38 - Workers’ Compensation ......................................................................40
Article 39 - Liens .........................................................................................................41
Article 40 - Survival ....................................................................................................41
Article 41 - Liability and Indemnity for Third Party Claims .....................................41
Article 42 - Liability and Indemnity .........................................................................42
Article 43 - Insurance Provided by Contractor .........................................................43
Article 44 - Insurance Provided by Owner .................................................................45
Article 45 - Independent Contractor .......................................................................48
Article 46 - Conflict of Interest ..................................................................................48
Article 47 - Audit Access ............................................................................................49
Article 48 - Representatives and Notices .................................................................49
Article 49 - General ....................................................................................................50

ADDENDA

Appendix A – Owner’s Requirements
Appendix B – Compensation
Appendix C – Policy and Guidelines
Appendix D – Warranty Items Procedure
Appendix E – Liquidated Damages
Appendix F – Incentive Fee
Appendix G – Forms
Appendix H – Dispute Resolution Procedure
Appendix I – Key Personnel [NTD: Use if not in Execution Plan]
Engineering, Procurement and Construction Contract

This Contract is made effective this * day of *, 20*

Between

the “Contractor”

- and -

the “Owner”

Introduction:

A. The Contractor has agreed to perform the Work for the Owner as set out in this Contract, on the terms and conditions set forth in this Contract;

IN CONSIDERATION of the mutual covenants and conditions contained herein, the parties agree as follows:

Article 1 - Definitions and Appendices

1.1 The following terms, wherever capitalised and italicised in the Contract, or in any document produced pursuant to the terms of the Contract, shall have the following meanings:

(a) Appendix or Appendices, as the case may be, means one or more of the schedules attached to and incorporated in this Contract as set forth in Section 1.2;

(b) As-Built Drawings means the controlled and complete set of documents upon which the Contractor records each and every instance of differences between the Work as executed and the Work as designed and depicted in the documents issued by the Contractor for Construction Work;

(c) Change means any change in, addition to, or deletion from the Owner’s Requirements, Owner’s Specified Materials and Subcontractors, the Milestones, or the Contract Time;

(d) Change Directive means a written instruction from the Owner directing a Change;

(e) Change Order means a written order signed by both the Contractor and the Owner authorizing a Change;

(f) Change Quotation means a written quotation from the Contractor for an adjustment in the Contract Time, Milestones or the Compensation, or both;
(g) Commencement Date means the date that the Work is to commence, which, at the effective date of this Contract, is *

(h) Commissioning after Functional Completion means those commissioning duties of the Owner and of the Contractor that shall take place after Functional Completion and which are described in the Owner’s Requirements and allocated to either the Owner or the Contractor;

(i) Commissioning before Functional Completion means those commissioning duties of the Owner and of the Contractor that shall take place before Functional Completion and which are described in the Owner’s Requirements and allocated to either the Owner or the Contractor;

(j) Compensation means the compensation which the Owner shall pay for performance of the Work in accordance with Appendix B – Compensation;

(k) Confidential Information means all information relating to the Work and any process or technology relating thereto, and information relating to the nature of the Contractor’s and the Owner’s business and affairs, which either party directly or indirectly receives or acquires from the other party, or the other party’s representative, either in writing or verbally, including information in the Contract, or through observation of the Owner’s Site, the Work Site, the Work or work performed by Other Contractors, except information falling into any one or more of the following categories:

   (i) information which the receiving party can show was in its possession on a non-confidential basis before receipt or acquisition of the information from the other party;

   (ii) information which is lawfully in the public domain at the time of the receiving party’s receipt or acquisition of the information from the other party, other than from the Owner’s Requirements or through the process of proposal calls or performing the Work;

   (iii) information which, after the receiving party’s receipt or acquisition of the information from the other party, becomes part of the public domain through no act of the receiving party or of any third party under an obligation of confidence with respect to such information, but only after such information becomes part of the public domain; or

   (iv) information which, after receipt or acquisition of the information from the other party, is lawfully obtained by the receiving party from a third party, but only after such information is so received or acquired, and provided such third party is under no obligation of confidence with respect to such information.

(l) Construction Work means delivery, fabrication, assembly, construction, testing, commissioning and correction, including professional and technical personnel,
labour, supervision, administration, materials, transportation, supplies, tools, equipment, and such other work and materials necessary to be performed or supplied to meet the requirements of the Contract, including any work which is not expressly described in the Contract but which is nevertheless necessary for the proper execution of the Work, but does not include Engineering Services or Procurement Services;

(m) Contemplated Change Notice means a written notice from the Owner advising the Contractor that the Owner is contemplating a Change;

(n) Contract means:

(i) this Engineering, Procurement and Construction Contract;

(ii) Change Orders and Change Directives;

(iii) Execution Plan; and

(iv) other documents which come into existence and are incorporated into the Contract pursuant to the terms of this Contract;

(o) Contract Time means the period of time from the Commencement Date to the Scheduled Functional Completion Date;

(p) Contractor means *;

(q) Contractor’s Representative means that person identified as such in Section 48.2, or an approved replacement;

(r) Deficiency means any portion of the Work that has not been performed in accordance with the Owner’s Requirements, the Contract or the Law;

(s) Engineering Services means those services described in the Owner’s Requirements and provided by the Contractor for the design, planning and engineering of the Project, but does not include Construction Work or Procurement Services;

(t) Event of Force Majeure means any occurrence, other than the financial capability of a party or an event constituting a delay under Article 32 - Delays Caused by the Contractor or Article 33 - Delays not Caused by the Contractor, which prevents or delays a party from performing its obligations under the Contract (except an obligation to pay any amount) within the time required for the performance of such obligation and which is beyond the control and without the fault or negligence of the party relying on such occurrence, and which by the exercise of reasonable diligence that party could not, at the time the Contract was executed, have reasonably contemplated happening and which at the time of such occurrence, is beyond the reasonable control of the party required by the Contract to perform such obligation and such party is unable to reasonably prevent or provide against such occurrence;
(u) Execution Plan means the programme developed by the Contractor for the Work in accordance with Section 4.2 and which shall be updated from time to time as may be required by the Owner and which shall include, but not be limited to:

(i) the organisation to be established by the Contractor for carrying out the Work, including, but not limited to, the identities and curriculum vitae of Key Personnel, or if not yet identified, then the titles of the positions that will be held by Key Personnel;

(ii) the sequences and methods for the performance of the Work; and

(iii) a detailed schedule with dates for the completion of Milestones;

(v) Facilities means the physical works engineered, procured and constructed as a result of the Work being performed;

(w) Final Completion Notice means that notice in the form contained in Appendix G – Forms issued by the Owner to the Contractor pursuant to Section 20.2 certifying completion and acceptance of the Work under the Contract;

(x) Functional Completion means that date when the Work, or a System:

(i) has passed the required Performance Tests that are stipulated in the Owner’s Requirements to be performed before Functional Completion; and

(ii) is certified by the Owner’s Representative pursuant to Section 19.4 as being complete or ready to be put into service, or being used for the purpose intended and a Functional Completion Certificate is issued;

(y) Functional Completion Certificate means that notice, in the form attached hereto as Appendix G – Forms, issued by the Owner to the Contractor pursuant to Section 19.4, certifying achievement of Functional Completion and identifying the date that the Owner takes over the Work;

(z) Goods means any goods, supplies, materials or equipment required as part of the Work, or to perform the Work, and which are supplied or fabricated by the Contractor, but do not include Procured Goods;

(aa) Hazardous Material means any substances which are hazardous to persons, animals, property or the environment and includes hazardous substances, hazardous waste, ozone depleting substances and dangerous goods, all as identified or defined under applicable law, as well as any prescribed product under the Nuclear Safety and Control Act (Canada);

(bb) Incentive Fee means that fee that shall be paid by the Owner to the Contractor, if applicable, and which is set out in Appendix F – Incentive Fee;
(cc) *Inspection and Test Plan* means the plan for inspection and testing, which shall be prepared by either the *Owner* or the *Contractor* as specified in the *Owner’s Requirements*;

(dd) *Key Personnel* means the *Contractor’s* key personnel for the *Work* identified in Appendix I – *Key Personnel* [NTD: *Use if not in Execution Plan*], or if not determined before the execution of this *Contract*, identified in an organisational chart in accordance with Article 15 - *Key Personnel* and approved by the *Owner*;

(ee) *Law* means the common law, the law of equity and all federal or provincial statutes or municipal by-laws and all regulations, orders, directives, permits and licenses thereunder, which apply to or otherwise affect the *Work*, the *Owner* or the *Contractor* with respect to the *Work*, or the property of the *Owner* or the *Contractor*, real or personal, including, but not limited to, all environmental, occupational, health and safety laws;

(ff) *Liquidated Damages* means those damages, if applicable, agreed by the parties to be a genuine pre-estimate of damages in the event the *Performance Guarantees* are not met or the *Work* is not completed in the *Contract Time* and which are set out in Appendix E – *Liquidated Damages*;

(gg) *Milestone* or *Milestones* means, as the case may be, one or more milestones that the *Contractor* must meet as set forth in the *Owner’s Requirements*;

(hh) *Other Contractors* means the contractors, consultants, or engineers retained by the *Owner*, to perform any work or services at, or related to, the *Owner’s Site*, other than the *Contractor*;

(ii) *Owner* means *

(jj) *Owner’s Representative* means that person identified as such in Section 48.1 which may include a consultant hired by the *Owner*, if so designated, or that person’s designated replacement;

(kk) *Owner’s Requirements* means the description of the scope, standards, design criteria, *Performance Guarantees*, *Milestones* and the programme of work set out in Appendix A – *Owner’s Requirements*, as amended by any *Changes*;

(ll) *Owner’s Site* means the *Owner’s* land upon which the *Work Site* is located and which may have on it other projects by *Other Contractors* or existing facilities, activities or operations;

(mm) *Owner’s Specified Materials and Subcontractors* means those materials, goods, products, processes, equipment and subcontractors specified in the *Owner Requirements* to be used in, or to be incorporated into, the *Work* by the *Contractor*;

(nn) *Performance Guarantees* means the performance guarantees set out in the *Owner’s Requirements*;
(oo) **Performance Tests** mean the performance tests set out in the **Owner’s Requirements** for the purpose of determining achievement of the **Performance Guarantees** for the **Work**, and such other tests as may be agreed between the **Owner** and **Contractor** in order to compare actual performance of the **Work** with the **Performance Guarantees**;

(pp) **Policies** means the policies of the **Owner** as attached in Appendix C – Policy and Guidelines;

(qq) **Procured Goods** means those goods, supplies, materials or equipment obtained by the **Contractor** for incorporation in, or to perform, the **Construction Work**, and procured by the **Contractor** as part of its **Procurement Services**;

(rr) **Procurement Services** means the procurement of **Procured Goods** performed by the **Contractor**, which may be performed as agent of the **Owner**, or for the **Contractor** on its own account, as stipulated in the **Owner’s Requirements**;

(ss) **Project** means [NTD: Insert name of Project]

(tt) **Proprietary Information** means all inventions, discoveries, improvements and technical information not in the public domain, which the **Contractor**, **Subcontractors**, or their respective employees or agents who are performing the **Work**, may conceive of, reduce to practice or develop during the **Contract Time** or within 12 months thereafter, as a result of **Confidential Information**;

(uu) **Records** means the books, statements, records and accounts pertaining to the **Contract** and the performance of the **Work**, whether in paper or electronic form;

(vv) **Safety Plan** means the plan, as specified in the **Owner’s Requirements**, which includes, but is not limited to, safety performance requirements, mitigation plans, training and orientation requirements, site safety and access rules, reporting and safety meeting frequency, site cleanliness requirements and other occupation health and safety requirements and compliance issues;

(ww) **Scheduled Functional Completion Date** means the date on which the **Work** is scheduled to achieve **Functional Completion**, which, at the effective date of this **Contract**, is [NTD: Insert date];

(xx) **Subcontractors** means any subcontractors, consultants, suppliers or vendors hired by the **Contractor** to perform any portion of the **Work** or supply any **Goods**;

(yy) **Suspended Work** means any **Work**, or portion thereof, which the **Owner** has suspended pursuant to Article 34 - Suspension;

(zz) **System** means any component system of the **Work**, or any part thereof as the context requires; [NTD: This definition is to be reviewed on a project-specific basis and components are to be identified in the **Owner’s Requirements**.]
(aaa) Warranty Item means any Deficiency that is identified after the Functional Completion Certificate is issued or is incorporated into the Functional Completion Certificate to be remedied after Functional Completion;

(bbb) Warranty Period commences on the date of Functional Completion of the Work or System, or part thereof to, and continues for __ months from the date of Functional Completion as stated in the Functional Completion Certificate;

(ccc) Work means all Engineering Services, project management, Procurement Services, Goods, Construction Work and those duties allocated to the Contractor in the Commissioning before Functional Completion and Commissioning after Functional Completion, as may be necessary to fulfill the Owner’s Requirements and includes anything that is ancillary or necessary by implication to fulfill the Owner’s Requirements;

(ddd) Work Day means any day, except for a Saturday, Sunday, a general holiday or a holiday which is observed in the construction industry in Alberta, or defined as a holiday in a collective agreement pertaining to the Work Site; and [NTD: This definition should be revised on a project-specific basis.]

(eee) Work Site means those lands where the Project is located and which are legally and municipally described as such in the Owner’s Requirements.

1.2 The following schedules attached hereto shall form part of and are incorporated in this Contract:

(a) Appendix A – Owner’s Requirements
(b) Appendix B – Compensation
(c) Appendix C – Policy and Guidelines
(d) Appendix D – Warranty Items Procedure
(e) Appendix E – Liquidated Damages
(f) Appendix F – Incentive Fee
(g) Appendix G – Forms
   – Key Employee Confidentiality, Proprietary Information and Consent Agreement
   – Change Order
   – Change Directive
   – Functional Completion Notice
   – Final Completion Notice
   – Release and Certificate of Final Payment
   – Statutory Declaration
(h) Appendix H – Dispute Resolution Procedure
(i) Appendix I – Key Personnel [NTD: Use if not in Execution Plan]

[NTD: List any additional Appendices]
Article 2 - Interpretation and Order of Precedence

2.1 Unless the context otherwise requires, words importing the singular shall include the plural and vice-versa and words importing gender shall include the masculine, feminine and neuter genders.

2.2 The headings and sub-headings of the Contract are used for convenience and ease of reference only and in no way define, limit, describe or interpret the scope or intent of the Contract.

2.3 If there is a conflict in the Contract, the order of precedence of documents, from highest to lowest, shall be:

(a) this Engineering, Procurement and Construction Contract, excluding the Appendices;
(b) Change Orders and Change Directives;
(c) Appendix A – Owner’s Requirements;
(d) Appendix B – Compensation;
(e) Appendix C – Policy and Guidelines; and
(f) all other Appendices.

2.4 The following shall, in all instances, apply:

(a) for documents revised by either party and approved by the Owner, the latest revision shall govern;
(b) figured dimensions on drawings shall govern, even though they may differ from scaled dimensions;
(c) drawings of larger scale shall govern over those of smaller scale of the same date; and
(d) specifications shall govern over drawings regardless of time.

2.5 Wherever this Contract requires an action to be performed or an obligation to be undertaken, such action or obligation shall be performed in a reasonable manner by the party taking the action or fulfilling its obligation.

Article 3 - Owner’s Requirements

3.1 The Owner’s Requirements shall describe the scope of the Work.
3.2 The Owner's Requirements shall specify the requirements of the Safety Plan and identify the party, or parties, responsible for the development and implementation of the Safety Plan.

3.3 Subject to Section 13.9, all conflicts with respect to the interpretation of the Owner’s Requirements shall be resolved by the Owner’s Representative.

Article 4 - General Requirements of the Work

4.1 The scope of the Work includes correction of defects and Deficiencies by the Contractor in accordance with the Contract.

4.2 By the date or dates specified in the Owner’s Requirements, the Contractor shall prepare and submit to the Owner a detailed Execution Plan for the performance of all or any part of the Work required under the Contract. The Contractor shall control the progress of the Work to achieve compliance with the Execution Plan.

4.3 In the execution of the Work the Contractor shall comply with, and the completed Work shall comply with, the Law, including, without limitation, applicable building codes, technical standards, building construction and environmental regulations and the standards specified in the Contract.

4.4 References in the Contract to applicable codes, standards or regulations shall be understood to be references to the edition applicable on the date of the Contract, unless stated otherwise. If substantially changed or new applicable codes, standards or regulations come into force after the date of the Contract, the Contractor shall submit a Change Quotation for compliance to those new codes, standards or regulations to the Owner’s Representative. Any Change in the Work, the Contract Time or the Compensation as a result shall be dealt with under Article 13 - Changes.

4.5 The Contractor accepts the Owner’s Site, the Work Site and the obligation to perform the Work in the condition existing at the effective date of this Contract and acknowledges that it has investigated and satisfied itself as to:

(a) the nature of the Work;

(b) the location of and all conditions relating to the Owner’s Site and the Work Site, including, but not limited to, accessibility, general character, surface conditions, utilities, roads, uncertainties of seasonal weather and all other physical, topographical and geographical conditions but excluding subsurface or other physical conditions, unless disclosed by the Owner;

(c) all environmental risks, conditions, Law and restrictions applicable to the Contractor or the Work that may affect the Work; and

(d) the magnitude of the Work.

4.6 The Contractor accepts the obligation to perform the Work and acknowledges that it has investigated and accepts:
(a) the general character, quality, quantity and availability of equipment and materials required to execute and complete the Work; and

(b) all conditions affecting labour, including, without limitation, availability, productivity and administrative practices, including those relating to safety, prevailing at or applicable to the Work.

4.7 Any failure by the Contractor to discover matters which affect, or could affect, the Work shall not relieve the Contractor from its obligations under the Contract or otherwise affect the Contract Time or the Compensation.

4.8 The Owner reserves the right to award separate contracts to Other Contractors for work to be performed at the Work Site and to perform work with its own forces at the Work Site. In such event, the Contractor shall co-ordinate and schedule the Work with the work of the Other Contractors and the Owner’s own forces, and the Contractor shall share access to and use of the Work Site to accommodate the work of Other Contractors. If work performed by Other Contractors as directed by the Owner interferes with the Work performed by the Contractor, the Contractor may issue a Change Quotation in accordance with Section 13.9.

4.9 The Contractor shall co-operate fully with the Owner, Other Contractors and all other parties with whom the Contractor or Owner may be involved during the performance of the Work. The Contractor shall supervise its employees and Subcontractors and inspect their work to ensure that the Work conforms in each and every respect to the Owner’s Requirements and in accordance with Section 10.1.

4.10 Approval of the Engineering Services, acceptance of any part of the Goods, Procured Goods or the Construction Work by the Owner, or payment to the Contractor, or any one or more of them, shall not relieve the Contractor from its responsibilities under the Contract, whether pursuant to any of the warranties or guarantees expressed or implied herein, or otherwise.

4.11 As required by the Owner’s Requirements, the Contractor shall provide the Owner with written reports detailing the status of the Work and all issues relating to the Work, promptly upon the request of the Owner, and shall attend meetings as required by the Contract, or as otherwise requested by the Owner’s Representative.

4.12 The Contractor shall have those responsibilities for managing the Work as stipulated in the Owner’s Requirements, including, but not limited to:

(a) cost monitoring, scheduling and reporting to the Owner;

(b) scheduling the Work and monitoring and reporting on the progress of the Work relative to the Milestones to the Owner;

(c) coordination, scheduling and supervision of Subcontractors;

(d) coordination and management of transportation and related services for the Work;
(e) management of the Work to ensure the Work is performed in an efficient and coordinated manner; and

(f) preparation of reports and attendance at meetings with the Owner.

4.13 The Contractor shall ensure that no activities or actions are undertaken in the performance of the Work, or otherwise by the Contractor, which would adversely affect, restrict or limit in any way the continued operation of the Owner’s other facilities which are in operation, unless required to perform the Work, done in accordance with the Execution Plan and authorized in writing by the Owner’s Representative.

4.14 In the performance of the Work, the Contractor shall give due consideration to the interest and property of others wherever involved, and shall carry out and perform the Work in a manner which shall cause the minimum of inconvenience, injury, and damage to others.

4.15 The Owner shall provide and the Contractor shall abide by all documents provided by the Owner relating to the Owner’s Site, including, but not limited to, any special restrictions and conditions contained in any easement, regulatory board order, crossing agreement, or other permit relating to the Work Site.

4.16 The Contractor shall restore, at its expense, all property damaged in the performance of the Work including, without limitation, buildings, fences, hedges, roads, railroads, bridges, culverts, drainage ditches, irrigation ditches and levees, unless such restoration is specifically identified in the Owner’s Requirements and, in which case, the restoration shall be performed in accordance with the Owner’s Requirements.

4.17 Each of the parties shall promptly and fully inform each other of any errors, omissions or inconsistencies in the Contract, defects or Deficiencies in the Work and of any inconsistencies between the Contract and the Law, of which they become aware. The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions which could result in any such inconsistencies, defect or Deficiencies. If the Contractor discovers any inconsistencies in the Contract, or between the Contract and the Law, or discovers any defects or Deficiencies in the Work, it shall resolve all such inconsistencies with the Owner before proceeding with the affected portion of the Work. If the Contractor discovers any inconsistencies in the Contract, or between the Contract and the Law, or discovers any defects or Deficiencies in the Work, and proceeds without resolution with the Owner, the Contractor shall proceed at the Contractor’s own risk and expense and waives all rights to claim against the Owner for the same.

4.18 All documents and drawings prepared as part of the Work shall be in English.

Article 5 - Engineering Services

5.1 The Contractor shall perform the Engineering Services and be responsible for the design and engineering necessary to execute the Work. The Engineering Services shall be prepared under the supervision of the Contractor’s qualified professional engineers licensed by the Association of Professional Engineers, Geologists and Geophysicists of...
Alberta. All final plans, specifications, reports or documents of a professional nature shall be signed by and stamped or sealed with the stamp or seal of:

(a) the professional member or licensee who prepared them or under whose supervision and control they were prepared; or

(b) the professional member or licensee who thoroughly reviewed and accepted professional responsibility for them.

5.2 The professional members referred to in Section 5.1 shall be available to meet with the Owner’s Representative at all reasonable times during the Contract Time and Warranty Period.

5.3 The Owner shall have the right of inspection and review of the design drawings and specifications at all reasonable times. No inspection, or failure to inspect, by the Owner shall relieve the Contractor of the Contractor’s obligations under the Contract.

5.4 Prior to commencement of the Performance Tests, the Contractor shall prepare, and submit to the Owner’s Representative, operation and maintenance manuals in accordance with the Owner’s Requirements. The Work shall not be considered to be completed for the purposes of achieving Functional Completion until such operation and maintenance manuals have been submitted to the Owner’s Representative.

5.5 The Contractor shall:

(a) prepare, and keep up-to-date, the As-Built Drawings;

(b) record the exact locations of each of these differences, sizes and details of the Construction Work as executed, with cross-references to relevant specifications and other requirements on the As-Built Drawings;

(c) keep the As-Built Drawings on the Work Site;

(d) during the Contract Time, provide the Owner with access to the As-Built Drawings; and

(e) upon completion of the Work, or at such other time as may be determined by the Owner, submit the As-Built Drawings and copies to the Owner’s Representative in accordance with the Owner’s Requirements.

Article 6 - Owner’s Specified Materials and Subcontractors

6.1 Where the Owner’s Requirements, a Change Order or a Change Directive is issued directing the Contractor to use the Owner’s Specified Materials and Subcontractors, the Contractor shall review the Owner’s Specified Materials and Subcontractors to determine whether such materials are acceptable to meet the Engineering Services and Construction Work and can be made available for procurement without interfering with the achievement of the Milestones.
6.2 If the Contractor determines that the Owner’s Specified Materials and Subcontractors are acceptable for the Work, then the Owner’s Specified Materials and Subcontractors shall be used and incorporated in the Work in the same manner as those materials and pieces of equipment proposed by the Contractor and the Contractor shall take responsibility for the Owner’s Specified Materials and Subcontractors and all warranty provisions that apply thereto; or

6.3 If the Contractor determines that the Owner’s Specified Materials and Subcontractors are not acceptable for the Work, then the Contractor shall give notice to the Owner that the Owner’s Specified Materials and Subcontractors are not suitable for the Work, which notice will provide details of the reasons why the Owner’s Specified Materials and Subcontractors are not acceptable for use or incorporation into the Work.

6.4 Where the Contractor has provided notice to the Owner that the Owner’s Specified Materials and Subcontractors are not acceptable for the Work, the Owner shall promptly notify the Contractor of the Owner’s decision as to whether or not to include the Owner’s Specified Materials and Subcontractors in the Work.

6.5 If the Owner chooses to direct the Contractor to use the Owner’s Specified Materials and Subcontractors after the Contractor has notified the Owner that the Owner’s Specified Materials and Subcontractors are not acceptable for the Work, then the Owner shall take full responsibility for the Owner’s Specified Materials and Subcontractors, including any warranty claims and damages that may occur from the use or incorporation of the Owner’s Specified Materials and Subcontractors.

Article 7 - Procurement Services

7.1 As specified in the Owner’s Requirements, the Contractor shall perform the Procurement Services either as agent for the Owner, or for its own account, or both, as applicable.

7.2 Where specified in the Owner’s Requirements, the Contractor shall provide Procurement Services using such selected vendor lists and Owner’s Specified Materials and Subcontractors as directed by the Owner.

7.3 Payment of invoices for Procured Goods shall be made in accordance with the Owner’s Requirements.

7.4 Where the Contractor performs the Procurement Services as agent of the Owner, the Contractor shall carry out the Owner’s instructions and shall act:

(a) in good faith and in the best interests of the Owner and the Project,

(b) within the scope of the agency specified in this Article 7 - Procurement Services and the Owner’s Requirements.

7.5 Where the Contractor performs the Procurement Services as agent of the Owner, the appointment of the Contractor as the Owner’s agent shall be limited as follows:

(a) to the specifications contained in the Owner’s Requirements;
(b) the Contractor shall not enter into any agreement, contract, settlement or arrangement with any person, firm or corporation, or other enterprise imposing any compromise, legal obligation or liability of any kind whatsoever on the Owner, unless such is in accordance with this Contract or unless it has prior specific written authority to do so from the Owner;

(c) the Procurement Services performed by the Contractor shall only relate to the Project and the Contractor shall not act as agent for the Owner in any other respect;

(d) the Procurement Services shall be on commercial terms and conditions previously approved by the Owner and the Contractor shall not modify or change any of the terms and conditions approved by the Owner without the Owner’s prior written consent, which consent may be withheld at the Owner’s sole discretion;

(e) the Procurement Services by the Contractor shall be in accordance with the Contractor’s internal approval process, but subject always to the final written approval of the Owner’s Representative;

(f) title to all Procured Goods shall be in the Owner’s name; and

(g) all warranties and guarantees relating to the Procured Goods shall be made to the Owner and shall be enforceable by the Owner.

7.6 Where the Contractor performs the Procurement Services as agent of the Owner, the Owner shall:

(a) provide to the Contractor sufficient instructions and guidelines to enable the Contractor to effect delivery, receiving and handling into and within the Owner’s system of materials handling and warehousing; and

(b) provide to the Contractor instructions and guidelines that identify the levels of review and approval required by the Owner in relation to the Procured Goods.

7.7 In accordance with the Owner’s Requirements, the Contractor shall submit any required samples for the Owner’s Representative’s approval, together with any relevant information. The Contractor shall also submit for the Owner’s Representative’s approval, manufacturer’s standard samples of materials (with relevant information) and any additional samples instructed by the Owner’s Representative. All samples shall be labelled as to origin and intended use in the Work. For each part of the Work, construction shall not commence prior to receipt of such approval to the relevant samples.

Article 8 - Construction Work

8.1 The Contractor shall perform the Construction Work in accordance with the Contract.

8.2 Except for those materials, services and equipment to be provided by the Owner and described in Appendix A – Owner’s Requirements, the Contractor shall supply or cause
to be supplied all services, equipment and materials required for the proper execution and completion of the Construction Work.

8.3 Subject to Section 25.5, the Contractor shall take full responsibility for the adequacy, stability and safety of the Work and the Work Site operations under its control, of all methods of construction and of all of the Construction Work, unless the Contractor has received written instructions from the Owner’s Representative absolving the Contractor of responsibility.

Article 9 - Commissioning

9.1 The duties of the Owner and of the Contractor in relation to Commissioning before Functional Completion and Commissioning after Functional Completion, together with the Milestones to be reached for commissioning, are as set out in the Owner’s Requirements.

Article 10 - Contractor’s Representations

10.1 The Contractor shall:

(a) perform the Work in a professional, efficient and workmanlike manner, using only qualified, skilful and careful workers, in strict accordance with the Contract and in accordance with sound and currently accepted design, engineering, procurement, construction and commissioning practices normally employed in industrial construction similar to the Work;

(b) perform the Work in a safe and environmentally sound manner and in compliance with the Law;

(c) ensure that the title to any and all Goods and those Procured Goods supplied by the Contractor shall, upon delivery to the Work Site, be free from any and all claims, liens, charges, encumbrances or security interests of any kind whatsoever;

(d) ensure equipment and materials furnished, manufactured or fabricated by the Contractor, or its Subcontractors, for incorporation into the Work, shall:

   (i) be free from all latent and other defects or Deficiencies;

   (ii) meet the specifications in the Contract, if so specified, and if not specified then be of the quality best suited for the required operating conditions and intended use and purpose of the materials and services; and

   (iii) shall be fit for the purpose for which the equipment and materials have been manufactured or fabricated;

(e) perform the Work to meet the Owner’s Requirements;

(f) comply with the Contract, including, but not limited to, all time schedules set out in, or called for by, the Contract or the Execution Plan; and
(g) ensure the Work shall be fit for its intended purpose as specified in the Owner’s Requirements.

10.2 The Contractor represents and warrants to the Owner that:

(a) it has the experience, resources, personnel and capability to perform the Work;

(b) it is duly incorporated and validly existing under the laws of the jurisdiction(s) of its incorporation and is registered to carry on business in the Province of Alberta;

(c) it has all required permits, licenses and authorizations necessary to carry on its business; and

(d) the Contractor has the right to use, employ and incorporate in the Work those things or ideas to which the Contractor gives the Owner a license under Section 28.4.

Article 11 - Contract Time

11.1 Subject to any Change Order or Change Directive, the Contractor shall commence the Work on the Commencement Date and shall achieve Functional Completion of all of the Work by the Scheduled Functional Completion Date.

11.2 The Contractor shall, unless otherwise provided for in this Contract or altered by any Change Order or a Change Directive, perform the Work in accordance with the Execution Plan.

11.3 If a party fails to meet its obligations set out in this Contract in a timely manner, the other party may raise the failure of a timely action as provided for in Appendix H – Dispute Resolution Procedure; however, in such case the parties shall continue to perform the Work and their respective obligations under this Contract while the matter is being resolved.

Article 12 - Payment

12.1 As full and complete compensation for the Work, the Owner shall pay the Contractor the Compensation pursuant to the terms of Appendix B – Compensation which shall in no event exceed the Compensation payable in accordance with the Contract, as adjusted by any Change Order.

12.2 The Contractor shall prepare and submit invoices for all Work performed in accordance with Appendix B – Compensation.

12.3 As a condition precedent to each progress payment to the Contractor by the Owner, the Contractor shall deliver to the Owner:

(a) a Workers’ Compensation Board Clearance Certificate; and

(b) a Statutory Declaration, in the form set out in Appendix G – Forms.
12.4 The Owner shall retain from all payments due and payable to the Contractor an amount equal to 10% of the value of the Work actually done and materials furnished by the Contractor in accordance with the Builders’ Lien Act (Alberta).

12.5 When the Contractor has substantially performed the Work, as substantial performance is defined in the Builders’ Lien Act (Alberta), the Contractor shall issue and deliver to the Owner a certificate of substantial performance in accordance with the Builders’ Lien Act (Alberta). The Contractor shall post the certificate of substantial performance in accordance with the Builders’ Lien Act (Alberta).

12.6 If:

(a) a certificate of substantial performance is issued for a subcontract;

(b) the period designated for the release of holdback pursuant to the Builders’ Lien Act (Alberta) has expired from the date of issue of that certificate of substantial performance; and

(c) no builders’ lien has been registered against the title to the Work Site or any part of the Work;

the amount that the Owner shall retain under Section 12.4 shall be reduced by 10% of the value of the Work actually done and materials actually furnished under the subcontract at the date of issue of the Certificate of Substantial Performance in respect thereof.

12.7 If:

(a) a certificate of substantial performance is issued for the Contract;

(b) the period designated for the release of holdback pursuant to the Builders’ Lien Act has expired from the date of issue of the Certificate of Substantial Performance; and

(c) no builder’s lien has been registered against the title to the Work Site or any part of the Work;

the amount that the Owner shall retain under Section 12.4 shall be reduced by 10% of the value of the Work actually done and materials actually furnished under the Contract at the date of issue of the Certificate of Substantial Performance.

12.8 Should either party fail to make payments as they become due under the terms of the Contract or in an award of arbitration or judgment of a court, interest at the rate of 8% per annum compounded semi-annually on any unpaid amounts shall also become due and be payable.

Article 13 - Changes

13.1 The Owner shall have the right, at any time, to make a Change.
13.2 When a Change is proposed by the Owner, then the Owner shall provide a Contemplated Change Notice to the Contractor describing the proposed Change.

13.3 The Contractor, upon receipt of a Contemplated Change Notice, shall within * Work Days provide the Owner’s Representative with a Change Quotation which shall include a method of adjustment or an amount of adjustment to the Compensation, if any, and any adjustment in the Contract Time for the proposed Change.

13.4 Following receipt of a Change Quotation, the Owner shall within * Work Days either agree to the adjustments in the Contract Time and the Compensation or to the method to be used to determine the adjustments, or give the Contractor notice that the Change Quotation is not acceptable.

13.5 If the Change Quotation is agreed to, then the Owner shall issue a Change Order recording the Change, which shall be signed by the Owner and the Contractor. The value of the Work performed as a result of a Change Order shall be included in invoices for payment given by the Contractor in accordance with the terms of payment in Appendix B – Compensation and shall identify those portions of the invoice charged for the Change Order.

13.6 If the Owner requests the Contractor to provide a Change Quotation and subsequently elects not to proceed with the Change, the Contractor shall be reimbursed in accordance with Appendix B – Compensation, or as otherwise agreed between the parties, for its reasonable costs incurred including design and engineering services, and the Owner shall issue a Change Order for these costs.

13.7 If the Owner requires the Contractor to proceed with the Change before the Owner and the Contractor agree, or, if the Owner and the Contractor have failed to agree upon the adjustment in Contract Time and the Compensation, then the Owner shall issue a Change Directive directing the Contractor to proceed with the Work.

13.8 Upon receipt of a Change Directive, the Contractor shall proceed promptly with the Change and:

(a) keep daily records of the time, materials and equipment employed in the Change and shall submit such records to the Owner’s Representative on a daily basis;

(b) the Compensation shall be adjusted in accordance with the rates set forth in Appendix B – Compensation; if applicable, or as negotiated by the parties, or failing such resolution, shall be settled in accordance with Appendix H – Dispute Resolution Procedure; and

(c) the Contract Time shall be adjusted by agreement between the Owner and the Contractor, or shall be settled in accordance with Appendix H – Dispute Resolution Procedure.

13.9 If, during the performance of the Work, the Contractor is of the opinion that any instruction, interpretation, decision or direction from the Owner should have, but has not,
resulted in a Contemplated Change Notice or Change Directive being issued, the Contractor shall give the Owner Work Days notice with a Change Quotation requesting an adjustment in Contract Time and the Compensation required. If the Contractor does not issue a Change Quotation within the specified time, then the Contractor shall have no claim for any claim against the Owner attributable to that instruction, interpretation, decision or direction.

13.10 If the Owner receives a Change Quotation from the Contractor pursuant to Section 13.9, the Owner shall promptly consider the Change Quotation and immediately issue a Change Order, Change Directive or advise the Contractor in writing that the Contractor’s request is denied. If the Contractor disputes the Owner’s decision, the Contractor shall, before proceeding with the Work, provide notice to the Owner disputing the Owner’s decision, but in all cases, the Contractor shall proceed with the Work. In such event, the Contractor shall keep daily records in accordance with Section 13.8(a), in respect of the disputed work. The Contractor’s entitlement to an adjustment in the Contract Time and the Compensation shall then be resolved in accordance with Appendix H – Dispute Resolution Procedure.

13.11 No modification, addition, deletion or other revision to the Owner’s Requirements shall be binding on either party unless set out in a Change Order, required by a Change Directive or determined by Appendix H – Dispute Resolution Procedure. Neither the keeping of daily records in respect of disputed work nor the signing of those records by the Owner’s Representative shall be considered an admission of entitlement to payment by the Owner. Such records, if signed by the Owner, shall only constitute the Owner’s agreement that the time, materials and equipment were spent or employed in respect of the Work for which a Change Directive has been issued, or in respect of the Work in relation to which the Contractor has given notice of a dispute pursuant to Section 13.9.

13.12 The Contractor shall include in its Change Quotation all costs and changes in Contract Time reasonably expected to result from a Change including any impact costs or costs of acceleration.

13.13 If the Contractor encounters actual subsurface or other concealed physical conditions at the Work Site which are materially different from any representations of existing conditions made in the Owner’s Requirements, then the Contractor shall provide notice to the Owner within 5 Work Days of encountering the conditions and shall allow the Owner the opportunity for inspection before the conditions are further disturbed. If the Contractor fails to provide such notice to the Owner within the specified time then the Contractor shall have no claim for any additional costs or delays attributable to such subsurface or concealed physical conditions.

13.14 The Owner shall promptly investigate the conditions described by the Contractor pursuant to Section 13.13 and if the actual conditions encountered by the Contractor at the Work Site differ materially from the conditions represented in the Owner’s Requirements so as to substantially increase the cost to the Contractor or impact the Contract Time, then the Owner shall issue a Change Order to cover the increased cost and Contract Time.
Article 14 - Personnel

14.1 All communications between the Owner and the Contractor and all documents of whatever kind submitted to the Owner by the Contractor and its Subcontractors shall be in the English language. All of the Contractor’s and the Subcontractors’ personnel that deal with or communicate with the Owner shall be fluent in the English language. All training and supervision of the Owner’s operating personnel shall be in the English language.

14.2 The Contractor shall employ, or cause to be employed, only supervisory personnel who are appropriately qualified, trained and experienced in safety, efficiency and quality of work supervision, and if requested by the Owner, accredited or enrolled in a program for accreditation, in the manner specified by the Owner in the Owner’s Requirements.

14.3 At the Owner’s request, the Contractor shall reassign, replace or remove personnel who, in the Owner’s opinion, acting in good faith, negatively affect the efficiency, safety or Scheduled Functional Completion Date of the Work or who have committed a violation of the Policies.

14.4 The Contractor shall not employ, or continue to employ, non-Canadian workers in Canada, except in compliance with the Immigration Act (Canada) and regulations, as amended from time to time. The Contractor shall obtain and produce to the Owner’s Representative valid and subsisting employment authorizations with respect to all non-Canadian workers to be used to perform the Work.

Article 15 - Key Personnel

15.1 If not agreed to before the execution of the Contract, the Contractor shall submit a proposed organisational chart for the Owner’s approval, as part of the Execution Plan. The organisational chart shall show the Key Personnel and other supervisory and staff personnel who shall be executing the Work, together with their respective job titles.

15.2 The Owner shall identify any of the Key Personnel to which the Owner objects within 14 Work Days and if the Owner does not provide the Contractor with its objections to the Key Personnel, the Owner shall be deemed to have accepted the Key Personnel.

15.3 If the Owner objects to any of the Key Personnel in accordance with Section 15.2, then the Contractor will promptly prepare a new organisational chart identifying the Key Personnel for the Owner’s approval. This process shall be repeated until the Owner approves the Key Personnel.

15.4 Once the Owner has approved the organisational chart identifying the Key Personnel, the Contractor shall within Work Days arrange for each of the Key Personnel to complete and execute an agreement in the form of the Key Employee Confidentiality Proprietary Information and Consent Agreement, attached as part of Appendix G – Forms.
15.5 Subject to Section 15.6, the Contractor shall not, without the Owner’s consent, make any changes to the Key Personnel or an organisational chart that has been approved by the Owner.

15.6 If any Key Personnel leave the Contractor’s workforce, the Contractor shall forthwith replace such Key Personnel with personnel possessing those qualifications necessary for the proper performance of the functions to which assigned. Where the Compensation for Work, or part thereof, is based on a reimbursable basis, then the Owner shall have the right to determine if the replacement personnel is suitable to the Owner, and if not suitable, the Contractor shall provide further replacement personnel until the Owner determines that the replacement person is suitable to the Owner.

Article 16 - Subcontracts and Assignment

16.1 The Contractor shall provide notice to the Owner of its intention to subcontract the performance of any Work or the supply of equipment and materials and of the intended Subcontractor before entering into any subcontract. The Owner may for reasonable cause, and acting in good faith, object to the use of a proposed Subcontractor and require the Contractor to obtain another Subcontractor. Any reviews or approvals by the Owner pursuant to the provisions of this Article or elsewhere in this Contract shall not release or relieve the Contractor of any of its obligations under this Contract or create any contractual relations between the Owner and any Subcontractor. The Contractor shall require any Subcontractor to agree to be bound by this Contract and to abide by the Owner’s requirements for safety and loss management.

16.2 Prior to the Commencement Date, the Contractor shall provide the Owner’s Representative with a list of the names and addresses of all Subcontractors and others who the Contractor proposes to perform any part of the Work. The Contractor shall provide the Owner’s Representative with any proposed changes to this list during the Contract Time.

16.3 Subject to Article 6 - Owner’s Specified Materials and Subcontractors, the Contractor shall be fully responsible for any part of the Work performed by Subcontractors and for the acts or omissions of Subcontractors and all persons either directly or indirectly employed by them, to the same extent as the Contractor is for its own acts or omissions. Without in any way limiting the Contractor’s obligations pursuant to the provisions of this Article or elsewhere under this Contract, the Contractor shall secure compliance with and enforce, at its own expense, for the benefit of the Owner, each of the contracts concluded by the Contractor with Subcontractors.

16.4 The Contractor shall not assign the Contract, or any part thereof, without the prior approval of the Owner.

16.5 The Owner may assign this Contract including all rights and obligations hereunder, at any time without the prior agreement of the Contractor, provided that the Owner shall remain liable for the Owner’s obligations under this Contract, unless the Contractor provides its consent to release the Owner, which consent shall not be unreasonably withheld.
16.6 The Contractor shall enforce the warranty obligations of its Subcontractors, and upon the request of the Owner, shall assign any warranty to the Owner. All contracts between the Contractor and its Subcontractors shall provide that warranties given by the Subcontractor shall be given to both the Contractor and the Owner and the warranties may be enforced by either the Contractor or the Owner.

16.7 The Contractor shall request and use its best efforts to obtain for the benefit of the Owner, the best warranties and guarantees that it is possible to secure from its Subcontractors without impact to cost and, as a minimum, shall obtain and provide to the Owner the warranties required by the Contract. The Contractor shall do all things and provide all assistance reasonably necessary to enable the Owner to enforce warranties and guarantees provided by its Subcontractors.

Article 17 - Inspection and Testing

17.1 The Inspection and Test Plan shall be prepared by the party specified in the Owner’s Requirements as having responsibility for the preparation of it and shall be followed when any inspection or testing of the Work is performed.

17.2 At all times during the progress of the Work, the Owner shall have the right to inspect or witness any part of the Work.

17.3 The Contractor shall inspect and be solely responsible for the inspection of all workmanship, materials and equipment furnished by itself or its Subcontractors in respect of the Work, to ensure conformity in each and every respect to the Contract and the Law and to ensure that good and proper construction practices are followed and that the Work is performed in a safe and environmentally sound manner.

17.4 If the Law requires testing of any part of the Work, the Contractor shall provide the Owner with sufficient advance notice of the arrangements for the test.

17.5 If the Owner’s Requirements require any test to be performed or witnessed by the Owner, the Contractor shall provide the Owner’s Representative with sufficient advance notice of its readiness for the test and the Owner shall then promptly perform or witness the test. If the Owner fails to witness the test when scheduled, any re-testing required by the Owner shall constitute a Change.

17.6 If any portion of the Work is closed or covered by the Contractor without the Owner’s permission and before the Owner has been given the opportunity to perform or witness a required test, then, if required by the Owner, that portion of the Work shall be opened or uncovered for testing and re-closed or recovered, all at the Contractor’s expense and without increasing the Contract Time.

17.7 Any Work which must be tested shall not be considered ready for inspection by the Owner until the Contractor has satisfied itself and notified the Owner’s Representative, that, in the Contractor’s opinion, that portion of the Work can successfully pass the test.
17.8 Any inspection, testing or witnessing of any of the Work or tests by the Owner, or omission or failure on the part of the Owner to inspect or test any of the Work shall not be construed to be an acceptance of any such Work, or as relieving the Contractor of its responsibilities pursuant to the Contract or the Law.

17.9 The Contractor shall ensure that all tools, equipment, temporary facilities and other items used in accomplishing the Work, whether purchased, rented, manufactured or fabricated by, or under the direction of the Contractor, or otherwise provided by the Contractor or Subcontractors, are safe, environmentally sound and maintained in good condition, capable of performing their required functions. In the case of tools, meters and other devices which require calibration, the Contractor shall ensure that such calibration is performed on the frequency recommended by the manufacturer and in accordance with normal industry practice.

17.10 The Owner reserves the right to inspect all tools and equipment brought on to the Work Site at any time during the progress of the Work. The Owner’s Representative may require the Contractor to supply a qualified, independent engineering evaluation or certification that any item in question is suitable for its intended purpose, or to reject any item and require replacement with a proper and suitable item which is satisfactory to the Owner’s Representative. If any tool or item of equipment is deemed by the Owner to be unsafe, environmentally unsound or incapable of doing the work for which it is intended, then the Contractor shall repair or replace it with a safe, environmentally sound and suitable tool or item of equipment at the Contractor’s expense.

17.11 The Owner may, at any time during the progress of the Work, conduct inspections or tests on any part thereof, to determine whether the Work is in accordance with the Owner’s Requirements. Such tests shall be at the sole expense of the Owner, unless the result of a Performance Test determines that the Work is not in accordance with the Owner’s Requirements, in which case the Contractor shall reimburse the Owner for such Performance Test and redo or repair the Work ready for a new Performance Test to be performed by the Owner.

17.12 Where the Owner’s Requirements specify that the Contractor shall prepare, or the Owner’s Requirements are silent on the point, then the Contractor shall develop and provide to the Owner, for the Owner’s review and approval, an Inspection and Test Plan in time to allow the Owner to perform the inspections complated by this Article 17 - Inspection and Testing.

**Article 18 - Performance Tests**

18.1 If Performance Tests are specified in the Owner’s Requirements, this Article shall apply.

18.2 Performance Tests may be stipulated in the Owner’s Requirements to be performed before, after, or both before and after Functional Completion and shall be performed by that party specified in the Owner’s Requirements.

18.3 Where the Owner’s Requirements stipulate that one or more of the Performance Tests shall be performed after Functional Completion, the Owner shall pay the Contractor for
the Work, in accordance with this Contract, upon Functional Completion, and may, as stipulated in the Owner’s Requirements, hold back security until the Work passes the Performance Tests.

18.4 Unless otherwise stipulated in the Owner’s Requirements:

(a) the Owner shall provide the necessary labour, materials, electricity, fuel, heat, chemicals, disposal of fluids and materials and water for the Performance Tests;

(b) the Contractor shall carry out the Performance Tests in accordance with the manuals provided by the Contractor under Section 5.4; and

(c) the Contractor shall provide such guidance as specified in the Owner’s Requirements during the course of such Performance Tests.

18.5 When the Contractor considers that the Work, or any System, will pass the Performance Tests, the Contractor shall notify the Owner that the Contractor may perform the Performance Tests on, or to, the Work or a System.

18.6 If the Work or a System, or part thereof, passes one or more Performance Tests, the Owner shall promptly give notice acknowledging the success of the same to the Contractor.

18.7 If the Work or a System or part thereof, fails to meet one or more Performance Tests, the Owner shall promptly provide a notice of such failure to the Contractor and the Owner may:

(a) reject such Work or System, or part thereof, which has failed to pass a Performance Test; or

(b) conditionally accept such Work or System, or part thereof, on conditions which shall be stated in the notice to the Contractor.

18.8 If the Work or a System, or part thereof, fails one or more of the Performance Tests, then the Contractor shall:

(a) reimburse the Owner for all the Owner’s direct costs in performing such failed Performance Tests;

(b) prepare a report to the Owner, for the Owner’s approval, proposing the alterations the Contractor will make to the Work or System, or part thereof, to bring the Work or System to a condition which the Contractor considers will pass the Performance Tests;

(c) redo or repair the Work or System, or part thereof, and repair any damage to the Work or System caused by the same in failing to meet the Performance Test, to make such Work or System, or part thereof, ready for a repeat of the failed Performance Tests.
18.9 If the Work or a System, or part thereof, fails to pass one or more Performance Tests as a result of actions or omissions by the Owner, the Owner shall promptly issue a Change Order providing a Change in the Contract Time or the Compensation, or both, as the case may be, to the Contractor for such Performance Tests and the Contractor shall proceed with its obligations relating to the Performance Tests as set out in the Owner’s Requirements.

18.10 If any revenue is generated from any of the Performance Tests, such revenue shall be to the account of the Owner.

Article 19 - Functional Completion

19.1 If the Work is divided into Systems, the Contractor shall be entitled to apply for a Functional Completion Certificate for each System.

19.2 The Contractor may apply by notice to the Owner’s Representative for a Functional Completion Certificate not earlier than 14 days before the Work or a System will, in the Contractor’s opinion, be complete and ready for taking over by the Owner. Such notice shall include the Deficiencies which are acknowledged by the Contractor.

19.3 After receipt of the Contractor’s application for a Functional Completion Certificate, the Owner’s Representative shall, within 28 days after the receipt of the same:

(a) reject the application, giving reasons and specifying the Work required to be done by the Contractor, which reasons shall specify Category “A” Deficiencies, related to the Work or System for which the application is made, and which, if not remedied, will prevent the Owner from testing, commissioning or starting-up the Facilities, and the Category “B” Deficiencies, related to the Work or System for which the application is made, which will not prevent the Owner from testing, commissioning or starting-up the Facilities; or

(b) issue the Functional Completion Certificate to the Contractor, stating the date on which the Work or a System was completed in accordance with the Contract, attaching a list of Category “B” Deficiencies, related to the Work or System for which the application is made, and which if not remedied will not prevent the Owner from testing, commissioning or starting-up the Facilities, and the Contractor shall cease to be liable for, and shall relinquish care, custody and control of, such Work or System from the date of the Functional Completion Certificate and responsibility shall pass to the Owner.

19.4 If the Owner determines that the Work, or a System, does not meet Functional Completion, as set out in the Owner’s Requirements, the Owner shall provide a notice to the Contractor as specified in Section 19.3(a) and the Owner’s Representative may:

(a) order further repetition of Performance Tests specified to be performed before Functional Completion in the Owner’s Requirements, or other tests necessary to determine Functional Completion; or
(b) issue a **Functional Completion Certificate**, in which case, if the **Owner** so requires, the **Compensation** shall then be reduced by such amount as may be agreed by the **Owner** and the **Contractor** (in full satisfaction of such failure only), and the **Contractor** shall then proceed in accordance with the **Contractor’s** other obligations under the **Contract**.

19.5 If the **Owner’s Representative** fails either to issue the **Functional Completion Certificate** or to reject the **Contractor’s** application within the period of 28 days, the **Functional Completion Certificate** shall be deemed to have been issued on the date specified by the **Contractor for Functional Completion** in the notice in accordance with Section 19.2.

19.6 Where the **Contractor's** application for a **Functional Completion Certificate** is rejected by the **Owner** in accordance with 19.3(a), the **Contractor** shall not re-apply for a **Functional Completion Certificate** under Section 19.2 until the Category "A" **Deficiencies** are remedied.

19.7 The **Owner** shall not use any part of the **Work** unless the **Owner’s Representative** has issued a **Functional Completion Certificate** for such part, or a **Functional Completion Certificate** has been deemed to have been issued in accordance with Section 19.5.

19.8 If the **Contractor** is prevented from carrying out a **Performance Test** by a cause for which the **Owner** or one or more **Other Contractors** are responsible, the **Contractor** shall notify the **Owner** within 48 hours of such delay and if the **Contractor** is further prevented during the next 48 hours from doing so, the **Owner** shall issue a **Change Order** to compensate the **Contractor** for a **Change in Compensation** or **Contract Time**, as may be applicable.

19.9 After a **Functional Completion Certificate** is issued, either for a **System** or the whole of the **Work**, the **Owner** may continue to identify **Deficiencies**. Where **Deficiencies** are identified after issuance of a **Functional Completion Certificate**, the procedure for dealing with and resolving such **Deficiencies** shall be as set forth in Appendix D – Warranty Items Procedure.

[**NTD:** Appendix D – Warranty Items Procedure is a flow chart. This Appendix must be modified on a Project-Specific basis and the flow chart is only included as one example of how to deal with **Deficiencies**.]

**Article 20 - Final Completion**

20.1 It is a condition precedent to the issuance of a **Final Completion Notice** that the **Contractor** satisfy each of the following requirements:

(a) the **Work** has been fully completed in accordance with the terms and conditions of this **Contract**;

(b) all **Deficiencies** with respect to the **Work** have been remedied to meet the requirements of the **Contract**;

(c) all obligations of the **Contractor** to other parties in relation to the **Work**, for which the **Owner** could in any way be held responsible, have been fully satisfied; and
(d) the Contractor has delivered to the Owner the following:

(i) a statutory declaration in the form included in Appendix G – Forms and modified as required to include the following:

(a) the amount of final sums payable;
(b) the date the Contractor completed the Work, to evidence the expiration of the term for filing liens; and
(c) the full payment of all payrolls and other similar indebtedness, and all other sums and obligations whatsoever incurred by the Contractor in carrying out the Work, including, without limitation, payments to Subcontractors or for materials or equipment;

(ii) a Workers’ Compensation Board clearance certificate;

(iii) any As-Built Drawings and operations manuals for which the Contractor is responsible;

(iv) assignments of any warranties provided by manufacturers or suppliers of materials;

(v) written evidence of good standing from union representatives, if any; and

(vi) a Release and Certificate of Final Payment, in the form provided in Appendix G – Forms, releasing all of the Contractor’s claims against the Work and the Owner arising under or by virtue of this Contract, other than such claims, if any, as may be expressly identified by their nature and amount by the Contractor in the Release and Certificate of Final Payment, or as attached as an attachment thereto.

20.2 When conditions precedent set out in Section 20.1 have been met by the Contractor, the Owner shall issue to the Contractor a Final Completion Notice.

Article 21 - Liquidated Damages

[NTD: This Article to be used and modified on a project-specific basis.]

21.1 Liquidated Damages shall be paid by the Contractor to the Owner in accordance with Appendix E – Liquidated Damages.

21.2 Subject to the Contractor’s obligations pursuant to Section 32.1, Liquidated Damages shall be the Owner’s sole remedy to claim from the Contractor for any damages due to delay or failure to meet Performance Guarantees.

21.3 In the event that the Contractor does not complete the Work or reach Functional Completion, then the limit of the damages for delay or failure to meet Performance Guarantees that the Owner shall be entitled to is the aggregate of the Liquidated Damages.
Article 22 - Incentive Fee

[NTD: This Article to be used and modified on a project-specific basis.]

22.1 The Incentive Fee shall be paid to the Contractor by the Owner in accordance with Appendix F – Incentive Fee.

Article 23 - Warranty

23.1 If a defect in the Facilities is discovered during the Warranty Period and if the Owner has notified the Contractor in writing of such Deficiency no later than 30 days after the expiry of the Warranty Period, the Contractor shall, at its own risk and expense:

(a) remedy without delay, and in a manner satisfactory to the Owner, such defect;

[NTD: The parties are to negotiate the applicability of the following warranties on a project-specific basis:

- repair or replace any portion of the Facilities damaged as a result of such defect or damaged by the remedy of such defect;
- repair or replace all equipment, materials, supplies, or work performed by Other Contractors, damaged as a result of such defect, or damaged by the remedy of such defect; and
- repair or replace any property, including but not limited to land belonging to the Owner, or others, which is damaged as a result of the defect or damaged by the remedy of such defect.]

23.2 Should the Contractor fail to remedy a defect, or commence a remedy on a defect, in accordance with Section 23.1, within 7 days of the Owner providing a notice to the Contractor to remedy the same, the Owner may proceed with any activities necessary to remedy the defect and the Contractor shall be liable to and shall indemnify the Owner for any and all reasonable costs and expenses incurred by the Owner in doing so and the Owner may retain and deduct such amount from payments or other monies due, or which may become due, to the Contractor, howsoever arising.

23.3 The Contractor further warrants any and all corrective actions it performs in respect of defects appearing during the Warranty Period for a period of 8 months from completion of the remedial work.

23.4 The Contractor shall immediately advise the Owner’s Representative of any defects in workmanship, defects, errors, omissions or mistakes in the Work that it discovers or becomes aware of during the Contract Time or the Warranty Period.

23.5 The Contractor shall perform its warranty obligations set forth in this Article 23 - Warranty in a manner that keeps disruptions to the Owner’s continued operations at a minimum.
23.6 Neither acceptance of the Work by the Owner, nor payment for performance of the Work, shall relieve the Contractor from any responsibility for defects in the Work.

Article 24 - Compliance with Law

24.1 The Contractor shall act in accordance with all Policies and the Law and with a view to the timely and cost effective completion of the Work in accordance with the Milestones.

24.2 Where there is a change in the Law after the effective date of this Contract, the Contractor shall be responsible for ensuring that the Work complies with the Law, but any time or cost associated with such change shall be to the account of the Owner. If the Contractor considers such change to be a Change, the Contractor may make a claim for such Change under Section 13.9.

24.3 The Contractor shall comply with and shall ensure that its employees and agents comply with and shall contractually require its Subcontractors and their respective employees and agents to comply with all applicable Law in connection with the Work.

24.4 The Contractor shall obtain from governmental authorities or other third parties, and pay for, those licenses, permits and approvals required by the Law and the Contract to perform the Work, except those licenses, permits and approvals required with respect to the land-use aspects of the Work to be performed on the Work Site, and except for any licenses, permits and approvals required by the Contract to be obtained by the Owner as stipulated in Appendix A – Owner’s Requirements.

24.5 Subject to Section 24.2, if the Contractor discovers any variance between the Law and any materials purchased or supplied by the Contractor or Subcontractors, the Contractor shall promptly notify the Owner before proceeding with the part of the Work affected, and shall make the necessary revisions to the materials to comply with the Law, at the Contractor’s expense.

Article 25 - Safety and Loss Management

25.1 The Owner and the Contractor are committed to safety and the application of loss management principles in the conduct of their business. The parties recognize that excellence in safety and loss management can only be achieved through the active participation of everyone, including Subcontractors and their respective employees, consultants and agents.

25.2 The Contractor shall have the highest regard for safety, emergency procedures and loss management at all times during the performance of the Work. Accordingly, the Contractor shall at all times be responsible for safety and loss management in the performance of the Work, including, but not limited to, protecting the employees of the Owner, the Contractor, Other Contractors, Subcontractors, visitors to the Work Site and the general public from injury or death and protecting the Work Site, the Owner’s property and the property of third parties from loss or damage. Without limiting the generality of the foregoing, the Contractor shall comply with all safety requirements specified in the Contract.
[NTD: This clause is drafted for a project where the Contractor has exclusive control of the Work Site. Modify as necessary on a project-specific basis.]

25.3 The Contractor shall comply with the Safety Plan and any Policies relating to safety, emergency and loss management.

25.4 All employees of the Contractor and Subcontractors and all Work Site visitors must successfully complete any of the Owner’s safety orientation courses and other similar courses stipulated in the Owner’s Requirements before being allowed access to the Work Site, and it shall be the Contractor’s responsibility to ensure that they have done so.

25.5 Subject to Section 25.6, [NTD: Insert Owner, Contractor or the name of the Other Contractor, as applicable.] shall be the “prime contractor”, as that term is defined in the Occupational Health and Safety Act (Alberta), for the Work as stipulated in the Owner’s Requirements.

25.6 Where the Contractor is stipulated as the “prime contractor” for the purposes of the Occupational Health and Safety Act (Alberta) in the Owner’s Requirements, the Owner may take over the role of “prime contractor” at any time as may be stipulated in the Owner’s Requirements.

25.7 For all Work performed on the Work Site, the Contractor shall have an alcohol and drug policy that is at least equivalent to the requirements set out in the Construction Owners Association of Alberta Alcohol and Drug Guidelines and Work Rule or shall comply with the Construction Owners Association of Alberta Alcohol and Drug Guidelines and Work Rule, current as of the effective date of this Contract.

25.8 The Contractor shall ensure that its, and its Subcontractors’ employees and agents, attending at the Work Site complete the Construction Safety Training System (CSTS) instituted by the Alberta Construction Safety Association, together with any renewable training necessary to maintain CSTS certification, and are in possession of accredited documentation proving the successful completion of CSTS topics 1 through 12 inclusive.

Article 26 - Work Area and Clean Up

26.1 The Contractor shall be responsible for keeping all its working and storage areas clean, orderly and secure.

26.2 The Owner is not responsible for theft, loss or damage to the Contractor’s tools, equipment or materials howsoever caused, except where caused by the negligent act or omission of the Owner or those for whom in Law it is responsible.

26.3 The Contractor shall not, and shall ensure that its Subcontractors do not, use, transport, or store Hazardous Material at the Work Site except with the prior approval of the Owner’s Representative. All Hazardous Material used, transported or stored shall be dealt with in accordance with, and the Contractor shall comply with, the Law, the Contract and the Policies.
26.4 During the performance of the Work, the Contractor shall comply fully with the Contract and the Owner’s safety and emergency guidelines and publications regarding clean up. The Contractor shall clean up, remove and dispose of all surplus materials, containers, trash and debris resulting from the Work. Upon completion of the Work, or earlier termination of the Contract, the Contractor shall promptly clean up and remove all equipment, tools and surplus materials from the Work Site as specified by the Owner and shall leave the Work Site clean and ready for the Owner’s use and occupancy.

Article 27 - Title and Responsibility

27.1 Except for any proprietary processes of the Contractor listed in Appendix A – Owner’s Requirements, all of the Work shall belong to the Owner, and accordingly the Contractor shall have no proprietary right or interest in the Work. The Contractor shall not use, copy or disclose any of the Owner’s Requirements or the Work for any purpose other than performing the Work. Subject to the foregoing, the Contractor may retain for its own records a copy of the plans and specifications.

27.2 Notwithstanding Section 27.1, where a technology, process or work method belongs to, or is developed by the Contractor or Subcontractor and is not the result of Confidential Information provided by the Owner, the proprietary rights to that technology, process or work method shall remain with the Contractor or Subcontractor. Where proprietary rights remain with a party other than the Owner, then the Owner and its assignees shall, and are hereby granted, the right and irrevocable license without charge to have, retain and use information in respect thereof, for the purpose of the Work and the operation, repair, maintenance, re-building or renovation of the Work or any portion thereof.

27.3 Notwithstanding Section 27.1, or any other provision of the Contract, the Contractor shall be responsible for possession of the Engineering Services until received by the Owner. If the Engineering Services, or any part thereof is lost, damaged or destroyed prior to receipt by the Owner, then the Engineering Services, or portion thereof, as applicable, shall be promptly redone and replaced by the Contractor, at its expense, unless the loss, damage, or destruction was caused by the Owner or persons for whom in Law it is responsible.

27.4 Subject to the Owner’s rights under Section 16.5, the Owner agrees that it shall not:

(a) sell to third parties the Engineering Services, except as part of the sale of the Project;

(b) use the Engineering Services to build other facilities, plants or structures of a similar nature or purpose; or

[NTD: The COAA Contracts Committee could not reach consensus on this sub-clause. Generally speaking, the Owners could not agree to this sub-clause as drafted. On the other hand, the Contractors were concerned that there may be liability or defence costs associated with the use of the Contractor’s documents on projects not part of this Contract. The COAA Contracts Committee discussed drafting a provision stating that the Owner could use the Engineering Services on]
other projects and the Contractor would not be liable, but could not reach consensus on an indemnification for the Contractor arising from third party claims.]

(c) distribute the Engineering Services, to third parties except for the purpose of operating, maintaining, repairing or replacing, re-building or renovating the Owner’s property encompassing or relating to the Work, or, for the purpose of performing other work directly related to the Work.

27.5 The title to all Work completed or in the course of construction at the Work Site and all Goods, except tools and equipment owned or rented by the Contractor or Subcontractors and not intended to be incorporated into the Work, shall become the property of the Owner upon the earlier of payment by the Owner on account thereof or delivery to the Work Site.

27.6 Notwithstanding the provisions of Section 27.5, until the Owner has issued a Functional Completion Certificate or a Final Completion Notice, whichever is earlier, the Contractor shall retain all risk with respect to and be responsible for:

(a) all items supplied by the Contractor or its Subcontractors which are to be incorporated into the Work or used in performance of the Work;

(b) all items supplied by the Owner to the Contractor for incorporation into the Work or for use in performing the Work;

(c) all temporary structures or facilities used in the performance of the Work; and

(d) any Work completed or in progress.

27.7 No materials, supplies or equipment incorporated into the Work shall be subject to any general security agreement, chattel mortgage, financing contract or other agreement by which an interest therein is retained by the seller, or any other party.

Article 28 - Patents and Licenses

28.1 The Contractor shall indemnify and save the Owner harmless from all claims costs and demands, including legal fees on a solicitor-and-own-client (indemnity) basis, arising out of any patent, trademark, copyright or industrial design infringement pertaining to any equipment, machinery, materials, compositions, processes, methods or designs supplied by the Contractor, or its Subcontractors, in the performance of the Work.

28.2 The Owner shall indemnify and save the Contractor harmless from all claims and demands, including legal fees on a solicitor-and-own-client (indemnity) basis arising out of any patent, trademark, copyright or industrial design infringement pertaining to any equipment, machinery, materials, compositions, processes, methods or designs supplied or specified for use by the Owner to the Contractor for use in connection with the Work.

28.3 The Contractor shall promptly give notice to the Owner if the Contractor has or acquires knowledge of any patent, trademark, copyright or industrial design or similar right under which an action could reasonably be expected to be maintained because of the use or
28.4 The Contractor grants the Owner a non-exclusive, royalty-free, perpetual, irrevocable license for the purpose of operating and maintaining the Facilities:

(a) to use any and all patents, industrial designs, copyrights, designs, process and technology related to the Work, that the Contractor owns or controls; and

(b) to make, have made and use the equipment, machinery, materials, compositions, designs, methods and processes supplied by the Contractor under the Contract.

28.5 The rights granted to the Owner by the Contractor under Section 28.4 shall be assignable by the Owner to any party to whom the Owner may transfer all or part of title to the Work or the Project.

28.6 The Owner shall be entitled, at its own expense, to participate in or conduct the defence of any claim with respect to which it is entitled to indemnity under Section 28.1 or in respect of which it is required to indemnify the Contractor under Section 28.2 and to settle any claim for which it has accepted responsibility but the Owner shall not be liable to indemnify any other party for payment of any settlement unless it has consented to the settlement.

Article 29 - Confidential Information and Publicity

29.1 Each party shall keep all Confidential Information in confidence and shall not disclose it to others without the prior approval of the other party. The Contractor shall not use the Confidential Information, except in performance of the Work.

29.2 Notwithstanding Section 29.1, the Contractor may disclose Confidential Information to those of its employees, Subcontractors and their respective employees to whom disclosure is required in order for the Contractor to perform the Work, provided the Contractor shall ensure that its employees and agents comply with, and shall contractually require its Subcontractors and their respective employees and agents to comply with Section 29.1.

29.3 The Contractor shall not disclose any of the Owner’s Requirements or the Work to others without the prior approval of the Owner’s Representative, except as necessary to perform the Work.

29.4 Notwithstanding Section 29.1 or Section 29.3, Confidential Information may be disclosed by a party if that party is required to disclose the Confidential Information as a result of an arbitrator appointed under Appendix H – Dispute Resolution Procedure or an order of a court of competent jurisdiction. If disclosure is required by an arbitrator or an order of
a court, the disclosing party shall provide the other party with immediate notice of such arbitration or court order and shall only disclose the minimum amount of Confidential Information to comply with the arbitration or court order.

29.5 The Contractor shall not use the Owner's name, or the names of any of its affiliates (as defined in the Business Corporations Act (Alberta) and the registered or unregistered trademarks of the Owner or its affiliates in any slogans or otherwise in any advertising or promotional materials or publicity releases, and shall not take, permit to be taken or use any photographs of the Work Site, without the prior approval of the Owner’s Representative.

Article 30 - Proprietary Information

30.1 Subject to Section 27.1, where a technology, process or work method has been developed by the Contractor or its Subcontractors arising out of the Work, that is not the result of the Owner’s Confidential Information or the Owner’s Requirements, the proprietary rights to that technology, process or work method shall remain with the Contractor or its Subcontractors, as the case may be. Where proprietary rights remain with a party other than the Owner, the Owner and its assigns, shall have the right, and are hereby granted the right, to have and to retain a copy for their own use, and to use, any Engineering Services, As-Built Drawings or other information, for the purpose of the Work or the operation, repair, maintenance, replacement, re-building or renovations of the Facilities.

30.2 The Contractor shall keep and maintain adequate and current records of all Proprietary Information.

30.3 Subject to Section 30.1, the Contractor shall keep all Proprietary Information in confidence, shall not use it, or any part of it except in the performance of the Work and shall not disclose it to others, without the Owner’s prior consent.

Article 31 - Force Majeure

31.1 Either the Owner or the Contractor may claim that an Event of Force Majeure has taken place, by giving the other party verbal notice within 24 hours of the Event of Force Majeure, and, in addition, notice, together with a proposed plan of corrective action to resolve or minimize the effect of the Event of Force Majeure, within 48 hours of the Event of Force Majeure.

31.2 If the Owner has given a notice of an Event of Force Majeure, or the Owner agrees with a notice of an Event of Force Majeure issued by the Contractor that the Work or a portion thereof is affected by an Event of Force Majeure, then the Owner shall:

(a) cause the Contractor to complete the Work, with such time adjustments to the Contract Time as are required by the Event of Force Majeure; or

(b) suspend the Work or any portion thereof in accordance with Article 34 - Suspension; or
(c) terminate the Contract or any portion thereof in accordance with Section 35.1 and Section 36.5(e).

31.3 If the Owner does not agree that the Work or any portion of the Work is affected as a result of an Event of Force Majeure for which the Contractor has given notice under Section 31.2, then the Contractor shall complete the Work in accordance with the Execution Plan and may request an adjustment to the Contract Time and the Compensation in the manner provided in Section 13.9.

31.4 If an Event of Force Majeure exists and continues for a period in excess of continuous Work Days and results in substantially all of the Work being stopped or suspended during that period, the Contractor may terminate the Contract and the Owner shall pay the Contractor for the Work performed to the date of termination.

31.5 Any delay or failure on the part of either the Owner or the Contractor which is a result of an Event of Force Majeure, shall not constitute default hereunder or give rise to any claim for damages or result in any increase to the Compensation.

Article 32 - Delays Caused by the Contractor

32.1 If the Contractor is responsible for a delay in the progress of the Work, or fails to complete any portion of the Work within the time limits set forth in the Execution Plan, then the Contractor shall, at no additional cost to the Owner, provide a recovery plan and perform whatever acts are required or requested by the Owner’s Representative to make up the lost time and to avoid any further delay in the performance of the Work, including, without limitation, work overtime, and acquire and use any necessary additional labour and equipment.

Article 33 - Delays not Caused by the Contractor

33.1 If the Contractor is delayed in the performance of the Work by an act or omission of the Owner or Other Contractors, contrary to the provisions of the Contract, then the Contract Time shall be extended for such reasonable time as may be necessary to allow the Contractor to make up the delay.

33.2 If the Contractor is delayed in the performance of the Work by an order issued by a court or other public authority having jurisdiction, providing that such order was not issued as the result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, then the Contract Time shall be extended as agreed by the parties or as resolved under Appendix H – Dispute Resolution Procedure.

33.3 If the Contractor is forced to shut down all or a portion of its operation by reason of:

(a) any act or omission of the Owner or of any Other Contractor;

(b) failure of the Owner to provide the Work Site; or

(c) an error or omission in the Owner’s Requirements; then
the Contractor shall give to the Owner notice of such shut-down, within 6 hours of such shut-down, indicating the number and classification of persons and number and description of equipment affected thereby.

33.4 In the event of a delay pursuant to Section 33.3, the Contractor shall be reimbursed by the Owner in accordance with the rates set out in Appendix B – Compensation or its reasonable costs incurred.

33.5 No claim for delay and no extension of time on account of delay shall be made by the Contractor unless notice of claim with a Change Quotation is given to the Owner not later than * Work Days after the commencement of delay, provided however, that in the case of a continuing cause of delay only one notice of claim shall be necessary.

Article 34 - Suspension

34.1 In addition to any other right that the Owner may have under the Contract or in Law, the Owner may, at any time or times, by notice to the Contractor specifying the effective date of the suspension, require the Contractor to suspend the Work, or any portion thereof.

34.2 Upon providing notice under Section 34.1, the Owner shall arrange to immediately discuss with the Contractor the specific requirements of the suspension and whether or not the Owner anticipates that demobilization, remobilization or idle equipment or personnel will occur as a result of the suspension.

34.3 Upon receiving notice, the Contractor shall discontinue the Suspended Work, place no further purchase orders or subcontracts with respect to the Suspended Work, and promptly make reasonable efforts to obtain suspension terms satisfactory to the Owner with respect to all purchase orders, subcontracts, supply contracts and rental agreements related to the Suspended Work. The Contractor shall continue to perform all other portions of the Work which have not been suspended by the Owner.

34.4 Where requested by the Owner, the Contractor shall advise the Owner of:

(a) the number of the Contractor's personnel made idle by the suspension;

(b) the labour costs resulting from the Contractor's personnel made idle by the suspension;

(c) transportation costs for the Contractor's personnel released during the suspension;

(d) the equipment made idle and associated equipment costs resulting from the suspension; and

(e) any other costing, labour, material or equipment information relating to the suspension that the Owner may require.

34.5 The Owner may at any time authorize resumption of the Suspended Work or any part thereof, by giving the Contractor reasonable notice specifying the part of the Suspended
Work to be resumed and the effective date of such resumption. The Contractor shall resume the Suspended Work on the date and to the extent specified in the notice provided that if the date for resumption is more than \* days after the date of suspension, the Contractor may, by Change Quotation given within \* days of receipt of the notice of resumption, request a Change Order deleting the Suspended Work from the Contract.

34.6 The Contractor shall use its employees, equipment and materials in such manner, and take such other steps as may be necessary or desirable to minimize the costs associated with the Suspended Work. During the period of Suspended Work, the Contractor shall secure and protect the Suspended Work and all materials and equipment to be used or incorporated therein.

34.7 In relation to Suspended Work, the Owner shall reimburse the Contractor for those costs, exclusive of profit, reasonably incurred by the Contractor as a direct result of the suspension of the Work in accordance with Appendix B – Compensation. The Owner shall not be liable for any damages or loss of profits on account of the Suspended Work or any part thereof, or the deletion of Suspended Work from the Contract.

Article 35 - Termination for Convenience

35.1 In addition to any other rights that the Owner may have under the Contract or in Law, the Owner may, at any time, terminate the Contract, the Work or any portion thereof by giving notice to the Contractor specifying the Work or portion thereof to be terminated and the effective date of the termination.

35.2 Upon receipt of a notice under Section 35.1, the Contractor shall discontinue the Work in accordance with the notice, and shall take whatever steps are necessary or desirable to terminate the Work in a safe, cost effective and timely manner with due consideration to environmental impacts. The Contractor shall continue to perform all other portions of the Work not terminated, if any, in accordance with the Contract. The Owner shall reimburse the Contractor for those costs reasonably incurred by the Contractor as a direct result of the termination of the Contract, the Work, or any portion thereof.

[NTD: The COAA Contracts Committee recommends that the parties consider that no lost profit be paid on the termination portion of the Work.]

Article 36 - Termination for Cause

36.1 Without limiting the generality of Section 35.1, the Owner may immediately terminate the Contract by notice to the Contractor in any of the following circumstances:

(a) if the Contractor becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the Contractor;

(b) if an order is made or resolution is passed for the winding up or liquidation of the Contractor;
(c) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the Contractor or any of the Contractor’s property;

(d) if the Contractor ceases to carry on business in the ordinary course; and

(e) if a creditor takes possession of any of the Contractor’s property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the Contractor.

36.2 Upon receipt of a notice pursuant to Section 36.1, the Contractor shall discontinue the Work in accordance with the notice, and shall take such steps as may be necessary or desirable to minimize the costs associated with the termination of the Work.

36.3 In addition to any rights the Owner may have at Law, if the Contractor is in default in carrying out any of the terms, conditions, covenants or obligations of the Contract, or has made a false representation, declaration or warranty, the Owner may give the Contractor notice of default.

36.4 Where the Owner gives the Contractor a notice of default pursuant to Section 36.3, the Contractor shall have *Work Days* immediately following receipt of the notice, or such longer time as the Owner determines to be reasonable and has specified in the notice of default or has subsequently agreed upon in writing, to remedy such default, or commence to prosecute a remedy. If the Contractor fails to remedy the default, the Owner may by *Work Days* notice to the Contractor terminate the whole or any part of the Contract.

36.5 In the event the Contract or any portion of the Work is terminated pursuant to Section 36.1 or Section 36.4:

(a) the Contractor shall discontinue the Work in accordance with the notice and shall take such steps as may be necessary or desirable to minimize the costs to the Owner associated with the termination of the Work and the Owner shall not be liable for those costs incurred by the Contractor as a result of the termination of the Work;

(b) the Owner shall have the right to take possession of the Goods and the Contractor’s equipment, materials and plant and shall have the right to use the same to complete the Work;

(c) the Contractor shall execute and deliver to the Owner all documents required by the Owner, and shall take all steps required by the Owner, to assign to and fully vest in the Owner the rights and benefits of the Contractor under existing agreements with the Contractor’s Subcontractors, which are related to the Work.

(d) the Owner may complete or have others complete the Work at the Contractor’s expense;

(e) the Owner shall pay the Contractor for all Work satisfactorily performed to the date of termination, in accordance with Article 12 - Payment, less the sum of any monies already paid to the Contractor and any additional cost, loss or expense,
including legal fees on a solicitor-and-own-client (indemnity) basis, that the Owner incurs, suffers or sustains, including any amount the Owner must pay to obtain satisfactory completion of the Work by others;

(f) the Owner shall not be liable for any penalties, damages or loss of profits as a result of the termination of the Work or the Contract by the Owner.

36.6 The Contractor may immediately terminate the Contract by notice to the Owner in any of the following circumstances:

(a) if the Owner becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the Owner;

(b) if an order is made or resolution is passed for the winding up or liquidation of the Owner;

(c) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the Owner or any of the Owner’s property;

(d) if the Owner ceases to carry on business in the ordinary course; and

(e) if a creditor takes possession of any of the Owner’s property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the Owner.

36.7 Subject to a legitimate dispute between the parties, or a dispute being pursued in accordance with Appendix H – Dispute Resolution Procedure, should the Owner be in material default of its obligations under this Contract, the Contractor may provide a notice in *Work Days to the Owner that should the material default not be remedied, or the Owner commence to prosecute a remedy in relation to the material default, that the Contractor may suspend or terminate the Contractor’s obligations under the Contract.

36.8 The rights and remedies provided in this Article 36 - Termination for Cause are in addition to the rights and remedies provided by the Law, or under any other provision of the Contract.

Article 37 - Taxes

37.1 The Contractor shall be responsible for the payment of:

(a) all taxes imposed by reason of the performance or completion of the Work including but not limited to license, permit and registration fees and the Contractor’s income, profit, franchise, business, and personal property taxes;

(b) all employment taxes and contributions imposed by the Law or required to be paid on behalf of the employees of the Contractor or its Subcontractors, including but not limited to taxes and contributions for income tax, workers’ compensation,
unemployment insurance, old age benefits, welfare funds, pensions and annuities and disability insurance;

(c) all taxes, other than property taxes, on the Work Site and arising out of the Work, to the date of Functional Completion; and

(d) all customs, sales and excise taxes and duties owing with respect to any labour, machinery, materials and equipment to be supplied by the Contractor and used in performance of or incorporated into the Work, except for goods and services tax payable by the Owner with respect to payments due to the Contractor.

37.2 Any increase in taxes and charges described in Section 37.1(a) and Section 37.1(b) shall be the sole responsibility of the Contractor. In the event of an increase in taxes or charges described in Section 37.1(c), the Contractor shall be entitled to a Change Order altering the Compensation to account for the difference between the amount of tax that would have been payable by the Contractor as of the effective date of this Contract and the actual amount of tax that becomes payable as a result of the tax increase.

37.3 The Contractor shall indemnify and hold the Owner harmless from any liability resulting from the failure of the Contractor or its Subcontractors to make timely payments of the items referred to in this Section or such similar items for which the Contractor is responsible. Any interest, penalties or other liabilities arising from such failure shall be the sole responsibility of and be paid for by the Contractor.

Article 38 - Workers’ Compensation

38.1 The Contractor shall ensure all its employees and representatives engaged in the performance of the Work are registered for workers’ compensation coverage in accordance with the statutory requirements of the Province of Alberta.

38.2 The Contractor shall at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to the Workers’ Compensation Act (Alberta) and upon failure to do so, the Owner, in addition to any other rights it may have at Law or under the Contract, may retain the amount of such assessment or contribution from the Compensation.

38.3 The Contractor shall indemnify and save harmless the Owner from all workers’ compensation assessments due by the Contractor in relation to the Work.

38.4 Prior to the performance of any Work, before the release of the holdback, and upon request by the Owner at any other time, the Contractor shall provide, or cause to be provided, evidence:

(a) that it has an account with the Workers’ Compensation Board (WCB) by providing a WCB “Certificate Letter”;

(b) in the form of a WCB “Letter of Clearance”, that its account is in good standing and that it has paid any assessments made by the WCB in relation to the Work; and
Article 39 - Liens

39.1 The Contractor shall at all times reimburse, protect, indemnify and save free and harmless the Owner, the Work Site and the other lands and property of the Owner from and against all liens and claims made or liability incurred by the Owner on account of the Work performed or materials supplied by employees of the Contractor and Subcontractors, or on account of an exaggerated lien filed by the Contractor, including, without limitation, legal fees on a solicitor-and-own-client (indemnity) basis. The Contractor shall cause any such lien or claim which may be filed or made, to be released and discharged forthwith at the expense of the Contractor. If the Contractor fails to release or obtain the release and discharge of any such lien or claim, then the Owner may, but shall not be obliged to, discharge, release or otherwise deal with the lien or claim, and the Contractor shall pay any and all costs and expenses incurred by the Owner in so releasing, discharging or otherwise dealing with the claim or lien, including but not limited to, legal fees on a solicitor-and-own-client (indemnity) basis. Any amounts so paid by the Owner may be deducted from any amounts due to the Contractor whether under the Contract or otherwise.

Article 40 - Survival

40.1 If the Contract or any part of the Work is terminated pursuant to Article 35 - Termination for Convenience or Article 36 - Termination for Cause, then Article 23 - Warranty shall survive such termination, and the Warranty Period, with respect to the Work or System which has received a Functional Completion Certificate, shall remain in effect notwithstanding the termination of this Contract.

40.2 Any terms, covenants, provisions or conditions of the Contract which expressly or by their nature survive the termination of the Contract shall continue in full force and effect subsequent to and notwithstanding such termination, and shall not be merged with the termination, until such terms, covenants, provisions and conditions are satisfied or by their nature expire.

Article 41 - Liability and Indemnity for Third Party Claims

41.1 The Contractor shall be liable to and shall indemnify, and hold harmless the Owner, its officers, directors, employees, consultants and agents for all losses, damages and expenses, including legal fees on a solicitor-and-own-client (indemnity) basis, which they or any of them may incur as a result of claims, demands, actions or proceedings made or taken against them by persons not party to the Contract for:

(a) any acts or omissions in connection with the performance, purported performance or non-performance of the Contract or of the Work by the Contractor or its Subcontractors or their respective employees or agents;

(b) any acts or omissions of the Owner, Other Contractors or their respective employees or agents, or in connection with such acts or omissions, while acting...
under the direction and control of the Contractor, its Subcontractors or their respective employees or agents; or

(c) any liability, claims, damages, costs and expenses arising from the failure of the Contractor or its Subcontractors, or their respective employees or agents to comply with the Law.

41.2 The Contractor shall, at its sole expense, if requested by the Owner, defend those persons entitled to be indemnified pursuant to Section 41.1. The Owner shall have the right, if it so elects, to participate in any such defence and the Contractor shall have the right to settle claims to a maximum of $\star$ without first consulting with the Owner and thereafter only with the consent of the Owner.

41.3 In the event that the Owner considers that the failure by the Contractor to settle any claim, demand, action or proceeding to which it or others are entitled to be indemnified by the Contractor would be detrimental to its interests, it may so notify the Contractor. If, within 10 Work Days of the notice, the Contractor fails to conclude a settlement with the claimant, or fails to advise the Owner that a settlement would prejudice the Contractor’s insurance coverage for such claim, demand, action or proceeding, then the Owner may settle the claim, demand, action or proceeding in such amount as it considers reasonable and the Contractor shall immediately pay to the Owner all or such portion of the amount so paid in settlement as the Owner designates as the Contractor’s liability. However such settlement by the Owner shall not require the Contractor to repay the Owner where the Contractor notified the Owner that such settlement would prejudice the Contractor’s insurance coverage for such claim, demand, action or proceeding.

41.4 The Owner shall indemnify and hold harmless the Contractor, its Subcontractors, and their respective officers and directors from and against all claims, demands, losses, damages, expenses, actions and proceedings made or taken by persons not party to the Contract and which arise on account of and are attributable to the Owner’s obligations hereunder, including, without limitation any action for which the Owner must indemnify the Contractor pursuant to Section 28.2.

41.5 In the event that the Owner accepts the responsibility to indemnify the Contractor, its Subcontractors, officers and directors pursuant to Section 41.3, then it shall be entitled to retain and instruct counsel to act for and on behalf of those persons and to settle, compromise and pay any claim, demand, action or proceeding without first obtaining prior approval from the party in whose favour the indemnity has been provided. The Contractor shall and shall cause any indemnified party to co-operate in all respects in contesting any third party claim for which the Owner has accepted responsibility.

Article 42 - Liability and Indemnity

42.1 The Contractor shall be liable to and shall indemnify the Owner for all losses, damages and expenses on account of:
(a) all physical damage caused by the Contractor or its Subcontractors to the Work, the Work Site, the property of the Owner or Other Contractors or property under the care, custody or control of the Owner or Other Contractors; and

(b) the cost to repair or make good any and all damage to roads, bridges, railroads, highways, land adjacent to the Owner’s Site, irrigation canals or facilities, ditches or equipment relating thereto caused by or resulting from the actions howsoever of the Contractor or its Subcontractors.

42.2 Subject to Section 42.4, except for Liquidated Damages and except to the extent to which coverage is provided by a policy or policies of insurance, as applicable, the Contractor, its Subcontractors, and their respective officers and directors shall not be liable to the Owner, or anyone claiming through or under it, whether by way of indemnity or by reason of breach of contract or in tort, including liability for negligence and breach of statutory duty, or on any other legal or equitable basis, for:

(a) special, punitive, indirect, economic or consequential loss or damage;

(b) loss of use, whether complete or partial, of the Work or existing facilities of the Owner or third parties;

(c) loss of product;

(d) loss of revenue, overhead and profit; or

(e) loss of any contract that may be suffered by the Owner.

42.3 Notwithstanding any other provision of the Contract, the Contractor’s total aggregate liability to the Owner shall be limited to $*.

[NTD: Section 42.3 is to be used only where the parties choose not to include Liquidated Damages in the Contract. In addition, if Section 42.3 is to be incorporated, the COAA Contracts Committee suggests that the parties negotiate whether the following indemnities obligations of the Contractor should be carved-out of the cap: Section 28.1 (intellectual property infringement); Section 39.1 (liens); Section 41.1 (third party claims); Section 45.3 (independent contract indemnity); obligations relating to workers’ compensation premiums if the Owner is held accountable; and any taxes payable by the Contractor for which the Owner is held accountable.]

42.4 In the event of a sale by the Owner of the Work Site, the Owner agrees to cause the purchaser to enter into an agreement whereby the purchaser covenants to be bound by and to afford to the Contractor the benefit of Sections 42.2 and 42.3.

Article 43 - Insurance Provided by Contractor

43.1 The Contractor shall, and shall ensure that its Subcontractors shall, without limiting any of the obligations or liabilities under the Contract, continuously carry during the performance of the Work and any time the Contractor or its Subcontractors are on the
Work Site, at their own expense and cost, the following insurance coverage with limits where applicable not less than those shown in the respective items as set out below:

(a) workers’ compensation coverage for all employees engaged in the Work in accordance with the statutory requirements of the Province of Alberta;

(b) employer’s liability coverage for all employees engaged on the Work Site and not covered by workers’ compensation, in the amount of $*;

(c) automobile liability insurance covering all licensed motor vehicles owned or leased having a limit of not less than $* inclusive per occurrence for bodily injury, death, and damage to property;

(d) aircraft and watercraft liability insurance covering all owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the Work having a limit of not less than $* inclusive per occurrence for bodily injury, death, and damage to property and not less than $* for aircraft passenger hazard;

(e) property and contractor’s equipment insurance covering property, equipment, tools and construction machinery owned, rented or leased by and to be used for the performance of the Work, excluding all machinery, materials and supplies at the Work Site or in transit thereto and intended to become a part of the finished Work, for the full replacement cost value of such property on an “all risks” basis;

[NTD: Where the Owner elects to insure the equipment used by the Contractor and leased on a common basis for the Work Site by the Contractor and Other Contractors, this paragraph should be amended to reflect the same.]

(f) professional errors & omissions insurance in an amount not less than $* each claim and in the aggregate for the Project covering the period from start of Engineering Services until Functional Completion of the Work and for a further discovery period of * years from the issuance of the Functional Completion Certificate for the entire Work.

43.2 Where a claim is paid by the insurer in respect of losses for which coverage is provided under Section 43.1, the Contractor shall be responsible for the deductibles relating to insurance proceeds under the insurance required pursuant to Sections 43.1(b), 43.1(c), 43.1(d), 43.1(e) and 43.1(f).

43.3 The Contractor shall, and shall ensure that its Subcontractors shall:

(a) provide the Owner with certificates of insurance for the policies described in Section 43.1 within * Work Days of written notice of award of the Contract or prior to the commencement of the Work, whichever is earlier, and certificates of insurance evidencing renewal of these policies within * Work Days of their expiry date where such policies expire prior to Functional Completion;
(b) place all policies with insurers which are licensed to provide insurance in the Province of Alberta with an A.M. Best rating no less than *, and in a form acceptable to the Owner;

(c) ensure that such policies provide for at least 30 days prior written notice to the Owner of cancellation or change that is material to the Contract;

(d) require that the dollar amount of the deductible in the policies for any one loss shall be subject to the approval of the Owner;

(e) with the exception of the insurance as required by Section 43.1(c), ensure that all insurance provided by the Contractor and its Subcontractors pursuant to Section 43.1 is primary and not contributory with, or in excess of, any other insurance carried by the Owner;

(f) require that a waiver of subrogation in favour of the Owner, its officers, directors, employees, consultants and agents in respect of the insurance coverage required under Section 43.1(e); and

(g) ensure that the Owner is added as an additional insured with respect to liability arising out of the Contractor or its Subcontractors performance of the Work and the insurance coverage provided pursuant to Section 43.1(d) and Section 43.1(f).

43.4 If the Contractor or its Subcontractors fail to furnish the Owner with a certificate of insurance for each policy required to be obtained and continually carried, or if after furnishing the certificates of insurance, the policies lapse, are cancelled, or are materially changed, then in every case the Owner may, but shall not be obligated to, obtain and maintain such insurance in the name of the Contractor or any Subcontractor. The cost thereof (including Subcontractor’s insurance costs) shall be payable by the Contractor to the Owner on demand, and the Owner may at its election deduct the cost from any monies which are due or may become due to the Contractor.

43.5 Neither the providing of insurance by the Contractor in accordance with the requirements of this Article 43 - Insurance Provided by Contractor, nor the insolvency, bankruptcy, or failure of any insurance company to pay any claim shall be held to relieve the Contractor from any other provisions of the Contract with respect to liability of the Contractor, or otherwise.

Article 44 - Insurance Provided by Owner

[NTD: Every project has different risks and risk management strategies; these insurance provisions should be used as a guideline only.]

44.1 The Owner shall obtain and, during the progress of the Work, maintain in force the policies of insurance described in this Article 44 - Insurance Provided by Owner, with the Owner as named insured and with the Contractor and its Subcontractors as unnamed insureds. The actual policies of insurance may be examined by the Contractor upon
request to the Owner. This insurance applies only to the Work performed in connection with the Contract:

(a) course of construction and transit insurance to a limit of the value of the full replacement cost of the Work covering all risks of direct physical loss or damage to the Work, Goods and Procured Goods, including temporary or off-site storage and project lay-down areas, and all temporary structures used in the erection of the Work including while in transit to and from the Work Site or in storage while at the Work Site, before and during erection and until completed and while awaiting tests and during testing and commissioning until issuance of a Final Completion Notice; [NTD: The description of the property insured may be modified depending upon the scope of work, allocation of responsibilities for testing and commissioning. Where the Owner elects to insure the equipment used by the Contractor and leased on a common basis for the Work Site by the Contractor and Other Contractors, this paragraph should be amended to reflect the same. The scope of coverage should specify if transit insurance is to include inland or marine transit.]

(b) commercial general liability insurance covering any operations in connection with the Contract on an occurrence basis with a combined single limit not less than $\star$ inclusive of each accident or occurrence for bodily injury, including death, personal injury and damage to property, including loss of use thereof and in the aggregate for products and completed operations; such coverage shall include but not be limited to the following:

(i) blanket contractual liability;

(ii) sudden and accidental pollution liability;

(iii) products and completed operations including a provision that such coverage is to be maintained for a period not less than $\star$ months from the date of issuance of the Functional Completion Certificate;

(iv) broad form completed operations;

(v) employers liability;

(vi) non-owned automobile liability;

(vii) broad form property damage;

(viii) blasting, pile driving, caisson work, underground work (XCU coverage); and

(ix) cross liability and severability of interest; and

44.2 Where a claim is paid by the insurer in respect of losses for which coverage is provided under Section 44.1:
(a) the Contractor shall be responsible for the deductibles relating to insurance proceeds for damage to the Work until a Functional Completion Certificate is issued;

(b) the Owner shall be responsible for the deductibles relating to insurance proceeds for damage to the Work after a Functional Completion Certificate is issued;

(c) [NTD: Optional] the Owner shall be responsible for the deductibles relating to insurance proceeds for damage to equipment used by the Contractor and leased on a common basis for the Work Site by the Contractor and Other Contractors;

(d) the Owner shall be responsible for the deductibles relating to insurance proceeds for damage to the Owner’s property, other than as provided for in 44.2(a) and 44.2(b); and

(e) the negligent party or parties shall be responsible for the deductibles relating to insurance proceeds for damage to third parties.

44.3 All insurance policies provided by the Owner shall be written to prohibit the insurer from obtaining subrogation or transfer of rights in respect of any claim under such policies against the Contractor, Subcontractors, or their employees, directors or officers who are employed in the performance of the Work.

44.4 The Owner shall:

(a) provide the Contractor with certificates of insurance for the policies described in Section 44.1 within Work Days of written notice of award of the Contract or prior to the commencement of the Work, whichever is earlier, and certificates of insurance evidencing renewal of these policies within Work Days of their expiry date where such policies expire prior to Functional Completion; and

(b) ensure that such policies provide for at least 30 days prior written notice to the Contractor of cancellation or change that is material to the Contract.

44.5 The Owner makes no representation or warranty with respect to the extent or adequacy of the insurance protection to be provided by it described in Article 44 - Insurance Provided by Owner and the Contractor and its Subcontractors shall satisfy themselves as to the coverage afforded by such policies and the adequacy thereof. The furnishing of this insurance by the Owner shall not limit any of the obligations or liabilities of the Contractor or Subcontractors as expressed elsewhere in the Contract.

44.6 The Contractor shall not be entitled to any Compensation to duplicate the insurance coverage provided by the Owner pursuant to this Article 44 - Insurance Provided by Owner.

44.7 The Compensation shall not include the cost of premiums for the insurance to be provided by the Owner.
44.8 The insurance protection provided by the Owner in accordance with Article 44 - Insurance Provided by Owner insurance shall be primary with respect to any loss or damage which at the time of the occurrence is covered by the Owner’s insurance policies.

44.9 It is mutually agreed that all losses shall be adjusted by a firm or firms of general insurance adjusters to be named by the Owner and the Owner has the sole right to act as agent on behalf of the Contractor in the settlement of any claim(s) under the policies to be provided by the Owner pursuant to Article 44 - Insurance Provided by Owner. The Owner makes no representation or warranty with respect to the extent or adequacy of the insurance protection provided by it to the Contractor.

[NTD: The appointment of a control adjuster for purposes of adjusting insurance claims is subject to the approval of the insurer(s). This clause should be optional and incorporated only once it has been determined that a control adjuster has been appointed and agreed to by insurer(s).]

Article 45 - Independent Contractor

45.1 For the purposes of the Contract and the Work, the Contractor shall be an independent contractor and not the agent or employee of the Owner, except to the extent that the Owner’s Requirements specify that the Contractor shall act as the Owner’s agent in relation to some, or all, of the Procurement Services.

45.2 All persons employed or retained by the Contractor in connection with the performance of its obligations shall be its employees or those of its Subcontractors, as the case may be, and not the employees or agents of the Owner in any respect.

45.3 The Contractor shall indemnify and hold harmless the Owner, against all claims, demands, losses, damages, expenses, actions and proceedings whatsoever, including legal fees on a solicitor-and-own-client (indemnity) basis, which may be incurred by the Owner as a result of any determination by any tribunal or court that any personnel provided by the Contractor pursuant to the terms of this Contract are for any purposes agents or employees of the Owner, except to the extent that the Owner’s Requirements specify that the Contractor shall act as the Owner’s agent in relation to some, or all, of the Procurement Services.

45.4 The Contractor shall have no authority whatsoever to make any statement, representation or commitment of any kind, or to take any action, which may be binding on the Owner, except as provided for in this Contract, as authorized in writing by the Owner or in connection with the performance of the Procurement Services where the Owner’s Requirements specify that the Contractor shall act as the Owner’s agent in relation to some, or all, of the Procurement Services.

Article 46 - Conflict of Interest

46.1 The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with the Owner’s best interests. This obligation shall apply to the activities of the Contractor and its Subcontractors and their
respective employees and agents, in their relations or dealings with the employees of the Owner and their families, and other third parties, arising from the Contract or the performance of the Work. The efforts made by the Contractor in this regard shall include, but shall not be limited to, establishing reasonable precautions to prevent Subcontractors and their respective employees from offering, or providing entertainment, gifts, loans, payments or other considerations to the Owner’s employees, consultants and agents or their family members.

**Article 47 - Audit Access**

47.1 The Contractor shall preserve the Records in good order during the Contract Time and for a period of * years thereafter.

47.2 The Contractor shall permit authorized representatives of the Owner to review the Records at all reasonable times during the Contract Time, and for a period of two years thereafter for the purposes of:

(a) determining the Contractor’s compliance with all of the terms of the Contract, including, but not limited to:

   (i) Article 13 - Changes and Article 32 - Delays Caused by the Contractor; and

   (ii) the Policies; and

(b) verifying of all Work performed and all reimbursable costs and other charges payable under the Contract.

47.3 Where the Compensation is not on a cost reimbursable basis, the Contractor may black-out any information in the Records relating to price before access is given to the Owner.

**Article 48 - Representatives and Notices**

48.1 The Owner’s Representative is *. The Owner’s Representative has the authority to bind the Owner on all matters relating to the Work and the Contract, and all communications to or with the Owner’s Representative shall be deemed to be communications to or with the Owner.

48.2 Contractor’s Representative is *. The Contractor shall not change the Contractor’s Representative, except with the prior approval of the Owner. The Contractor’s Representative has the authority to bind the Contractor on all matters relating to the Work and the Contract, and all communications to or with Contractor’s Representative shall be deemed to be communications to or with the Contractor.

48.3 Unless otherwise specifically indicated in the Contract, all notices, approvals, consents, authorizations and other communications required or permitted pursuant to the Contract, shall be in writing and shall be communicated to the Contractor’s Representative or the Owner’s Representative, as the case may be, and shall be delivered by personal delivery, courier or facsimile to the parties at the addresses and facsimile numbers shown below:
(a) **Contractor:**

Address:

Attention:
Fax:

(b) **Owner:**

Address:

Attention:
Fax:

48.4 Either party may change its contact information for the purposes of Section 48.3 by providing the other party with 10 days notice of such a change.

48.5 Invoices and all supporting documentation shall be mailed or delivered to the address shown below:

Address:

Attention:
Fax:

48.6 E-mail, where such electronic transmission meets the minimum requirements set forth in the [Electronic Transactions Act](https://www.gov.ab.ca) (Alberta) may be used for communication between the parties, but e-mail shall not be used for the communication of a notice which is prescribed by the *Contract*.

**Article 49 - General**

49.1 No failure or delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

49.2 No waiver of any right, power or privilege by a party shall limit or affect that party’s rights with respect to any breach of the *Contract* by the other party.

49.3 Each of the parties hereto shall execute such further documents and give such further assurances as are required to give effect to the *Contract*.

49.4 If a court of competent jurisdiction determines that any provision of this *Contract* is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions of the *Contract*. 
49.5 All of the covenants and agreements herein contained on the part of either party shall
apply and enure to the benefit of and be binding upon their respective legal
representatives, successors and assigns.

49.6 Each of the parties hereby represents and warrants that it has the power and authority to
enter into the Contract and to perform all of its obligations hereunder.

49.7 The Contract constitutes the entire agreement between the parties with respect to the
Work and supersedes and replaces all previous communications, representations and
agreements, either written or verbal.

49.8 This Contract shall be governed by and construed in accordance with the laws of the
Province of Alberta, and, subject to Appendix H – Dispute Resolution Procedure, the
parties attorn to the jurisdiction of the Courts of the Province of Alberta.

49.9 This Contract shall be executed by the parties, or their representatives, in person with
original signatures, but may be executed in counterpart. Subsequent documents may be
executed by the parties, or their representatives, and such execution may be by way of
facsimile or electronic transfer.

TO EVIDENCE THEIR AGREEMENT, the parties have executed and delivered this Contract,
by their duly authorized officers, as of the effective date indicated on the first page.

Owner: _________________________ Contractor: _________________________

   Per: _________________________            Per: _________________________
   Name: _________________________          Name: _________________________

   Per: _________________________            Per: _________________________
   Name: _________________________          Name: _________________________

   [apply corporate seal]                    [apply corporate seal]
Appendix G – Forms

Statutory Declaration

IN THE MATTER OF an Engineering Procurement and Construction Contract bearing no. ________________ and dated the _____ day of ____________, 20___

Between:

____________________________________________
(Insert full name of Owner) and

____________________________________________
(Insert full name of Contractor)

hereinafter referred to as the “Contractor”,

for _________________________________________
(Description and location of work)

___________________________________________,

and IN THE MATTER OF (INDICATE BY checkmark in APPLICABLE BOX)

☐ a Progress Claim covering work done up to the _____ day of ____________, 20___.

☐ the Functional Completion Certificate.

☐ the Final Completion Notice.

WITNESS:

I,_____________________________________, of _____________________________________
(Print or type name of Declarant)                       (Declarant’s city/town and province of residence)

do solemnly declare:

(1) that I am ________________________________________________________________
(Print or type Declarant’s title or position with the Contractor)

and as such have personal knowledge of the Contract and of the facts and matters stated herein.

(INDICATE BY checkmark in APPLICABLE BOX)

☐ that, up to the date of the attached progress claim, the Contractor has complied with all its lawful obligations to its workers in respect of the work contracted for and has discharged all of its lawful obligations to its subcontractors and its suppliers except for the amounts owing which total $_________________ (if nil, state nil). A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration; or

☐ that, up to the date hereof, the Contractor has complied with all its lawful obligations to its workers, its subcontractors and its suppliers in respect of the work contracted for and to all tax authorities respecting
the payment of all applicable taxes arising from or related to the performance of the work under the Contract, except for the amounts owing which total $______________ (if nil, state nil). A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration; or

☐ that, up to the Final Completion Notice, the Contractor has complied with all its lawful obligations to its workers, its subcontractors and its suppliers in respect of the work contracted for and discharged and satisfied all lawful claims against it that arose out of the performance of this Contract except for the amounts owing which total $______________ (if nil, state nil). A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration.

And I make this SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

DECLARED before me at ________________
this ______ day of ____________, 20___.

_________________________________________________________
(Signature of person before whom the Declaration is made)

_________________________________________________________
(Print name of person before whom the Declaration is made) (Signature of Declarant)

_________________________________________________________
A Notary Public, Commissioner, etc. ____________

_________________________________________________________
(Please state authority for receiving Declarations Notaries to affix Notarial Seal)

NOTICE

If this Declaration is not complete in every detail, it will be returned for completion and payment will be delayed.

Those sections of the Criminal Code of Canada which deal with offenses relating to affidavits are hereby brought to the attention of the Declarant.
Appendix G – Forms

Release and Certificate of Final Payment

1. This is Appendix G – Forms, Release and Certificate of Final Payment, referred to in the Engineering Procurement and Construction Contract effective __________, 20__ (the “Contract”).

2. The capitalised and italicised terms used and not defined in this Appendix G – Forms, Release and Certificate of Final Payment, shall have the meanings given to them in the Contract.

3. In consideration of $1.00, the sufficiency of which is hereby acknowledged, the Contractor solemnly declares that:

   (a) the Contractor has made full payment, or will make full payment from the final payment to be received from the Owner, of all costs, charges and expenses incurred by the Contractor or on its behalf for the Work, Goods and Procured Goods supplied in connection with the Contract, or otherwise used in connection with the Work;

   (b) to Contractor's best knowledge and belief, each of its Subcontractors have made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labour, services, materials and equipment in connection with the Contract, or otherwise used by them in connection with the Work;

   (c) all assessments, levies and charges under the Employment Insurance Act, the Workers' Compensation Act and other legislation in respect of the Contract have been paid and, to the Contractor's best knowledge and belief, each and all of its Subcontractors have paid such assessments, levies and charges on their own account;

   (d) the Contractor unconditionally releases and forever discharges the Owner, the Work Site and all property of the Owner from all builder's liens and liens of whatsoever kind or nature arising out of or in connection with the performance of the Contract; and

   (e) the Contractor unconditionally releases and forever discharges the Owner from any and all claims, demands, actions or proceedings arising out of the performance of the Work of which it has knowledge, and in respect of which notice in writing has not, by the date hereof, been given by the Contractor to the Owner. The Contractor acknowledges and agrees that nothing herein contained relieves it of any obligations under the provisions of the Contract which by their nature survive completion of the Work including, without limitation, warranties, guarantees and indemnities.

The Contractor makes this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at ________, in the Province of Alberta, this ___ day of ____________, 20__

A Commissioner for Oaths in and for the Province of Alberta.

(Signature)

(Name of Contractor’s Representative signing)
Appendix G – Forms

Key Personnel Confidentiality, Proprietary Information and Consent Agreement

Dated effective __________, 20__

TO: __________________________
(the "Contractor")

AND TO: __________________________
(the "Owner")

I, ___________ (the "Employee"), in consideration of the Owner consenting to my participation in the performance of certain work (the "Work") by the Contractor for the Owner pursuant to an agreement (the "Agreement") made between the Owner and the Contractor dated as of _________________, 20___ with respect to ___________ [Project]; and for the further consideration of $1.00, from each of the Contractor and the Owner, the receipt and the sufficiency of which are hereby acknowledged, do hereby agree, separate and apart from the Contractor, as follows:

1. I have had my role and responsibilities explained to me by the Contractor, or I have reviewed a copy of the Agreement and agree to observe the terms and conditions that relate to employees and subcontractors of the Contractor.

2. I acknowledge that the Owner has an interest in securing the performance of the Work by the Contractor and that the ability of the Contractor to perform the Work primarily depends on my continued employment with the Contractor.

3. I shall perform for the Contractor such duties as may be assigned to me by the Contractor from time to time pertaining to the Work. I agree that all inventions, copyright, copyrightable works, discoveries, improvements, industrial designs and other intellectual and proprietary rights conceived, originated or prepared by me, arising directly or indirectly from the performance of the Work, are and shall be the exclusive property of the Owner or the Contractor as determined in accordance with the terms of the Agreement.

4. I shall not, without the prior written consent of the Contractor and the Owner, either during or for a 5 year period after my employment by the Contractor, use or disclose any information acquired by me in the course of or by reason of my participation in the performance of the Work, nor will I disclose to any person not in the employ of the Contractor any such information, including, without limitation, any information as to technology, policies, operations, processes or formulae used, owned or supervised by the Owner or by any of its affiliates. At the termination of the Agreement or earlier if so requested, I shall forthwith return to the Owner all confidential information in my possession.

I agree that, if any provision in this undertaking is found to be invalid or otherwise unenforceable at law, such provision shall be severed, and the remaining provisions shall continue in full force and effect.

_____________________________  ______________________________
Witness  Employee

CONSTRUCTION OWNERS ASSOCIATION OF ALBERTA
Appendix H - Dispute Resolution Procedure

1. In the event of disagreement between the parties as to the performance of the Work or the interpretation, application or administration of the Contract, the Contractor shall perform the Work as directed by the Owner's Representative. All differences between the parties not resolved by the decision of the Owner's Representative and all disputes and claims of either party arising out of the Contract and its performance shall be settled in accordance with this Appendix H – Dispute Resolution Procedure.

2. The parties shall make all reasonable efforts to resolve all disputes and claims by negotiation and agree to provide, without prejudice, open and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

3. Either party shall be entitled by notice to the other party to call for the appointment of an individual to act as a Project Mediator (the “Project Mediator”), in which case the parties shall within 10 Work Days jointly nominate a Project Mediator. If the parties do not agree on the appointment of a Project Mediator, then either party may request the Chair of the Alberta Arbitration and Mediation Society to appoint a Project Mediator, who when so appointed shall be deemed acceptable to the parties and to have been appointed by them.

4. The parties shall submit in writing their dispute to the Project Mediator, and afford to the Project Mediator access to all records, documents and information the Project Mediator may request. The parties shall meet with the Project Mediator at such reasonable times as may be required and shall, through the intervention of the Project Mediator, negotiate in good faith to resolve their dispute. All proceedings involving a Project Mediator are agreed to be without prejudice, and the cost of the Project Mediator shall be shared equally between the parties.

5. If the dispute has not been resolved within ___ days after the appointment of the Project Mediator either party may by notice to the other withdraw from the mediation process.

6. All disputes, claims and differences not settled as provided for in this Appendix H – Dispute Resolution Procedure, arising out of or in connection with the Contract or in respect of any defined legal relationship associated with it or derived from it, shall be referred to and finally resolved by arbitration in accordance with the Alberta Arbitration Act. The arbitral tribunal shall be composed of one arbitrator where the subject of the dispute, claim or difference relates primarily to whether work required to be performed is within the scope of the Work or the Contractor has met the required specifications of the Contract, and the Work has not yet been completed when the matter is referred to arbitration. In all other cases the arbitral tribunal shall be composed of 3 arbitrators, one appointed by each party who shall select the third who shall act as chair. The location of the arbitration shall be either Edmonton or Calgary, as the parties agree, or in the absence of agreement, as the arbitrator(s) direct.
1. Introduction

The COAA EPCM Contract Committee, consisting of owner, contractor and affiliate members, has developed a standard form EPCM Contract for use in industrial projects in Alberta. Together with the Stipulated Price Contract (2003) and the EPC Contract (2005), the EPCM Contract is freely available to the industry as there is no copyright attached to the COAA contracts.

The COAA Contract Committee’s Guiding Principles (2005) were used as a basis for the EPCM Contract Philosophy. This philosophy document provides background and context on the key issues the Committee addressed in preparing the EPCM Contract and is not meant to be an exclusive or exhaustive philosophy of EPCM contracting.

Where possible, and for consistency, definitions used in the earlier Stipulated Price and EPC contracts have been incorporated into the EPCM Contract. The result is a generic and equitable agreement that can serve as a starting point for Owners and Contractors to tailor their own contract. To accommodate a variety of projects, project-specific information is intended to be contained in the Appendices to the EPCM Contract.

The EPCM Contract is intended to serve as a starting point for negotiations and can be modified by the parties with respect to a specific project. It is preferred that changes be made to the EPCM Contract by way of supplementary conditions so that the COAA form remains as a precedent. However, care must be taken in the modification or editing of specific clauses to avoid changing the intent of referring or subsequent clauses.

2. Contract Structure

In the EPCM Contract, the EPCM Contractor performs engineering, procurement and construction management services. The EPCM Contractor's services will commence well before construction starts and will continue through project close-out and sometimes through the construction warranty period. The actual construction work is performed by one or more "Works Contractors" under the direction of the EPCM Contractor.

The EPCM Contractor acts as agent of the Owner in both procurement and construction management activities. The EPCM Contract also recognizes that the Owner may also procure materials and equipment directly which will be incorporated into the Work. Consequently, the Works Contracts are usually entered into between the EPCM Contractor (as agent for the Owner) and the Works Contractor.
3. Risks in EPCM Contracting

The Committee views the EPCM model as one in which more risk is retained by the Owner relative to the EPC model. Owners can typically exercise more control over the EPCM Contractor and have more input into the work being performed than is available in the EPC model.

The EPCM model allows the Owner to be more involved in the project execution, including the design process, and this relationship needs to be addressed between the Owner and the EPCM Contractor prior to project commencement. The parties must ensure they have the resources to meet the requirements as set out in Appendix A – Owner’s Requirements and Appendix B – Owner’s Obligations.

The contracting strategy for the project, and the selection of Works Contractors, is ultimately the Owner’s responsibility. However, the Owner and the EPCM Contractor work in a consultative mode to select the optimum strategy for the project. The EPCM Contractor will provide advice on work breakdown, contract types (lump sum, unit rates, cost reimbursable, etc.), and candidate Works Contractors. The Owner retains responsibility for the Works Contractors and the EPCM Contractor does not take responsibility for the project estimates or final completion schedules.

When an EPCM contract is entered into, the definition of the scope may be low though generally understood as the engineering has not yet been performed; yet the Owner is intending to proceed with construction. The fact that the definition of scope may be low increases the need for communication between the Owner and the EPCM Contractor so that, as the project develops, the appropriate choices and decisions can be made to ensure alignment with the Owner’s vision.

EPCM contracts need to anticipate the potential for changes in scope and incorporate a well defined change management process for the purpose of cost and project control. Scope growth may be more difficult to control as the Owner team may be less resistant to change when working with an EPCM Contractor who is acting as agent on a reimbursable basis.

The Committee recognizes that the Owner will have more control over the outcome where the Owner uses an experienced team to work with the EPCM Contractor. This is especially important in EPCM contracting where the Owner has more project risk because of the Owner's direct exposure to the risks under the Works Contracts.
4. Timing of Activities Relative to Functional Completion and Final Completion

The timing of the major activities contemplated in the EPCM Contract are set out in the chart below:
5. Payment Terms

The EPCM Contract is structured to provide for compensation to the EPCM Contractor on a cost-reimbursable, plus a fee, basis. While the parties may also wish to include an incentive component (whether positive or negative), a standard approach or format is not provided or recommended by the Committee. Incentives were discussed at length by the Committee. Given the project-specific nature of incentive schemes, and the varying corporate philosophies with respect to incentives, incentives cannot be developed as an industry standard. In general, the intent of the payment terms is to motivate the EPCM Contractor to be rewarded for superior performance through fair risk and compensation provisions.

(a) Reimbursable Costs

Reimbursable Costs generally include all costs incurred by the EPCM Contractor directly as a result of performing the EPCM services. These should be summarized in the EPCM Contractor’s regular invoice and supported with appropriate receipts or other documentation.

Some elements of cost are not easily attributable to the performance of a specific project-related task (examples: corporate finance, business development). These are usually reflected in a general cost allocation, such as "Overhead", and applied at a fixed rate per reimbursable hour. It is important that all such cost items, and the methods by which they will be quantified and reimbursed, are specified in the EPCM Contract. Appendix C – Reimbursable Costs and Fee provides a standard template of reimbursable costs and their calculation.

(b) Fee

The Fee includes all of the EPCM Contractor’s entitlement (including profit) other than Reimbursable Costs and, if applicable, incentive payments. The amount of the Fee, its method of calculation, and the formula for calculating adjustments (if any) must be negotiated between the parties, clearly documented, and incorporated into the EPCM Contract. Where an adjustment of the Fee is contemplated during the life of the EPCM Contract, the parties must ensure that adequate administrative resources are available during project execution to track and verify the basis of the adjustment.
6. Communication

Effective communication between the Owner and the EPCM Contractor is crucial to the success of a project. The two organizations must remain aligned in all aspects of project execution: scope of work, technical specifications, change management, subcontracting and purchasing strategies, site access and use, HSE requirements, interfaces with ongoing operations, financial authorities, accounting procedures, progress reporting, public affairs, and so on. Direct communication between the EPCM Contractor’s various functional departments and the Owner’s counterparts is necessary – but certain protocols must be followed to ensure overall control of the project. In general, all communications dealing with issues that affect the project’s cost, schedule, quality, safety, or reputation must be routed through the Owner’s and EPCM Contractor’s named representatives.

For procurement and construction management functions, the underlying relationship between the Owner and EPCM Contractor is one of agent and principal and in that relationship the EPCM Contractor needs to communicate project needs and the Owner must provide instructions. A communication plan is crucial to the success of an EPCM project and must include the following:

- key contacts on both sides for concerns regarding design, scope, schedule and cost;
- meeting frequency during the design and construction phases of the project;
- frequency of drawing reviews based on progress; and
- management of field queries from the Works Contractors to minimize cost and schedule impacts.

7. Change Management

Compared with other contract types, the EPCM form of contract facilitates a more rapid transition from front-end development into detailed engineering and construction. The contractual terms and conditions can be established early, allowing the EPCM Contractor to commence work - even though the detailed scope of work may still be in development. However, a robust change management process must be implemented in order to maintain control of cost and schedule, and to provide reasonably accurate forecasts of project results.

The parties must commit to open and regular communication generally, and, in particular, a formal change management procedure. All deviations from the project’s basis documents (e.g. design basis memorandum, cost estimate, and construction schedule) must be documented with appropriate authorizations. This procedure should be included in Appendix E - Work Procedures, and the parties should ensure that they have sufficient project staff to meet the requirements of the procedure.
8. Safety

The Committee recognizes the importance of safety and, where possible, has incorporated the Best Practices relating to safety developed by the COAA. In addition, the EPCM Contract specifically recognizes the role of "prime contractor" under the Occupational Health and Safety Act. Whether the prime contractor responsibilities are carried out by the Owner, the EPCM Contractor or a Works Contractor, the EPCM Contract also recognizes that the party fulfilling this role must have the requisite control over safety to perform in the prime contractor function.

9. Warranty

The EPCM Contract contains a warranty from the EPCM Contractor relating to the engineering, procurement and construction and construction management services to the extent of re-work only.

The warranty relative to EPCM services commences at the start of the services and concludes at a specified time frame following Functional Completion. With regard to the actual construction work, the Owner relies on the warranty flowing from the Works Contractors.

10. Allocation of Risk and Consequential Damages

Following the EPC Contract model, the Committee has incorporated an exclusion of consequential damages. This exclusion applies both to the EPCM Contractor and the Owner.
Proposed Appendices

The Committee has developed templates for those Appendices it considers to be industry standards. Where a template is not possible, a checklist has been provided. In relation to those Appendices which are project-specific, the Committee has provided some points as to the proposed content. The following are the proposed Appendices:

(a) **Appendix A – Owner’s Requirements**
   - See Checklist

(b) **Appendix B – Owner’s Obligations**
   - Proposed Content:
     (i) Scope of the Owner’s work (preferred suppliers, procurement, construction, etc.)
     (ii) List of Owner’s Key Personnel
     (iii) Communications Plan

(c) **Appendix C – Reimbursable Costs and Fee**
   - See Template

(d) **Appendix D – Invoicing and Payment Procedures**
   - Proposed Content:
     (i) Payment of Invoices
     (ii) Conditions for Withholding of Payment
     (iii) Allowance for Changes in Rates
     (iv) Cash management
     (v) Right to Audit

(e) **Appendix E – Work Procedures**
   - Proposed Content:
     (i) Health, Safety and Environment
     (ii) QA/QC
     (iii) Change Management
     (iv) Risk Management
     (v) Document Management
     (vi) Meeting and Reporting
     (vii) Scheduling and Progressing
(viii) Cost Trending and Forecasting
(ix) Contingency Management
(x) Construction Management
(xi) Contract Management
(xii) Handover – Functional Completion
(xiii) Project Close-Out
(xiv) Apprentice Employment Plan
(xv) Local Business Incorporation Plan

(f) **Appendix F – Key Performance Indicators**
   - See Template

(g) **Appendix G – Policies and Guidelines**
   - Proposed Content:
     (i) Health, Safety and Environment
     (ii) Labour Relations
     (iii) Procurement Plan
     (iv) COAA Canadian Model for Providing a Safe Workplace: Alcohol and Drug Guidelines and Work Rule
     (v) COAA Workplace Respect Policy

(h) **Appendix H – Forms**
   - See Templates for (i), (v) and (vi):
     (i) Key Employee Confidentiality, Intellectual Property and Consent Agreement
     (ii) Change Order
     (iii) Change Directive
     (iv) Final Completion Notice
     (v) Release and Certificate of Final Payment
     (vi) Statutory Declaration

(i) **Appendix I – Dispute Resolution Procedure**
   - Attach project-specific document

(j) **Appendix J – Key Personnel and Addresses for Notice**
   - Attach project-specific document
COAA EPCM Contract 2008
(Engineering, Procurement and Construction Management Contract)

Between

- and -

Effective Date: *

Note to Users: This EPCM Contract contains a number of blanks to be completed on a project-specific basis. These blanks are indicated by: *. There are also notes within the text which require further consideration of the specific project requirements before completing.

Draft: For COAA Board Approval
# TABLE OF CONTENTS

Introduction: .................................................................................................................................... 1  
Article 1 - Definitions and Appendices .......................................................................................... 1  
Article 2 - Interpretation and Order of Precedence....................................................................... 9  
Article 3 - Owner’s Requirements and Obligations ..................................................................... 10  
Article 4 - General Requirements of the Services ....................................................................... 11  
Article 5 - Engineering Services .................................................................................................. 14  
Article 6 - Owner’s Specified Materials and Services ................................................................. 14  
Article 7 - Procurement Services ................................................................................................ 15  
Article 8 - Construction Management Services and Construction Work .................................... 16  
Article 9 - Agency ......................................................................................................................... 17  
Article 10 - Commissioning ......................................................................................................... 18  
Article 11 - EPCM Contractor’s Representations ....................................................................... 18  
Article 12 - Contract Time ........................................................................................................... 19  
Article 13 - Payment .................................................................................................................... 19  
Article 14 - Cost and Price Control .............................................................................................. 20  
Article 15 - Changes .................................................................................................................... 21  
Article 16 - Personnel, including Key Personnel ....................................................................... 23  
Article 17 - Key Personnel ........................................................................................................... 24  
Article 18 - Subcontracts and Assignment .................................................................................. 25  
Article 19 - Inspection, Testing and Performance Tests ............................................................... 26  
Article 20 - Final Completion of the Services ............................................................................. 27  
Article 21 - Warranty ................................................................................................................... 28  
Article 22 - Compliance with Law and Policies .......................................................................... 28  
Article 23 - Safety and Loss Management .................................................................................. 29  
Article 24 - Services Area and Clean Up ...................................................................................... 30  
Article 25 - Responsibility for and Title to the Services ............................................................ 30  
Article 26 - Prohibition on Sale of Engineering Services ............................................................. 31  
Article 27 - Protection of Intellectual Property .......................................................................... 31  
Article 28 - Confidentiality ......................................................................................................... 33  
Article 29 - Publicity .................................................................................................................... 34  
Article 30 - Force Majeure ............................................................................................................ 34
Article 31 - Delays Caused by the EPCM Contractor ................................................................. 35
Article 32 - Suspension ................................................................................................................. 35
Article 33 - Termination for Convenience ................................................................................... 36
Article 34 - Termination for Cause ............................................................................................. 37
Article 35 - Taxes .......................................................................................................................... 39
Article 36 - Workers' Compensation ............................................................................................ 39
Article 37 - Liens .......................................................................................................................... 40
Article 38 - Liability and Indemnity for Third Party Claims ......................................................... 41
Article 39 - Liability and Indemnity ............................................................................................. 42
Article 40 - Insurance Provided by EPCM Contractor ............................................................... 43
Article 41 - Insurance Provided by Owner .................................................................................... 45
Article 42 - Independent Contractor ............................................................................................ 48
Article 43 - Conflict of Interest ..................................................................................................... 48
Article 44 - Audit Access .............................................................................................................. 49
Article 45 - Representatives and Notices ..................................................................................... 49
Article 46 - Survival ..................................................................................................................... 50
Article 47 - General ...................................................................................................................... 50

APPENDICES
Appendix A – Owner’s Requirements
Appendix B – Owner’s Obligations
Appendix C – Reimbursable Costs and Fee
Appendix D – Invoicing and Payment Procedures
Appendix E – Work Procedures
Appendix F – Key Performance Indicators
Appendix G – Policies and Guidelines
Appendix H – Forms
Appendix I – Dispute Resolution Procedure
Appendix J – Key Personnel and Addresses for Notice
Engineering, Procurement and Construction Management Contract

This Contract is made effective this ___ day of __, 20__.

Between

- and -

Introduction:

A. The EPCM Contractor has agreed to perform the Services for the Owner as set out in this Contract, on the terms and conditions set forth in this Contract.

IN CONSIDERATION of the mutual covenants and conditions contained herein, the parties agree as follows:

Article 1 - Definitions and Appendices

1.1 The following terms, wherever capitalised and italicised in the Contract, or in any document produced pursuant to the terms of the Contract, shall have the following meanings:

(a) Affiliate has the meaning it is given in the Canada Business Corporations Act, R.S.C. 1985, c. C-44, as amended;

(b) Appendix or Appendices, as the case may be, means one or more of the appendices attached to and incorporated in this Contract as set forth in Section 1.2;

(c) As-Built Drawings means the controlled and complete set of documents upon which is reflected all differences between the Facilities, together with temporary facilities still in place, as constructed, and the Facilities, together with temporary facilities, as designed in the documents issued by the EPCM Contractor for Construction Work;

(d) Change means any change in, addition to, or deletion from the Owner’s Requirements, Owner’s Specified Materials and Services, the Milestones, or the Contract Time;

(e) Change Directive means a written instruction from the Owner directing a Change;
(f) **Change Order** means a written order signed by both the **EPCM Contractor** and the **Owner** authorizing a **Change**;

(g) **Change Quotation** means a written quotation from the **EPCM Contractor** for an adjustment in any one or more of the **Services**, **Contract Time**, **Milestones** or the **Compensation**;

(h) **Commencement Date** means the date that the **Services** are to commence, which, at the effective date of this **Contract**, is $20^{th}$.

(i) **Commissioning after Functional Completion** means those commissioning duties of the **Owner** and of the **EPCM Contractor** that shall take place after **Functional Completion** and which are described in the **Owner’s Requirements** and allocated to either the **Owner** or the **EPCM Contractor**;

(j) **Commissioning before Functional Completion** means those commissioning duties of the **Owner** and of the **EPCM Contractor** that shall take place before **Functional Completion** and which are described in the **Owner’s Requirements** and allocated to either the **Owner** or the **EPCM Contractor**;

(k) **Compensation** means the compensation which the **Owner** shall pay for performance of the **Services** in accordance with Appendix C – Reimbursable Costs and Fee;

(l) **Confidential Information** means all information relating to the **Services** and any process or technology, including any process or technology from a licensor, relating thereto, and information relating to the nature of the **EPCM Contractor’s** and the **Owner’s** business, affairs or trade secrets, which either party directly or indirectly receives or acquires from the other party, or the other party’s representative, either in writing or verbally, including information in the **Contract**, or through observation of the **Owner’s Site**, the **Services** or services or work performed by **Other Contractors**, except information falling into any one or more of the following categories:

(i) information which the disclosing party can show was in its possession on a non-confidential basis before receipt or acquisition of the information from the other party;

(ii) information which is lawfully in the public domain at the time of the disclosing party’s receipt or acquisition of the information from the other party, other than from the **Owner’s Requirements** or through the process of proposal calls or performing the **Services**;

(iii) information which, after the disclosing party’s receipt or acquisition of the information from the other party, becomes part of the public domain through no act of the disclosing party or of any third party under an obligation of confidence with respect to such information, but only after such information becomes part of the public domain; or
(iv) information which, after receipt or acquisition of the information from the other party, is lawfully obtained by the disclosing party from a third party, but only after such information is so received or acquired, and provided such third party is under no obligation of confidence with respect to such information.

(m) Construction Contract means the contract between the Owner, or the EPCM Contractor as agent for the Owner, and a Works Contractor;

(n) Construction Management Services means those services described in the Owner’s Requirements and provided by the EPCM Contractor for the construction management of the Project;

(o) Construction Work means the work performed by Works Contractors and includes, but is not limited to, delivery, fabrication, assembly, construction, testing, commissioning and correction, including professional and technical personnel, labour, supervision, administration, materials, transportation, supplies, tools, equipment, and such other services and materials necessary to be performed or supplied to meet the requirements of the Construction Contract, including any work which is not expressly described in the Construction Contract but which is nevertheless necessary for the proper execution of the work;

(p) Contemplated Change Notice means a written notice from the Owner advising the Contractor that the Owner is contemplating a Change;

(q) Contract means:

(i) this Engineering, Procurement and Construction Management Contract;

(ii) Change Orders and Change Directives;

(iii) Execution Plan; and

(iv) other documents which come into existence and are incorporated into the Contract, including all Appendices;

(r) Contract Time means the period of time from the Commencement Date to the scheduled date for issuance of the Final Completion Notice;

(s) Deficiency means any portion of the Services that has not been performed in accordance with the Contract, whether because of error or omission;

(t) Engineering Services means those services described in the Owner’s Requirements and provided by the EPCM Contractor for the design, planning and engineering of the Project and includes the deliverables required to be provided by the EPCM Contractor as specified in the Owner’s Requirements, but does not include Construction Management Services or Procurement Services;
(u)  *EPCM Contractor* means *

(v)  *EPCM Contractor’s Key Personnel* means the *EPCM Contractor’s* key personnel for the *Services* identified in Appendix J – Key Personnel and Addresses for Notice, or if not determined before the execution of this *Contract*, identified in an organisational chart in accordance with Article 17 - Key Personnel and approved by the *Owner*;

(w)  *EPCM Contractor’s Representative* means that person identified as such in Section 45.2, or an approved replacement;

(x)  *Estimated Contract Price* means the estimated cost to perform the *Services* and to perform the *Construction Work*, which shall be identified as separate costs for each of the *Services* and the *Construction Work* by the *Owner* in Appendix C – Reimbursable Costs and Fee;

(y)  *Event of Force Majeure* means any occurrence, other than the financial incapability of a party or an event constituting a delay under Article 31 - Delays Caused by the EPCM Contractor, which prevents or delays a party from performing its obligations under the *Contract* (except an obligation to pay any amount) within the time required for the performance of such obligation and which is beyond the control and without the fault or negligence of the party relying on such occurrence, and which by the exercise of reasonable diligence that party could not, at the time the *Contract* was executed, have reasonably contemplated happening and which, at the time of such occurrence, is beyond the reasonable control of the party required by the *Contract* to perform such obligation and such party is unable to reasonably prevent or provide against such occurrence;

(z)  *Execution Plan* means the programme developed by the *EPCM Contractor* for the *Services* in accordance with Section 4.2 and which shall include, but not be limited to:

(i)  the organisation to be established by the *EPCM Contractor* for carrying out the *Services*, including, but not limited to, the identities and curriculum vitae of *Key Personnel*, or if not yet identified, then the titles of the positions that will be held by *Key Personnel*;

(ii)  limits of authority of the *EPCM Contractor*;

(iii)  the sequences and methods for the performance of the *Services*; and

(iv)  a detailed schedule with dates for the completion of *Milestones*;

(v)  a contracting plan;

(vi)  a materials management plan;

(vii)  a procurement plan;

(viii) a third party vendor plan;
(ix) a QA/QC program; and
(x) a communication plan;

(aa) *Facilities* means the physical works engineered, procured, constructed and incorporated into the works as a result of the *Services* and *Construction Work* performed, but does not include temporary facilities;

(bb) *Final Completion Notice* means that notice in the form contained in Appendix H – Forms issued by the *Owner* to the *EPCM Contractor* pursuant to Section 20.2 certifying completion and acceptance of the *Services* under the *Contract*;

(cc) *Functional Completion* means that date the *Construction Work* performed by the *Works Contractors* has developed to the point where the *Facilities*:

(i) have passed the required *Performance Tests*; and

(ii) are ready to be put into service, or being used for the purpose intended;

(dd) *Functional Completion Certificate* means that notice issued by the *Owner*, or by the *EPCM Contractor* on the *Owner's* behalf, to *Works Contractor* certifying achievement of *Functional Completion*;

(ee) *Goods* means any goods, supplies, materials or equipment required as part of the *Construction Contract*, and which are supplied or fabricated by a *Works Contractor* and do not include *Procured Goods*;

(ff) *Hazardous Material* means any substances which are hazardous to persons, animals, property or the environment and includes hazardous substances, hazardous waste, ozone depleting substances and dangerous goods, all as identified or defined by *Law*, as well as any prescribed product under the *Nuclear Safety and Control Act* (Canada);

(gg) *Intellectual Property* means all discoveries, inventions, know-how, improvements, developments, processes, technology, compositions, designs, techniques, methods, industrial designs, compositions, prototypes, models, literary work, research, drawings, software and trade secrets whether capable of patent, industrial design, copyright or trademark protection, or any other type of protection, or not;

(hh) *Law* means the common law, the law of equity and all federal or provincial statutes or municipal by-laws and all regulations, orders, directives, building codes, permits and licences thereunder, which apply to or otherwise affect the *Services*, the *Owner* or the *EPCM Contractor* with respect to the *Services*, or the property of the *Owner* or the *EPCM Contractor*, real or personal;

(ii) *Milestone* or *Milestones* means, as the case may be, one or more milestones that the *EPCM Contractor* must meet as set forth in the *Owner’s Requirements*;
(jj) *Other Contractors* means the contractors (including *Works Contractors*), consultants, or engineers retained by the *Owner* or its consultants or contractors, to perform any work or services at, or related to, the *Owner’s Site*, other than the *EPCM Contractor*;

(kk) *Owner* means *;

(ll) *Owner’s Key Personnel* means the *Owner’s* key personnel for the *Project* who are identified in Appendix J – Key Personnel and Addresses for Notice;

(mm) *Owner’s Representative* means that person identified as such in Section 45.1 which may include a consultant hired by the *Owner*, if so designated, or that person’s designated replacement;

(nn) *Owner’s Requirements* means the description of the scope, standards, design criteria, *Milestones* and the programme of Services set out in Appendix A – *Owner’s Requirements*, as amended by any *Changes*;

(oo) *Owner’s Site* means the *Owner’s* land upon which the *Work Site* is located and which may have on it other projects by *Other Contractors* or existing facilities, activities or operations;

(pp) *Owner’s Specified Materials and Services* means those materials, goods, products, processes, equipment and subconsultants specified in the *Owner Requirements* to be used in, or to be incorporated into, the *Services* by the *EPCM Contractor*;

(qq) *Performance Tests* mean the performance tests set out in the *Owner’s Requirements* for the testing the *Services* and the *Construction Work*, and such other tests as may be agreed between the *Owner* and *EPCM Contractor*;

(rr) *Personnel* means the employees or individuals engaged by a party, or its *Affiliates*, to supplement that party's work force and, where applicable, includes corporate entities used for the sole purpose of engaging an individual by a party, or its *Affiliates*, to supplement that party's work force;

(ss) *Policies* means the policies of the *Owner* as attached in Appendix G – Policies and Guidelines;

(tt) *Procured Goods* means those goods, supplies, materials or equipment obtained for incorporation in, or to perform, the *Construction Work*, and procured by the *EPCM Contractor* as part of its *Procurement Services*;

(uu) *Procurement Services* means the procurement by the *EPCM Contractor* of *Procured Goods* and *Construction Work*, which procurement services are performed by the *EPCM Contractor*, either as agent or non-agent for the *Owner*, as stipulated in the *Owner’s Requirements*;

(vv) *Project* means *;
(ww) Records means the books, statements, records and accounts pertaining to the Contract and the performance of the Services, whether in paper or electronic form;

(xx) Safety Plan means the plan, as specified in the Owner’s Requirements, which includes, but is not limited to, safety performance requirements, mitigation plans, training and orientation requirements, site safety and access rules, reporting and safety meeting frequency, site cleanliness requirements and other occupational health and safety requirements and compliance issues;

(yy) Scheduled Functional Completion Date means the date on which the Project is scheduled to achieve Functional Completion, which, at the effective date of this Contract, is *, 20*;

(zz) Services means all Engineering Services, Procurement Services, Construction Management Services, including those duties allocated to the EPCM Contractor in the Commissioning before Functional Completion and Commissioning after Functional Completion, as may be necessary to fulfill the Owner’s Requirements and includes anything that is ancillary or necessary by implication to fulfill the Owner’s Requirements;

(aaa) Subcontractor means a subcontractor of the EPCM Contractor which subcontractor is engaged for a discreet scope of services in relation to a portion of the Services, but does not include Personnel where those individuals are performing as part of the EPCM Contractor’s team and not as stand alone subcontractors;

(bbb) Suspended Services means any Services, or portion thereof, which the Owner has suspended pursuant to Article 32 - Suspension;

(ccc) System means any component system of the Services, or any part thereof as the context requires; [Note to Users: This definition is to be reviewed on a project-specific basis and components are to be identified in the Owner’s Requirements.]

(ddd) Warranty Period means a period of * months from the date the Final Completion Notice is issued;

(eee) WCB means the Workers’ Compensation Board of Alberta or any other applicable jurisdiction;

(fff) Work Days means any day, except for a Saturday, Sunday, a general holiday or a holiday which is observed in the construction industry in Alberta, or defined as a holiday in a collective agreement pertaining to the Work Site; [Note to Users: This definition should be revised on a project-specific basis.]

(ggg) Work Site means those lands where the Project is located and which are legally and municipally described as such in the Owner’s Requirements; and
(hhh) *Works Contractor* means any contractor, consultant, supplier or vendor hired by the *Owner* to perform any portion of the *Construction Work*, supply any *Goods*, or perform ancillary services.

1.2 The following *Appendices* attached hereto shall form part of and are incorporated in this *Contract*:

(a) Appendix A – Owner’s Requirements
   - See COAA Contracts Committee Checklist
   - See Workface Planning Provisions tailored for this Contract

(b) Appendix B – Owner’s Obligations
   - Proposed Content:
     - Scope of the Owner’s work (preferred suppliers, procurement, construction, etc.)
     - List of Owner's Key Personnel
     - Communications Plan

(c) Appendix C – Reimbursable Costs and Fee
   - See COAA Contracts Committee Template

(d) Appendix D – Invoicing and Payment Procedures
   - Proposed Content:
     - Payment of Invoices
     - Conditions for Withholding of Payment
     - Allowance for Changes in Rates
     - Cash management
     - Right to Audit

(e) Appendix E – Work Procedures
   - Proposed Content:
     - Health, Safety and Environment
     - QA/QC
     - Change Management
     - Risk Management
     - Document Management
     - Meeting and Reporting
     - Scheduling and Progressing
     - Cost Trending and Forecasting
     - Contingency Management
     - Construction Management
     - Contract Management
     - Handover – Functional Completion
     - Project Close-Out
     - Apprentice Employment Plan
     - Local Business Incorporation Plan
Appendix F – Key Performance Indicators
• See COAA Contracts Committee Template

Appendix G – Policies and Guidelines
• Proposed Content:
  o Health, Safety and Environment
  o Labour Relations
  o Procurement Plan
  o COAA Canadian Model for Providing a Safe Workplace: Alcohol and Drug Guidelines and Work Rule
  o COAA Workplace Respect Policy

Appendix H – Forms
• See COAA Contracts Committee Templates for forms (i), (v) and (vi):
  (i) Key Employee Confidentiality, Intellectual Property and Consent Agreement
  (ii) Change Order
  (iii) Change Directive
  (iv) Final Completion Notice
  (v) Release and Certificate of Final Payment
  (vi) Statutory Declaration

Appendix I – Dispute Resolution Procedure
• Attach project-specific document

Appendix J – Key Personnel and Addresses for Notice
• Attach project-specific document

[Note to Users: List any additional Appendices]

Article 2 - Interpretation and Order of Precedence

2.1 Unless the context otherwise requires, words importing the singular shall include the plural and vice-versa and words importing gender shall include the masculine, feminine and neuter genders.

2.2 The headings and sub-headings of the Contract are used for convenience and ease of reference only and in no way define, limit, describe or interpret the scope or intent of the Contract.

2.3 If there is a conflict in the Contract, the order of precedence of documents, from highest to lowest, shall be:

(a) this Engineering, Procurement and Construction Management Agreement, excluding the Appendices;

(b) Change Orders and Change Directives;
2.4 The following shall, in all instances, apply:

(a) for documents revised by either party and approved by the Owner, the revision most recently approved by the Owner shall govern;

(b) figured dimensions on drawings shall govern, even though they may differ from scaled dimensions;

(c) drawings of larger scale shall govern over those of smaller scale of the same date; and

(d) specifications shall govern over drawings regardless of time.

2.5 Wherever this Contract requires an action to be performed or an obligation to be undertaken, unless otherwise specified, such action or obligation shall be performed in a prompt and commercially reasonable manner by the party taking the action or fulfilling its obligation.

Article 3 - Owner’s Requirements and Obligations

3.1 The Owner’s Requirements describes the scope of the Services and Appendix B – Owner’s Obligations describes those things the Owner is required to do to facilitate the performance of the Services, including the Owner's scope of work and its communication plan with the EPCM Contractor.

3.2 The Owner’s Requirements shall specify the requirements of the Safety Plan and identify the party, or parties, responsible for the development and implementation of the Safety Plan.

3.3 Subject to Section 15.9, all conflicts with respect to the interpretation of the Owner’s Requirements shall be resolved by the Owner’s Representative.

3.4 The EPCM Contractor may rely on the accuracy of all documentation regarding the Project and the Owner's Site provided by the Owner, whether prepared by the Owner or some other party, except where a review or confirmation is required by the Owner and the scope of such review or confirmation is described in the Owner's Requirements.
Article 4- General Requirements of the Services

4.1 Subject to re-work covered by Article 21 - Warranty, or coverage that is available pursuant to the insurance coverage provided by the EPCM Contractor, the scope of the Services includes correction of Deficiencies by the EPCM Contractor at the Owner’s expense.

4.2 By the date or dates specified in the Owner’s Requirements, the EPCM Contractor shall prepare and submit for the Owner’s approval and acceptance a detailed Execution Plan for the performance of all of, or any part of, the Services, and shall update and obtain the Owner’s acceptance of the Execution Plan at the intervals identified in the Owner’s Requirements or, if not identified, as may be required during the performance of the Services. The EPCM Contractor shall control the progress of the Services to achieve compliance with the Execution Plan.

4.3 In the execution of the Services, the EPCM Contractor shall comply with, and the completed Services shall comply with, the Law and the standards specified in the Owner’s Requirements.

4.4 References in the Contract to applicable codes, standards or regulations shall be understood to be references to the edition applicable on the effective date of the Contract, unless stated otherwise. If changed or new applicable codes, standards or regulations come into force after the effective date of the Contract, the EPCM Contractor shall submit a Change Quotation for compliance to those changed or new codes, standards or regulations to the Owner’s Representative. Any Change in the Services, the Contract Time or the Compensation as a result shall be dealt with under Article 15 - Changes.

4.5 The EPCM Contractor accepts the Owner’s Site, the Work Site and the obligation to perform the Services in the condition existing at the effective date of this Contract and acknowledges that it has investigated and satisfied itself to the following, except for subsurface or other physical conditions not disclosed by the Owner:

(a) the nature of the Services;

(b) the location of and all conditions relating to the Owner’s Site and the Work Site, including, but not limited to, accessibility, general character, surface conditions, utilities, roads, uncertainties of seasonal weather and all other physical, topographical and geographical conditions;

(c) all environmental risks, conditions, Law and restrictions applicable to the EPCM Contractor or the Services that may affect the Services; and

(d) the magnitude of the Services.

4.6 The EPCM Contractor accepts the obligation to perform the Services and acknowledges that it has investigated and accepts what is known and can be reasonably anticipated regarding:
(a) the general character, quality, quantity and availability of resources required to execute and complete the Services and Construction Work; and

(b) all conditions affecting labour for the provision of the Services.

4.7 The Owner reserves the right to award separate contracts to Other Contractors for services or work to be performed at the Work Site and to perform services with its own forces at the Work Site. In such event, the EPCM Contractor shall co-ordinate and schedule the Services with the services of the Other Contractors, the Works Contractors’ work and the Owner’s own forces, and the EPCM Contractor shall share access to and use of the Work Site to accommodate the services of Other Contractors. If the proposed services performed by Other Contractors, as directed by the Owner, will interfere with the Services performed by the EPCM Contractor or the Works Contractors’ work, the EPCM Contractor shall notify the Owner of such interference.

4.8 The EPCM Contractor shall co-operate fully with the Owner, Other Contractors and all other parties with whom the EPCM Contractor or Owner may be involved during the performance of the Services.

4.9 The Owner shall advise the EPCM Contractor of any separate contracts or other work or events that may affect the Services or the Construction Work.

4.10 In the performance of the Services, the EPCM Contractor shall give due consideration to the interest and property of others wherever involved, and shall carry out and perform the Services in a manner which shall cause the minimum of inconvenience, injury, and damage to others.

4.11 Approval of the Services, or acceptance of any part of the Services by the Owner, or payment to the EPCM Contractor shall not relieve the EPCM Contractor from its responsibilities under the Contract.

4.12 The EPCM Contractor shall manage the Services as stipulated in the Owner’s Requirements and shall provide:

(a) cost monitoring, scheduling and reporting to the Owner;

(b) scheduling the Services and monitoring and reporting on the progress of the Construction Work relative to the Milestones to the Owner;

(c) coordination, scheduling and supervision of Works Contractors;

(d) coordination and management of transportation and related services for the Services and, as applicable, the Construction Work;

(e) management of the Services to ensure the Services are performed in an efficient and coordinated manner; and
written reports detailing the status of the Services and the Construction Work and all issues relating thereto, on a reporting cycle agreed by the Owner and the EPCM Contractor, and shall attend meetings as required by the Owner’s Requirements, or as otherwise requested by the Owner’s Representative.

4.13 The EPCM Contractor shall ensure that no activities or actions are undertaken in the performance of the Services which would adversely affect, restrict or limit in any way the continued operation of the Owner’s facilities which are in operation, unless required to perform the Services, done in accordance with the Execution Plan and authorized in writing by the Owner’s Representative.

4.14 The Owner shall provide, and the EPCM Contractor shall abide by, all documents provided by the Owner relating to the Owner’s Site, including, but not limited to, any special restrictions and conditions contained in any easement, regulatory board order, crossing agreement, or other permit relating to the Work Site.

4.15 Each of the parties shall fully inform each other of any errors, omissions or inconsistencies in the Contract, Deficiencies in the Services and of any inconsistencies between the Contract and the Law, of which they become aware. Both the Owner and the EPCM Contractor shall exercise reasonable care and diligence to prevent any actions or conditions which could result in any such inconsistencies or Deficiencies. If the Owner or the EPCM Contractor discovers any inconsistencies in the Contract, or between the Contract and the Law, or discovers any Deficiencies in the Services, that party shall notify the other party and in the case of the EPCM Contractor discovering such inconsistencies shall resolve all such inconsistencies with the Owner before proceeding with the affected portion of the Services. If the EPCM Contractor discovers any inconsistencies in the Contract, or between the Contract and the Law, or discovers any Deficiencies in the Services, and proceeds without approval of the Owner or issuance of a Change Directive, the EPCM Contractor shall proceed at the EPCM Contractor’s own risk and expense and waives all rights to claim against the Owner for the same.

4.16 Within ___ days of the Commencement Date, the EPCM Contractor shall prepare for approval by the Owner all work procedures listed in Appendix E – Work Procedures that are not provided by the Owner such that they comply with the Owner’s Requirements. The Owner shall review and either approve the work procedures prepared by the EPCM Contractor or provide the EPCM Contractor with written reasons specifying why one or more of the work procedures is not approved. Upon receiving such reasons, the EPCM Contractor shall promptly revise the work procedures in accordance with such reasons and re-submit the revised procedures to the Owner for approval. The process shall be repeated until all of the work procedures are approved by the Owner. The Owner may at any time, by providing notice of at least 14 days, direct the EPCM Contractor to revise any of the work procedures. The EPCM Contractor shall perform the Services in accordance with all approved work procedures.

4.17 All documents and drawings prepared as part of the Services shall be in English.
4.18 At all times during the progress of the Services, the Owner shall have the right to inspect or witness any part of the Services.

Article 5 - Engineering Services

5.1 The EPCM Contractor shall perform the Engineering Services and be responsible for the design and engineering necessary to execute the Construction Work.

5.2 The Engineering Services shall be prepared under the supervision of the EPCM Contractor’s qualified professional engineers licensed by the Association of Professional Engineers, Geologists and Geophysicists of Alberta.

5.3 The professional supervisors referred to in Section 5.2 shall be available to meet with the Owner’s Representative at all reasonable times during the Contract Time and the Warranty Period.

5.4 The Owner shall have the right of inspection and review of the design drawings and specifications at all reasonable times. No inspection, or failure to inspect, by the Owner shall relieve the EPCM Contractor of the EPCM Contractor’s obligations.

5.5 The EPCM Contractor shall:

   (a) prepare, and keep up-to-date, the As-Built Drawings with cross-references to relevant specifications, standards and codes;

   (b) keep the As-Built Drawings on the Work Site;

   (c) during the Contract Time, provide the Owner with access to the As-Built Drawings; and

   (d) upon completion of the Services, or at such other time as may be determined by the Owner, submit the As-Built Drawings and copies to the Owner’s Representative in accordance with the Owner’s Requirements.

5.6 Should the EPCM Contractor become aware of a deficiency in the Owner’s Requirements, the EPCM Contractor shall advise the Owner of such deficiency.

Article 6 - Owner’s Specified Materials and Services

6.1 Where the Owner’s Requirements, a Change Order or a Change Directive directs the EPCM Contractor to use the Owner’s Specified Materials and Services, the EPCM Contractor shall review the Owner’s Specified Materials and Services to determine whether such Owner’s Specified Materials and Services are acceptable to the EPCM Contractor and can be incorporated in the Services without interfering with the achievement of the Milestones.

6.2 If the EPCM Contractor determines that the Owner’s Specified Materials and Services are not acceptable to the EPCM Contractor for incorporation in the Services, then the
EPCM Contractor shall give notice to the Owner that the Owner’s Specified Materials and Services are not suitable for the Services, which notice will provide details of the reasons why the Owner’s Specified Materials and Services are not acceptable for use or incorporation into the Services. If such notice is not provided by the EPCM Contractor, then the EPCM Contractor shall accept the Owner’s Specified Materials and Services as if specified by the EPCM Contractor.

6.3 Where the EPCM Contractor has provided notice to the Owner that the Owner’s Specified Materials and Services are not acceptable for the Services, the Owner shall notify the EPCM Contractor of the Owner’s decision as to whether or not to include the Owner’s Specified Materials and Services in the Services.

6.4 If the Owner chooses to direct the EPCM Contractor to use the Owner’s Specified Materials and Services after the EPCM Contractor has notified the Owner that the Owner’s Specified Materials and Services are not acceptable for the Services, then the Owner shall take sole responsibility for specifying the Owner’s Specified Materials and Services.

Article 7 - Procurement Services

7.1 As specified in the Owner’s Requirements, the EPCM Contractor shall provide Procurement Services, as applicable, using such selected vendor lists, Works Contractor lists, contract documentation and Owner’s Specified Materials and Services as directed by the Owner.

7.2 The EPCM Contractor shall not recommend or award contracts to an Affiliate of the EPCM Contractor without written disclosure of that relationship to, and the prior written approval of, the Owner.

7.3 The Owner shall provide to the EPCM Contractor sufficient instructions and guidelines to enable the EPCM Contractor to effect delivery, receiving and handling into and within the Owner’s system of materials handling and warehousing.

7.4 In accordance with the Owner’s Requirements, the EPCM Contractor shall:

(a) verify documentation, pay vendor invoices, manage financial resources and report to the Owner on the payment for Procured Goods;

(b) make reasonable enquiries and checks to determine that Procured Goods are free of all claims, liens, charges, encumbrances and security interests;

(c) make reasonable enquiries and checks to determine that Procured Goods do not infringe on the Intellectual Property rights of others and negotiate terms that project the Owner from claims of infringement of Intellectual Property rights;

(d) submit any required samples for the approval of the Owner’s Representative, together with any relevant information; and
(e) monitor and report on the scheduled and actual delivery of Procured Goods in accordance with the Owner's Requirements.

Article 8- Construction Management Services and Construction Work

8.1 The Owner has ultimate responsibility for Works Contractors which are under the direction of EPCM Contractor and the Owner carries the risk of the Construction Work being performed in accordance with the applicable Construction Contracts.

8.2 The Owner and the EPCM Contractor shall work in a consultative mode to select and implement the optimum construction strategy for the Project.

8.3 The EPCM Contractor shall:

(a) provide the Construction Management Services in accordance with the Execution Plan and the Owner's Requirements;

(b) provide advice to the Owner on work breakdown, contracting strategy and candidate Works Contractors; and

(c) administer, supervise, manage and monitor the Works Contractors, and where any Works Contractor fails to conform to the Construction Contract, the EPCM Contractor shall provide adequate reporting to the Owner, seek the appropriate authority from the Owner and manage that non-conformance.

[Note to Users: The Committee recommends the use of the COAA Stipulated Price Construction Contract and the COAA EPC Contract for the Construction Contract between the Owner and Works Contractors]

8.4 The EPCM Contractor shall have the authority to make, and shall be responsible for making, all arrangements to perform inspections and testing and to deal with Performance Tests, if any, in accordance with Article 19 - Inspection and Testing. The EPCM Contractor shall provide full reporting to the Owner regarding such inspections and testing and provide recommendations to the Owner regarding all failed inspections and testing.

8.5 The EPCM Contractor have systems in place to and shall:

(a) monitor whether any materials, supplies or equipment incorporated into the Construction Work are subject to any general security agreement, chattel mortgage, financing contract or other agreement by which an interest therein is retained by the vendor, or any other party and shall report any occurrence of the same to the Owner;

(b) monitor the title to the Work Site for liens or other encumbrances and immediately take steps to deal with any affected payments and report any occurrence of the same to the Owner;
(c) ensure that the appropriate permits and regulatory approvals have been obtained and are easily accessible to Personnel requiring copies of the same;

(d) manage, support and report on the Construction Work, site and camp management, site operations and site safety;

(e) determine when and perform audits of Construction Contracts;

(f) support, facilitate transportation, storage, inspection, testing, and all related documentation;

(g) maintain and, at completion of the Services, turn-over all project documentation; and

(h) fulfill the requirements set out in the Owner's Requirements.

8.6 The EPCM Contractor shall provide notice to the Owner’s Representative when the EPCM Contractor believes that the Construction Work performed by a Works Contractor is ready for the issuance of a Functional Completion Certificate. Such notice shall be issued to the Owner not earlier than 7 days before the Construction Work or a System will, in the EPCM Contractor’s opinion, be complete and ready for taking over by the Owner. Such notice shall include the Deficiencies identified by the EPCM Contractor.

8.7 The EPCM Contractor shall, in accordance with the Owner's Requirements, be responsible for collection, collation and the turn-over of:

(a) all project documentation, including to all plans, drawings, operational and maintenance manuals to the Owner; and

(b) all documentation created and produced by the EPCM Contractor as agent of the Owner.

Article 9 - Agency

9.1 Where the EPCM Contractor performs any Services as agent of the Owner:

(a) the EPCM Contractor shall carry out the Owner’s instructions and shall act:

(i) in good faith and in the best interests of the Owner; and

(ii) within the scope of the agency specified in Article 7 - Procurement and the Owner's Requirements.

(b) the EPCM Contractor shall not enter into any agreement, contract, settlement or arrangement with any person, firm or corporation, or other enterprise imposing any compromise, legal obligation or liability of any kind whatsoever on the Owner, unless such is in accordance with this Contract or unless EPCM Contractor has prior specific written authority to do so from the Owner;
the appointment of the EPCM Contractor as the Owner’s agent shall be limited as follows:

(i) to the limits of authority contained in the Owner’s Requirements;

(ii) the Services shall be in accordance with the EPCM Contractor’s internal process, but subject always to the final written approval of the Owner’s Representative;

(iii) the Services shall only relate to the Project and the EPCM Contractor shall not act as agent for the Owner in any other respect;

(iv) the Services shall be on commercial terms and conditions pre-approved by the Owner and the EPCM Contractor shall not modify or change any of the terms and conditions approved by the Owner without the Owner’s prior written consent, which consent may be withheld at the Owner’s sole discretion;

(v) title to all Procured Goods shall be in the Owner’s name;

(vi) all warranties and guarantees relating to the Procured Goods shall be made to the Owner and shall be enforceable by the Owner; and

(vii) the EPCM Contractor shall strictly follow the Owner's instructions and guidelines that identify the levels of review and approval required by the Owner in relation to the Procured Goods.

Article 10 - Commissioning

10.1 The duties of the Owner and of the EPCM Contractor in relation to Commissioning before Functional Completion and Commissioning after Functional Completion, together with the Milestones to be reached for commissioning, shall be performed as set out in the Owner’s Requirements.

Article 11 - EPCM Contractor’s Representations

11.1 The EPCM Contractor shall:

(a) perform the Services in accordance with all applicable professional standards and in an efficient and workmanlike manner, using only qualified, skilful and careful workers, in strict accordance with the Contract and in accordance with sound and currently accepted design, engineering, procurement, construction management and commissioning practices normally employed in industrial construction similar to the Services;

(b) perform the Services in a safe and environmentally sound manner and in compliance with the Law;
(c) perform the Services to meet the Owner’s Requirements; and

(d) comply with the Contract, including, but not limited to, all time schedules set out in, or called for by, the Contract or the Execution Plan.

11.2 The EPCM Contractor represents and warrants to the Owner that:

(a) it has the experience, resources, Personnel and capability to perform the Services;

(b) it is duly incorporated and validly existing under the laws of the jurisdiction(s) of its incorporation and is registered to carry on business in the Province of Alberta;

(c) it has all required permits, licences and authorizations necessary to carry on its business and the Services; and

(d) the EPCM Contractor has the right to give the Owner all licences described in Section 27.5.

Article 12 - Contract Time

12.1 Subject to any Change Order or Change Directive, the EPCM Contractor shall commence the Services on the Commencement Date and shall diligently pursue the Services to facilitate the achievement of the Milestones until the Final Completion Notice is issued to the EPCM Contractor.

12.2 The EPCM Contractor shall, unless otherwise provided for in this Contract, or altered by any Change Order or a Change Directive, perform the Services in accordance with the Execution Plan.

12.3 If a party fails to meet its obligations set out in this Contract in a timely manner, the other party may raise the failure of a timely action as provided for in Appendix I – Dispute Resolution Procedure; however, in such case the parties shall continue to perform their respective obligations under this Contract while the matter is being resolved.

Article 13 - Payment

13.1 As full and complete compensation for the Services, the Owner shall pay the EPCM Contractor the Compensation, as adjusted by any Change Order or Change Directive.

13.2 The EPCM Contractor shall comply with this Article and prepare and submit invoices for all Services performed in accordance with Appendix D – Invoicing and Payment Procedures for all payments whether for the Services or arising under Article 32 - Suspension, Article 33 - Termination for Convenience or Article 34 - Termination for Cause.

13.3 As a condition precedent to each progress payment to the EPCM Contractor by the Owner, the EPCM Contractor shall deliver to the Owner:
(a) \( WCB \) clearance in the form of a \( WCB \) “Letter of Clearance”, that its account is in good standing and that it has paid any assessments made by the \( WCB \) in relation to the \textit{Services}; and

(b) a Statutory Declaration, on second and subsequent progress billings, in the form set out in Appendix H – Forms.

13.4 The Owner shall retain from all payments due and payable to the \textit{EPCM Contractor} an amount equal to 10% of the value of the \textit{Services} actually done and materials furnished by the \textit{EPCM Contractor} in accordance with the \textit{Builders’ Lien Act} (Alberta).

13.5 Where the \textit{EPCM Contractor} engages a \textit{Subcontractor}, the Owner shall release 10% of the value of the \textit{Services} actually done and materials actually furnished under a subcontract at the date of issue of a certificate of substantial performance issued in relation to that subcontract, if:

(a) a certificate of substantial performance is issued for the \textit{Subcontractor}'s subcontract,

(b) a period of specified in the \textit{Builders' Lien Act} for that particular portion of the \textit{Services} has expired from the date of issue of the certificate of substantial performance, and

(c) no lien has been registered.

13.6 When the \textit{EPCM Contractor} has substantially performed the \textit{Services}, as substantial performance is defined in the \textit{Builders’ Lien Act} (Alberta), the \textit{EPCM Contractor} shall issue and deliver to the Owner a certificate of substantial performance in accordance with the \textit{Builders’ Lien Act} (Alberta). The \textit{EPCM Contractor} shall post the certificate of substantial performance in accordance with the \textit{Builders’ Lien Act} (Alberta).

[Note to Users: The \textit{Builders’ Lien Act} is cumbersome for use in this type of contract. The COAA Best Practices has authorised a sub-committee of the Contracts Committee to develop proposals regarding the applicability of the \textit{Builders’ Lien Act} to major industrial projects.]

13.7 Should either party fail to make payments as they become due under the terms of the \textit{Contract} or in an award of arbitration or judgment of a court, interest at the rate of \% per annum compounded semi-annually on any unpaid amounts shall also become due and be payable.

\textbf{Article 14 - Cost and Price Control}

14.1 The Owner is responsible for the \textit{Project} meeting the \textit{Scheduled Functional Completion Date} and the \textit{EPCM Contractor} is responsible for meeting the \textit{Milestones}. 
14.2 The Owner is responsible for the cost of the Construction Work and the EPCM Contractor is responsible for managing the Estimated Contract Price as set out in Section 14.3 and the Owner’s Requirements.

14.3 In relation to the cost of the Services and the Construction Work, the EPCM Contractor shall, in accordance with the Owner’s Requirements:

(a) monitor costs, perform cost control and forecasting;

(b) prepare reports, estimates, budgets and trend analyses; and

(c) update or revise the Estimated Contract Price as required by the Owner.

Article 15- Changes

15.1 The Owner shall have the right, at any time, to make a Change.

15.2 When a Change is proposed by the Owner, then the Owner shall provide a Contemplated Change Notice to the EPCM Contractor describing the proposed Change.

15.3 The EPCM Contractor, upon receipt of a Contemplated Change Notice, shall within * Work Days provide the Owner’s Representative with a Change Quotation which shall include a method of adjustment or an amount of adjustment to the Compensation, if any, and any adjustment in the Contract Time for the proposed Change.

15.4 Following receipt of a Change Quotation, the Owner shall within * Work Days either agree to the adjustments in the Contract Time and the Compensation or to the method to be used to determine the adjustments, or give the EPCM Contractor notice that the Change Quotation is not acceptable.

15.5 If the Change Quotation is agreed to, then the Owner shall issue a Change Order recording the Change, which shall be signed by the Owner and the EPCM Contractor. The value of the Services performed as a result of a Change Order shall be included in invoices for payment submitted by the EPCM Contractor in accordance with the terms of payment in Appendix C – Reimbursable Costs and Fee and shall identify those portions of the invoice charged for the Change Order.

15.6 If the Owner requests the EPCM Contractor to provide a Change Quotation and subsequently elects not to proceed with the Change, the EPCM Contractor shall be reimbursed in accordance with Appendix C – Reimbursable Costs and Fee, or as otherwise agreed between the parties, for its reasonable costs incurred in preparing the Change Quotation and the Owner shall issue a Change Order for these costs.

15.7 If the Owner requires the EPCM Contractor to proceed with the Change before the Owner and the EPCM Contractor agree, or, if the Owner and the EPCM Contractor have failed to agree upon the adjustment in Contract Time and the Compensation, then the Owner shall issue a Change Directive directing the EPCM Contractor to proceed with the Services.
15.8 Upon receipt of a *Change Directive*, the *EPCM Contractor* shall proceed with the *Change* and:

(a) keep daily records of the time, materials and equipment employed in the *Change* and shall submit such records to the *Owner’s Representative* on a daily basis;

(b) the *Compensation* shall be adjusted in accordance with the rates set forth in Appendix C – Reimbursable Costs and Fee or as negotiated by the parties, or failing such resolution, those portions of the *Change Directive* not agreed to shall be settled in accordance with Appendix I – Dispute Resolution Procedure; however, payment for such portions of the *Change Directive* that are not disputed shall be paid in accordance with Article 13 - Payment; and

(c) the *Contract Time* shall be adjusted by agreement between the *Owner* and the *EPCM Contractor*, or shall be settled in accordance with Appendix I – Dispute Resolution Procedure.

15.9 If, during the performance of the *Services*, the *EPCM Contractor* is of the opinion that any instruction, interpretation, decision or direction relating to the *Project* and communicated to it by the *Owner* should have, but has not, resulted in a *Contemplated Change Notice* or *Change Directive* being issued, then, within \* Work Days, the *EPCM Contractor* shall give the *Owner* notice that the instruction, interpretation, decision or direction is a *Change* and, within the same number of *Work Days* specified in Section 15.3 from the notice of the *Change*, shall issue a *Change Quotation* requesting an adjustment in *Contract Time* and the *Compensation*, as may be required. If the *EPCM Contractor* does not issue the notice of a *Change* or a *Change Quotation* within the specified times, then the *EPCM Contractor* shall have no claim against the *Owner* attributable to that instruction, interpretation, decision or direction.

15.10 If, during the performance of the *Services*, the *EPCM Contractor* is of the opinion that any revision in the *Law* or regulatory regime occurring after the date of execution of this *Contract* has changed the *Owner’s Requirements*, surface conditions differ from those disclosed by the *Owner*, or there is some other external factor which occurred after the date of execution of the *Contract* which results in a *Change*, and should, but has not, resulted in a *Contemplated Change Notice* or *Change Directive* being issued, then, within \* Work Days, the *EPCM Contractor* shall give the *Owner* notice that the instruction, interpretation, decision or direction is a *Change* and, within the same number of *Work Days* specified in Section 15.3 from the notice of the *Change*, shall issue a *Change Quotation* requesting an adjustment in *Contract Time* and the *Compensation*, as may be required. If the *EPCM Contractor* does not issue the notice of a *Change* or a *Change Quotation* within the specified times, then the *EPCM Contractor* shall have no claim for any claim against the *Owner* attributable to that revision to the *Law* or regulatory regime, subsurface conditions being different than disclosed by the *Owner*, or other external factor.

15.11 If the *Owner* receives a *Change Quotation* from the *EPCM Contractor* pursuant to Section 15.9 or Section 15.10 the *Owner* shall consider the *Change Quotation* and, within
the same number of Work Days specified in Section 15.4, issue a Change Order, Change Directive or advise the EPCM Contractor in writing that the EPCM Contractor’s request is denied. If the EPCM Contractor disputes the Owner’s decision, the EPCM Contractor shall, before proceeding with the Services, provide notice to the Owner disputing the Owner’s decision, but in all cases, the EPCM Contractor shall proceed with the Services. In such event, the EPCM Contractor shall keep daily records in accordance with Section 15.8(a), in respect of the disputed services. The EPCM Contractor’s entitlement to an adjustment in the Contract Time, the Compensation, or both, shall then be resolved in accordance with Appendix I – Dispute Resolution Procedure.

15.12 No modification, addition, deletion or other revision to the Owner’s Requirements shall be binding on either party unless set out in a Change Order, required by a Change Directive or determined in accordance with Appendix I – Dispute Resolution Procedure. Neither the keeping of daily records in respect of disputed services nor the signing of those records by the Owner’s Representative shall be considered an admission of entitlement to payment by the Owner. Such records, if signed by the Owner, shall only constitute the Owner’s agreement that the time, materials and equipment were spent or employed in respect of the Services for which a Change Directive has been issued, or in respect of the Services in relation to which the EPCM Contractor has given notice of a dispute pursuant to Section 15.9 or Section 15.10.

15.13 The EPCM Contractor shall include in its Change Quotation all costs and changes in Contract Time reasonably expected to result from a Change including any impact or ripple costs or costs of acceleration.

**Article 16 - Personnel, including Key Personnel**

16.1 All communications between the Owner and the EPCM Contractor and all documents of whatever kind submitted to the Owner by the EPCM Contractor and its Subcontractors shall be in the English language. All of the EPCM Contractor’s and the Subcontractors’ Personnel that deal with, or communicate with, the Owner shall be fluent in the English language.

16.2 The EPCM Contractor’s supervisory Personnel for the Services shall be qualified, trained and experienced in safety, efficiency and quality of supervision, and if requested by the Owner, accredited or enrolled in a program for accreditation, in the manner specified by the Owner in the Owner’s Requirements.

16.3 At the Owner’s request, the EPCM Contractor shall reassign, replace or remove Personnel who, in the Owner’s opinion, acting in good faith, negatively affect the efficiency, safety or the ability to meet the Scheduled Functional Completion Date or who have committed a violation of the Policies.

16.4 The EPCM Contractor shall not employ, or continue to employ, workers who are not Canadian citizens or permanent residents of Canada in Canada, except in compliance with the Immigration and Refugee Protection Act (Canada) and regulations, as amended from time to time. The EPCM Contractor shall obtain, and upon request produce to the
Owner’s Representative, valid and subsisting employment authorizations with respect to all workers who are not Canadian citizens or permanent residents of Canada who perform the Services.

16.5 Neither party nor its Affiliates may at any time during the period starting on the Commencement Date and until $\ast$ days after the Final Completion Notice is issued, without the prior written consent of the other party, hire, employ, or solicit for the purpose of hiring, employing or contracting, any of the other party's Personnel as a member of its own work force. This Section shall not apply to any enquiries from, or resultant hiring of, Personnel from the other party’s work force as a result of a general advertisement or solicitation of employment circulated on the internet, newspaper or other mass media. The parties agree that this Section is reasonable and required by each party for the protection of their respective businesses.

16.6 The EPCM Contractor shall not engage any of the Owner’s Personnel to perform the Services who has resigned or has been terminated by the Owner for any reason, unless specifically authorized by the Owner.

Article 17 - Key Personnel

17.1 If not agreed to before the execution of the Contract, as part of the Execution Plan, the EPCM Contractor shall submit a proposed organisational chart for the Owner’s approval and at agreed upon intervals during the execution of the Services shall submit a list of the EPCM Contractor’s Key Personnel to accord with the timing of the performance of the Engineering Services, Procurement Services and Construction Management Services. At such agreed upon intervals, the EPCM Contractor shall update the organisational chart to show the EPCM Contractor’s Key Personnel and other supervisory Personnel who shall be executing the Services, together with their respective job titles.

17.2 The Owner shall identify any of the EPCM Contractor’s Key Personnel to which the Owner objects within 14 Work Days of receiving the proposed list in accordance with Section 17.1. If the Owner does not provide the EPCM Contractor with its objections to the EPCM Contractor’s Key Personnel within such time period, the Owner shall be deemed to have accepted the EPCM Contractor’s Key Personnel.

17.3 If the Owner objects to any of the EPCM Contractor’s Key Personnel in accordance with Section 17.2, then the EPCM Contractor will prepare a new organisational chart and list and identifying alternate individuals for the roles of the EPCM Contractor’s Key Personnel for the Owner’s approval. This process shall be repeated until the Owner approves the organisational chart and the list of the EPCM Contractor’s Key Personnel.

17.4 Once the Owner has approved the organizational chart and list identifying the EPCM Contractor’s Key Personnel, from time to time, the EPCM Contractor shall within $\ast$ Work Days arrange for each of the EPCM Contractor’s Key Personnel to complete and execute an agreement in the form of the Key Employee Confidentially Proprietary Information and Consent Agreement, attached as part of Appendix H – Forms.
17.5 Subject to Section 17.6, the EPCM Contractor shall not, without the Owner’s consent, make any changes to the EPCM Contractor’s Key Personnel who have been approved by the Owner.

17.6 If any of the EPCM Contractor’s Key Personnel leave the EPCM Contractor’s workforce, the EPCM Contractor shall forthwith replace such individuals with Personnel possessing those qualifications necessary for the proper performance of the functions to which each is assigned. The Owner shall have the right to determine if the individual proposed as a replacement is suitable to the Owner, and if not suitable, the EPCM Contractor shall propose further individuals until the Owner determines that the replacement person is suitable to the Owner.

17.7 The Owner shall use reasonable efforts to keep the Owner’s Key Personnel on the Project team and where this is not possible, will advise the EPCM Contractor of changes together with the name of the individual replacing any of the Owner’s Key Personnel, if applicable.

Article 18 - Subcontracts and Assignment

18.1 The EPCM Contractor shall provide prior notice to the Owner of its intention to subcontract the performance of any Services and of the name and address of the intended Subcontractor before entering into any subcontract. The Owner may for reasonable cause, and acting in good faith, advise the EPCM Contractor that it does not approve the use of a proposed Subcontractor. In such a case, the EPCM Contractor shall advise the Owner of the cost of replacing the Subcontractor and, upon the Owner’s direction, replace such Subcontractor at the Owner’s cost. Any reviews or approvals by the Owner pursuant to the provisions of this Contract shall not release or relieve the EPCM Contractor of any of its obligations under this Contract or create any contractual relations between the Owner and any Subcontractor nor between the Owner and any subcontractors of the Subcontractor.

18.2 The EPCM Contractor shall require and ensure that all of its Subcontractors and all of its Subcontractors’ subcontractors, at every tier, comply with the Owner's requirements relating to the Work Site.

[Note to Users: In this Contract, there are numerous provisions that require the EPCM Contractor to ensure that its Subcontractors comply with certain provisions. This does not flow through to low tier subcontractors. Depending on the Project specifics, the Owner may want to require the EPCM Contractor to ensure that its Subcontractors bind low tier subcontractors to certain obligations (such as confidentiality, publicity, intellectual property and insurance). If this is the case, it should be added to this Article.]

18.3 Subject to Article 6 - Owner’s Specified Materials and Services, the EPCM Contractor shall be fully responsible for any part of the Services performed by Subcontractors and any of their respective subcontractors and for the acts or omissions of Subcontractors and any of their respective subcontractors and all persons either directly or indirectly
employed by them, to the same extent as the EPCM Contractor is for its own acts or omissions. Without in any way limiting the EPCM Contractor’s obligations pursuant to this Contract, the EPCM Contractor shall secure compliance with and enforce for the benefit of the Owner, each of the contracts entered into by the EPCM Contractor with its Subcontractors and any of their respective subcontractors.

18.4 The EPCM Contractor shall not assign the Contract, or any part thereof, without the prior approval of the Owner.

18.5 The Owner may assign this Contract, including all rights and obligations hereunder, at any time, without the prior agreement of the EPCM Contractor, provided that the Owner shall remain liable for the Owner’s obligations under this Contract unless the EPCM Contractor provides its consent to release the Owner, which consent shall not be unreasonably withheld.

18.6 EPCM Contractor shall promptly furnish to Owner such information concerning the Subcontractors and any subcontractors as owner may reasonably request.

Article 19 - Inspection, Testing and Performance Tests

19.1 If and as specified in the Owner’s Requirements, the EPCM Contractor shall develop and provide to the Owner, an Inspection and Test Plan for the Owner’s review and approval in time to allow the Owner to perform the inspections contemplated by the Inspection and Test Plan.

19.2 If the Owner’s Requirements require any test to be performed or witnessed by the Owner, the EPCM Contractor shall ensure that Works Contractors provide sufficient advance notice of such test and shall provide the Owner’s Representative with sufficient advance notice of readiness for the test when scheduled; any re-testing required by the Owner shall constitute a Change.

19.3 The Owner reserves the right to inspect all tools and equipment brought on to the Work Site by the EPCM Contractor at any time during the progress of the Services. The Owner’s Representative may require the EPCM Contractor to supply a qualified, independent engineering evaluation or certification that any item in question is suitable for its intended purpose, or to reject any item and require replacement with a proper and suitable item which is satisfactory to the Owner’s Representative. If any of the EPCM Contractor’s tools or equipment are deemed by the Owner to be unsafe, environmentally unsound or incapable of performing the work for which it is intended, then the EPCM Contractor shall repair or replace it with a safe, environmentally sound and suitable tool or item of equipment at the EPCM Contractor’s expense.

19.4 Performance Tests may be stipulated in the Owner’s Requirements to be performed before, after, or both before and after Functional Completion and shall be performed by that party specified in the Owner’s Requirements.

19.5 Prior to commencement of the Performance Tests, if any, the EPCM Contractor shall obtain from the Works Contractors, and collate or prepare, as the case may be, and
submit to the Owner’s Representative, operation and maintenance manuals and other
documentation in accordance with the Owner’s Requirements.

19.6 When the EPCM Contractor considers that the Construction Work, or any System, will
pass the Performance Tests, the EPCM Contractor shall notify the Owner that the EPCM
Contractor may perform the Performance Tests on, or to, the Construction Work or a
System.

19.7 If the Construction Work or a System, or part thereof, fails or passes one or more
Performance Tests, the EPCM Contractor shall give notice of the outcome of the same to
the Owner and, in accordance with the Owner's Requirements, the EPCM Contractor
shall advise the applicable Works Contractor.

Article 20 - Final Completion of the Services

20.1 It is a condition precedent to the issuance of a Final Completion Notice that the EPCM
Contractor satisfy each of the following requirements:

(a) the Services have been fully completed in accordance with this Contract;

(b) all Deficiencies with respect to the Services have been remedied to meet the
requirements of this Contract, other than warranty items pursuant to Article 21 –
Warranty.

(c) all obligations of the EPCM Contractor to other parties in relation to the Services,
for which the Owner could in any way be held responsible, have been fully
satisfied; and

(d) the EPCM Contractor has delivered to the Owner the following:

(i) a statutory declaration in the form included in Appendix H – Forms and
modified as required to include the following:

(a) the amount of final sums payable;

(b) the date the EPCM Contractor completed the Services, to evidence
the expiration of the term for filing liens; and

(c) acknowledgement of full payment of all payrolls and other similar
indebtedness, and all other sums and obligations whatsoever
incurred by the EPCM Contractor in carrying out the Services;

(ii) WCB clearance in the form of a WCB “Letter of Clearance”, that its
account is in good standing and that it has paid any assessments made by
the WCB in relation to the Services;

(iii) any As-Built Drawings and operations and maintenance manuals for which
the EPCM Contractor is responsible; and
(iv) a Release and Certificate of Final Payment, in the form provided in Appendix H – Forms.

20.2 When conditions precedent set out in Section 20.1 have been met by the EPCM Contractor, the Owner shall issue to the EPCM Contractor a Final Completion Notice.

Article 21 - Warranty

21.1 If a Deficiency in the Services is discovered during the Warranty Period and if the Owner has notified the EPCM Contractor in writing of such Deficiency no later than 30 days after the expiry of the Warranty Period, the EPCM Contractor shall, at its own risk and expense, re-perform the Services to correct the Deficiency which shall constitute the full extent of the warranty in relation to that Deficiency.

21.2 Should the EPCM Contractor fail to remedy a Deficiency, or commence a remedy on a Deficiency within 7 days of the Owner providing a notice to the EPCM Contractor to remedy the same or within such period as the EPCM Contractor has proposed in writing and which the Owner has approved, the Owner may proceed with any activities necessary to remedy the Deficiency and the EPCM Contractor shall be liable to and shall indemnify the Owner for any and all reasonable costs and expenses incurred by the Owner in doing so and the Owner may retain and deduct such amount from payments or other monies due, or which may become due, to the EPCM Contractor, howsoever arising.

21.3 The EPCM Contractor further warrants any and all remedial services it performs for a further period of * months from completion of the remedial services.

21.4 The EPCM Contractor shall immediately advise the Owner’s Representative of any Deficiencies in workmanship, defects, errors, omissions or mistakes in the Services that it discovers or becomes aware of during the Contract Time or the Warranty Period.

21.5 The EPCM Contractor shall perform its warranty obligations set forth in this Article 21 - Warranty in a manner that minimises disruptions to the Owner’s continued operations.

21.6 Neither acceptance of the Services by the Owner, nor payment for performance of the Services, shall relieve the EPCM Contractor from any responsibility for Deficiencies in the Services.

Article 22 - Compliance with Law and Policies

22.1 The EPCM Contractor shall act in accordance with all Policies and the Law.

22.2 Where there is a change in the Law after the effective date of this Contract, the EPCM Contractor shall be responsible for ensuring that the Services comply with the Law, but any time or cost associated with such change to the Services shall be to the account of the Owner. If the EPCM Contractor considers such change to be a Change, the EPCM Contractor may make a claim for such Change under Section 15.10.
22.3 The *EPCM Contractor* shall comply with, shall ensure that its *Personnel* and agents comply with and shall contractually require its *Subcontractors* and their respective *Personnel* and agents to comply with all applicable *Law* in connection with the *Services*.

22.4 The *EPCM Contractor* shall obtain from governmental authorities or other third parties, and pay for, those licences, permits and approvals required by the *Law* and the *Contract* to perform the *Services*, except those licences, permits and approvals required with respect to the land-use aspects of the *Services* to be performed on the *Work Site*, and except for any licences, permits and approvals required by the *Contract* to be obtained by the *Owner* as stipulated in Appendix B – *Owner’s Obligations*.

22.5 Subject to Section 22.2, if the *EPCM Contractor* discovers any variance between the *Law* and any materials specified by the *EPCM Contractor* or its *Subcontractors*, the *EPCM Contractor* shall notify the *Owner* before proceeding with the part of the *Services* affected, and shall make the necessary revisions to the materials to comply with the *Law*, at the *EPCM Contractor’s* expense.

**Article 23 - Safety and Loss Management**

23.1 The *Owner* and the *EPCM Contractor* are committed to safety and the application of loss management principles in the conduct of their respective businesses. The parties recognize that excellence in safety and loss management can only be achieved through the active participation of everyone, including *Subcontractors* and their respective *Personnel*, consultants and agents.

23.2 The *EPCM Contractor* shall have the highest regard for safety, emergency procedures and loss management at all times during the performance of the *Services*. The *EPCM Contractor* shall at all times be responsible for safety and loss management in the performance of the *Services*, including, but not limited to, protecting the *Personnel* of the *Owner*, the *EPCM Contractor, Subcontractors, Other Contractors*, visitors to the *Work Site* and the general public from injury or death and protecting the *Work Site*, the *Owner’s* property and the property of third parties from loss or damage. Without limiting the generality of the foregoing, the *EPCM Contractor* shall comply with all safety requirements specified in the *Contract*.

[Note to Users: This clause is drafted for a project where the Contractor has exclusive control of the worksite. Modify as necessary on a project-specific basis.]

23.3 The *EPCM Contractor* shall comply with the *Safety Plan* and any *Policies* relating to safety, emergency and loss management.

23.4 All *Personnel* of the *EPCM Contractor*, its *Subcontractors*, the *Owner* and *Other Contractors* shall, and the *EPCM Contractor* shall, ensure that all *Work Site* visitors successfully complete all of the *Owner’s* safety orientation courses and other similar courses stipulated in the *Owner’s Requirements* before being allowed access to the *Work Site*. 
23.5 Subject to Section 23.6, [*Note to Users: Insert Owner, EPCM Contractor or the name of the Other Contractor, as applicable.*] shall be the “prime contractor”, as that term is defined in the Occupational Health and Safety Act (Alberta), for the Services as stipulated in the Owner’s Requirements. Where the EPCM Contractor is the “prime contractor”; it shall be the required authority over all persons entering the Work Site to satisfy its responsibility for safety at the Work Site.

23.6 Where the EPCM Contractor is stipulated as the “prime contractor” for the purposes of the Occupational Health and Safety Act (Alberta) in the Owner’s Requirements, the Owner may take over the role of “prime contractor” at any time as may be stipulated in the Owner’s Requirements.

23.7 For all Services performed on the Work Site, the EPCM Contractor shall have an alcohol and drug policy that is at least equivalent to the requirements set out in the Canadian Model for Providing a Safe Workplace, Alcohol and Drug Guidelines and Work Rules, A Best Practice for the Construction Owners Association of Alberta, current as of the effective as date of this Contract.

23.8 The EPCM Contractor shall ensure that its, and its Subcontractors’, Personnel attending at the Work Site complete the Construction Safety Training System (CSTS) instituted by the Alberta Construction Safety Association, together with any renewable training necessary to maintain applicable CSTS certification, and are in possession of accredited documentation evidencing the same.

23.9 The EPCM Contractor shall coordinate and participate in all security measures relating to the Services and the Work Site as described in the Owner’s Requirements.

Article 24 - Services Area and Clean Up

24.1 The EPCM Contractor shall not use, transport or store Hazardous Material, and shall ensure that Hazardous Material is not used, transported, or stored by Works Contractors, at or on the Owner’s Site, except with the prior written approval of the Owner’s Representative.

Article 25 - Responsibility for and Title to the Services

25.1 Subject to the responsibility for Services remaining with the EPCM Contractor in accordance with Section 25.2, the title to all Services completed or in the course of construction at the Work Site and all Procured Goods purchased for the EPCM Contractor’s own account, except tools and equipment owned or rented by the EPCM Contractor or Subcontractors and not intended to be incorporated into the Services, shall pass to the Owner upon payment by the Owner for such Services. Where the Owner has paid for a portion of the Services, the title to that portion that the Owner has paid for shall pass to the Owner upon such partial payment.

25.2 Notwithstanding the provisions of Section 25.1, until the Owner has issued a Final Completion Notice and during the performance of any remedial services pursuant to Article 21 – Warranty and while in the care, custody and control of the EPCM Contractor, *COAA Best Practices Contract*

EPCM Contract (2008)
Page 30 of 51
Contractor, the EPCM Contractor shall retain all risk with respect to and be responsible for:

(a) all items supplied by the EPCM Contractor or its Subcontractors which are to be incorporated into the Services or used in performance of the Services;

(b) all items supplied by the Owner to the EPCM Contractor for incorporation into the Services or for use in performing the Services; and

(c) any Services, whether in electronic or physical form, completed or in progress.

25.3 If the Services or items referred to in Section 25.2, or any part thereof, are lost, damaged or destroyed while the EPCM Contractor retains the risk and responsibility as set out in Section 25.2, then the Services, or the part thereof, as applicable, shall be redone and replaced in its original format by the EPCM Contractor, at its expense, unless the loss, damage, or destruction was caused by the Owner or persons for whom the Owner is responsible.

Article 26 - Prohibition on Sale of Engineering Services

26.1 Subject to the Owner’s rights under Section 18.5 and Article 27 - Protection of Intellectual Property, the Owner agrees that it shall not:

(a) sell to third parties any part of the Engineering Services, except as part of the sale of the Project;

(b) distribute the Engineering Services to third parties except for the purpose of operating, maintaining, repairing or replacing, re-building or renovating the Owner’s property encompassing or relating to the Services, or, for the purpose of performing other services directly related to the Services; and

(c) [Note to Users: The EPCM Committee considered whether there should be a prohibition on whether the Owner could "use the Engineering Services to build other facilities, plants or structures of a similar nature or purpose"; but the Committee could not reach consensus on this subsection. There were concerns raised about payment for re-use of Services and that there may be liability or defence costs associated with the use of the Contractor’s documents on projects not covered by this Contract.]

Article 27- Protection of Intellectual Property

27.1 Subject to any rights, title or interests expressly granted by the Contract, neither party shall acquire any right, title, or interest in or to any Intellectual Property of the other party which is in existence prior to the execution of the Contract.

27.2 Subject to Section 27.1, all Intellectual Property which the EPCM Contractor, its Personnel, Subcontractors or agents may conceive or make, alone or with others, and which may directly or indirectly result from the Owner's Confidential Information, shall
be the sole and absolute property of the Owner without any further compensation, payment or consideration to the EPCM Contractor, and shall be disclosed or divulged by the EPCM Contractor, or by such Personnel, Subcontractors or agents, only to the Owner.

27.3 In relation to Intellectual Property which is the property of the Owner pursuant to Section 27.2, the EPCM Contractor shall, whenever so requested by the Owner, execute and deliver or cause to be executed and delivered all documentation and facilitate all assignments which the Owner may deem advisable in connection with the Intellectual Property. The EPCM Contractor shall render such assistance when and as may be deemed desirable or necessary by the Owner in order to apply for and obtain letters patent, trademark, copyright and industrial design registrations or certifications in any jurisdiction for the Intellectual Property and in order to assign and convey to the Owner the sole and absolute right, title and interest in and to the same. All proper, reasonable and approved expenses in connection with such assistance shall be borne by the Owner.

27.4 Subject to Sections 27.1 and 27.2 and the exception contained in this Section, all Intellectual Property which the EPCM Contractor, its Personnel, Subcontractors or agents may conceive or make, alone or with others, and which may directly or indirectly result from or in the performance of the Services performed by them, shall be the property of the EPCM Contractor or its Subcontractors or agents, as the case may be. Notwithstanding the foregoing, but subject to Article 26 - Prohibition on Sale of Engineering Services, the EPCM Contractor have no rights in or to the As-Built Drawings and the As-Built Drawings shall be the sole property of the Owner.

27.5 In relation to Intellectual Property which is the property of the EPCM Contractor pursuant to Section 27.4, the EPCM Contractor grants to the Owner an irrevocable, royalty-free, perpetual, non-exclusive right and licence to use and make copies of any and all Intellectual Property related to the Services, or the performance of the Services, to operate, maintain, repair, replace, expand or reduce the Project. Such right and licence shall be assignable by the Owner to a party to whom the Owner may transfer all or part of the Project; however, where the Owner transfers a discrete portion of the Project only that Intellectual Property applicable to that discrete portion of the Project may be assigned by the Owner. [Note to Users: This Section needs to dovetail with Section 26.1(c) and where the Owner can use the Services in further projects, then the rights in this Section need to be reconsidered.]

27.6 Except to the extent that the Services performed by the EPCM Contractor are performed entirely to the Owner's design, specifications or instructions, the EPCM Contractor shall be liable to and, in addition, shall indemnify and hold harmless the Owner from and against any and all claims arising out of or resulting from the actual or alleged infringement of any Intellectual Property rights in respect of the Services performed by the EPCM Contractor.

27.7 In relation to the EPCM Contractor's obligations set out in Section 27.6, if either party becomes aware of any claims arising out of or resulting from the actual or alleged infringement of any Intellectual Property rights in respect of the Services performed by
the EPCM Contractor, that party shall immediately notify the other party of the same. The EPCM Contractor, if requested to do so by the Owner, shall, at its sole expense, defend the Owner against any such claim. At its own expense, the EPCM Contractor shall have the right to substitute Services which do not infringe or to modify infringing Services so they become non-infringing, or to obtain the necessary licences to use the infringing Services, but only to the extent that such substituted or modified Services meet all the requirements of the Contract. The Owner shall be entitled, at its own expense, to participate in or conduct the defence of any claim with respect to which it is entitled to indemnity under Section 27.6.

Article 28 - Confidentiality

28.1 Each party shall keep all Confidential Information in confidence and shall not:

(a) disclose it to others without the prior written consent of the other party; and

(b) in the case of the EPCM Contractor, shall not use the Owner's Confidential Information except in performance of the Services.

28.2 In addition to Section 28.1, the EPCM Contractor shall not disclose any of the Owner's Requirements, any details of the Services or Owner's Confidential Information except:

(a) to the extent necessary to perform the Services:

(i) to its Personnel associated with the Project who have a need to know the Confidential Information, the Owner's Requirements or the details of the Services, without the prior written consent of the Owner's Representative;

(ii) to any third party to which disclosure of the Owner’s Requirements or details of the Services is reasonably required if, prior to disclosure, consent is obtained from the Owner for such disclosure; or

(iii) to any third party to which disclosure of the Confidential Information is reasonably required if, prior to disclosure, consent is obtained from the Owner for such disclosure and such third party executes an agreement in a form and substance acceptable to the Owner, in its sole discretion, reflecting the confidential nature or the Confidential Information and the restrictions on its use; or

(b) to comply with the Law and, in such case, shall immediately upon becoming aware of the requirement to disclose notify the Owner of such requirement.

28.3 Notwithstanding Section 28.1 or Section 28.2, Confidential Information, Owner’s Requirements or details of the Services may be disclosed by a party if that party is required to make such a disclosure in the course of or as a result of a direction by an arbitrator appointed under Appendix I – Dispute Resolution Procedure or an order of a court of competent jurisdiction. If disclosure is required by an arbitrator or a court, the disclosing party shall provide the other party with immediate notice and, as soon as
possible a copy of, of such arbitration direction or court order and shall only disclose the minimum amount of Confidential Information, Owner’s Requirements or details of the Services to comply with the arbitration or court order.

28.4 The EPCM Contractor shall ensure that its Subcontractors are bound by similar terms of confidentiality and shall, upon the request of the Owner, provide written evidence of the same.

28.5 This Article shall survive the expiry or earlier termination of this Contract for a period of 5 years.

Article 29- Publicity

29.1 The EPCM Contractor shall not, and shall ensure that its Subcontractors do not, use the Owner’s or any of its Affiliates’ name or the registered or unregistered trademarks of the Owner, or its Affiliates, in any slogans or otherwise in any advertising, promotional materials or information or publicity releases, and shall not take, permit to be taken or use any photographs of the Project or the Work Site, without the prior written consent of the Owner’s Representative.

Article 30- Force Majeure

30.1 Either the Owner or the EPCM Contractor may claim that an Event of Force Majeure has taken place, by giving the other party verbal notice within 24 hours of the Event of Force Majeure, and, in addition, notice, together with a proposed plan of corrective action to resolve or minimize the effect of the Event of Force Majeure, within 72 hours of the Event of Force Majeure.

30.2 If there is an Event of Force Majeure, the party claiming such event shall:

30.2.1 complete its obligations as soon as possible, subject to adjustment of the time for performing such obligations as is required as a result of the Event of Force Majeure;

30.2.2 make all reasonable efforts to mitigate the effect of such occurrence on the other party; and

30.2.3 not treat other parties with whom it contracts more favourably where its obligations to such other parties are affected by the same Event of Force Majeure.

30.3 If the Owner does not agree that the Services or any portion of the Services is affected as a result of an Event of Force Majeure for which the EPCM Contractor has given notice under Section 30.1, then the EPCM Contractor shall complete the Services in accordance with the Execution Plan and may request an adjustment to the Contract Time and the Compensation in the manner provided in Section 15.9.

30.4 If an Event of Force Majeure exists and continues for a period in excess of 100 continuous Work Days and results in substantially all of the Services being stopped or suspended
during that period, the EPCM Contractor may terminate the Contract and the Owner shall pay the EPCM Contractor for the Services performed to the date of termination.

30.5 Any delay or failure on the part of either the Owner or the EPCM Contractor which is a result of an Event of Force Majeure, shall not constitute default hereunder or give rise to any claim for damages or result in any increase to the Compensation.

Article 31 - Delays Caused by the EPCM Contractor

31.1 If the EPCM Contractor is responsible for a delay in the progress of the Services, fails to complete any portion of the Services within the time limits set forth in the Execution Plan, or is aware that Milestones will not be reached, for any reason, then the EPCM Contractor shall provide a recovery plan and perform whatever acts are required or requested by the Owner’s Representative to make up the lost time and to avoid any further delay in the performance of the Services.

Article 32 - Suspension

32.1 In addition to any other right that the Owner may have under the Contract or in Law, the Owner may, at any time, by notice to the EPCM Contractor specifying the effective date of the suspension, require the EPCM Contractor to suspend the Services, or any portion thereof.

32.2 Upon providing notice in accordance with Section 32.1, the Owner shall arrange to immediately discuss with the EPCM Contractor the specific requirements of the suspension and whether or not the Owner anticipates that demobilization, remobilization or idle equipment or Personnel will occur as a result of the suspension.

32.3 Upon receiving notice, the EPCM Contractor shall discontinue the Suspended Services, place no further purchase orders or subcontracts with respect to the Suspended Services, and make reasonable efforts to obtain suspension terms satisfactory to the Owner with respect to all purchase orders, subcontracts, supply contracts and rental agreements related to the Suspended Services. The EPCM Contractor shall continue to perform all other portions of the Services which have not been suspended by the Owner.

32.4 Where requested by the Owner, the EPCM Contractor shall advise the Owner of:

(a) the number of the EPCM Contractor’s Personnel made idle by the suspension;

(b) the labour costs resulting from the EPCM Contractor’s Personnel made idle by the suspension;

(c) transportation costs for the EPCM Contractor’s Personnel released during the suspension;

(d) any impact on any of the Works Contractors or the Construction Work;
(e) the equipment made idle and associated equipment costs resulting from the suspension; and

(f) any other costing, labour, material or equipment information relating to the suspension that the Owner may require.

32.5 At the option and cost of the Owner, the EPCM Contractor shall maintain the availability of the EPCM Contractor's Key Personnel, however, the EPCM Contractor shall mitigate, where possible, the cost of maintaining the availability of the EPCM Contractor’s Key Personnel

32.6 The Owner may at any time authorize resumption of the Suspended Services, or any part thereof, by giving the EPCM Contractor reasonable notice specifying the part of the Suspended Services to be resumed and the effective date of such resumption. The EPCM Contractor shall resume the Suspended Services on the date and to the extent specified in the notice provided that if the date for resumption is more than 10 days after the date of suspension, the EPCM Contractor may, by Change Quotation given within the same number of Work Days specified in Section 15.3 after receipt of the notice of resumption, request a Change Order deleting the Suspended Services from the Contract.

32.7 The EPCM Contractor shall use its Personnel, equipment and materials in such manner, and take such other steps as may be necessary or desirable to minimize the costs associated with the Suspended Services. During the period of Suspended Services, the EPCM Contractor shall secure and protect the Suspended Services and all materials and equipment to be used or incorporated therein.

32.8 In relation to Suspended Services, the Owner shall reimburse the EPCM Contractor for the costs reasonably incurred by the EPCM Contractor as a direct result of the suspension of the Services in accordance with Appendix C – Reimbursable Costs and Fee.

Article 33 - Termination for Convenience

33.1 In addition to any other rights that the Owner may have under the Contract or in Law, the Owner may, at any time, terminate the Contract, the Services, or any portion thereof, by giving notice to the EPCM Contractor specifying the Services, or portion thereof, to be terminated and the effective date of the termination. Upon such termination, in addition to the other rights and responsibilities negotiated by the parties, the Owner shall have the rights and the EPCM Contractor shall have the obligations set out in Subsections 34.4(b) and 34.4(c).

33.2 Upon receipt of a notice under Section 33.1, the EPCM Contractor shall discontinue the Services in accordance with the notice, and shall take whatever steps are necessary or desirable to terminate the Services in a safe, cost effective and timely manner with due consideration to environmental impacts. The EPCM Contractor shall continue to perform all other portions of the Services not terminated, if any, in accordance with the Contract.
33.3 The Owner shall reimburse the EPCM Contractor for the Services performed to the date of termination and those costs reasonably incurred by the EPCM Contractor as a direct result of the termination of the Contract, the Services, or any portion thereof, in accordance with Appendix C – Reimbursable Costs and Fee.

33.4 In addition to the payment set out in Section 33.3, the Owner shall pay to the EPCM Contractor that portion of the fee for the Milestones achieved as at the date of termination in accordance with Appendix C – Reimbursable Costs and Fee.

[Note to Users: The Committee recommends a cancellation clause dealing with fees payable at various Milestones be incorporated in Appendix C – Reimbursable Costs and Fee.]

Article 34 - Termination for Cause

34.1 Without limiting the generality of Section 33.1, the Owner may immediately terminate the Contract by notice to the EPCM Contractor in any of the following circumstances:

(a) if the EPCM Contractor becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the EPCM Contractor;

(b) if an order is made or resolution is passed for the winding up or liquidation of the EPCM Contractor;

(c) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the EPCM Contractor or any of the EPCM Contractor’s property;

(d) if the EPCM Contractor ceases to carry on business in the ordinary course; or

(e) if a creditor takes possession of any of the EPCM Contractor’s property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the EPCM Contractor and is in an amount greater than $25,000.00.

34.2 In addition to any rights the Owner may have at Law, if the EPCM Contractor is in default in carrying out any of the terms, conditions, covenants or obligations of the Contract, or has made a false representation, declaration or warranty, the Owner may give the EPCM Contractor notice of default.

34.3 Where the Owner gives the EPCM Contractor a notice of default pursuant to Section 34.2, the EPCM Contractor shall have Work Days immediately following receipt of the notice, or such longer time as the Owner determines to be reasonable and has specified in the notice of default, or has subsequently agreed upon in writing, to remedy such default, or to prepare a remedial plan satisfactory to the Owner and commence to prosecute a remedy. If the EPCM Contractor fails to remedy the default, the Owner may by Work Days notice to the EPCM Contractor terminate the whole or any part of the Contract.
34.4 In the event the Contract is terminated pursuant to Section 34.1 or Section 34.3:

(a) the EPCM Contractor shall discontinue the Services in accordance with the notice and shall take such steps as may be necessary or desirable to minimize the costs to the Owner associated with the termination of the Services and the Owner shall not be liable for those costs incurred by the EPCM Contractor as a result of the termination of the Services;

(b) the Owner shall have the right to take possession of the Procured Goods and the EPCM Contractor’s equipment, materials and plant which are located on the Work Site or other location specifically designated for the Project and shall have the right to use the same to complete the Services;

(c) the EPCM Contractor shall execute and deliver to the Owner all documents required by the Owner, and shall take all steps required by the Owner, to assign to and fully vest in the Owner the rights and benefits of the EPCM Contractor under existing agreements with the its Subcontractors, which are related to the Services.

(d) the Owner shall pay the EPCM Contractor for all Services satisfactorily performed to the date of termination, in accordance with Article 13 - Payment, less the sum of any monies already paid to the EPCM Contractor and any additional cost, loss or expense, including legal fees on a solicitor-and-own-client (full indemnity) basis, that the Owner incurs, suffers or sustains, including, if applicable, any amount the Owner must pay to have any of the Services re-performed to obtain satisfactory completion of such Services by others; and

(e) the Owner shall not be liable for any penalties, damages or loss of profits as a result of the termination of the Services or the Contract by the Owner.

34.5 The EPCM Contractor may immediately terminate the Contract by notice to the Owner in any of the following circumstances:

(a) if the Owner becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the Owner;

(b) if an order is made or resolution is passed for the winding up or liquidation of the Owner;

(c) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the Owner or any of the Owner’s property;

(d) if the Owner ceases to carry on business in the ordinary course; and

(e) if a creditor takes possession of any of the Owner’s property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the Owner and is in an amount greater than $25,000.00.
34.6 Subject to a legitimate dispute between the parties, or a dispute being pursued in accordance with Appendix I – Dispute Resolution Procedure, should the Owner be in material default of its obligations under this Contract, the EPCM Contractor may provide a notice of *Work Days to the Owner that should the material default not be remedied, or the Owner commence to prosecute a remedy in relation to the material default, that the EPCM Contractor may suspend or terminate the EPCM Contractor’s obligations under the Contract.

34.7 Should the EPCM Contractor terminate this Contract pursuant to Section 34.5 or 34.6, the EPCM Contractor shall be entitled to payment from the Owner in accordance with Sections 33.3 and 33.4

34.8 The rights and remedies provided in this Article are in addition to the rights and remedies provided by the Law, or under any other provision of the Contract.

Article 35 - Taxes

35.1 The EPCM Contractor shall be responsible for the payment of:

(a) all taxes imposed by reason of the performance or completion of the Services including, but not limited to, licence, permit and registration fees and the EPCM Contractor’s income, profit, franchise, business, and personal property taxes;

(b) all employment taxes and contributions imposed by the Law or required to be paid on behalf of the Personnel of the EPCM Contractor or its Subcontractors, including, but not limited, to taxes and contributions for income tax, workers’ compensation, unemployment insurance, old age benefits, welfare funds, pensions and annuities and disability insurance; and

(c) all customs, sales and excise taxes and duties owing with respect to any labour, machinery, materials and equipment to be supplied by the EPCM Contractor and used in performance of or incorporated into the Services, except for goods and services tax payable by the Owner with respect to payments due to the EPCM Contractor.

35.2 Any increase in taxes and charges described in Section 35.1(a) and Section 35.1(b) shall be the sole responsibility of the EPCM Contractor.

35.3 The EPCM Contractor shall indemnify and hold the Owner harmless from any liability resulting from the failure of the EPCM Contractor or its Subcontractors to make timely payments of the items referred to in this Article or such similar items for which the EPCM Contractor is responsible. Any interest, penalties or other liabilities arising from such failure shall be the sole responsibility of and be paid for by the EPCM Contractor.

Article 36 - Workers’ Compensation

36.1 The EPCM Contractor shall ensure all of its and its Subcontractor's Personnel, agents, representatives and visitors, attending at the Work Site are registered for workers’
compensation coverage regardless of whether such coverage is required by the statutory requirements of the Province of Alberta.

36.2 The EPCM Contractor shall ensure all of its and its Subcontractor's Personnel, agents and representatives, who perform the Services but do not attend at the Work Site are registered for workers’ compensation coverage in accordance with the statutory requirements of the Province of Alberta.

36.3 The EPCM Contractor shall at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to the Workers’ Compensation Act (Alberta) and upon failure to do so, the Owner, in addition to any other rights it may have at Law or under the Contract, may retain the amount of such assessment or contribution from the Compensation.

36.4 The EPCM Contractor shall indemnify and save harmless the Owner from all workers’ compensation assessments due by the EPCM Contractor in relation to the Services.

36.5 Prior to the performance of any Services, before the release of the holdback and upon request by the Owner at any other time, the EPCM Contractor shall provide, or cause to be provided, evidence:

(a) that it has an account with the WCB;

(b) in the form of a WCB “Letter of Clearance”, that its account is in good standing and that it has paid any assessments made by the WCB in relation to the Services; and

(c) of any of the above in respect of all Subcontractors.

Article 37 - Liens

37.1 To the extent that the EPCM Contractor is not acting as agent of the Owner, and if all undisputed amounts due to the EPCM Contractor have been paid in accordance with this Contract, the EPCM Contractor shall reimburse, protect, indemnify and save free and harmless the Owner, including, without limitation, legal fees on a solicitor-and-own-client (full indemnity) basis, the Work Site and the other lands and property of the Owner from and against:

37.1.1 all liens and claims made or liability incurred by the Owner on account of the Services performed; and

37.1.2 any lien wrongfully registered as described in Section 40 of the Builders' Lien Act, whether registered by the EPCM Contractor or any other party providing the Services.

37.2 Upon becoming aware of any lien or claim described in Section 37.1, the EPCM Contractor shall forthwith discharge any such lien or claim which may be registered or filed, at the expense of the EPCM Contractor.
37.3 If the EPCM Contractor fails to discharge of any such lien or claim as described in Section 37.2, then the Owner may, but shall not be obliged to, discharge or otherwise deal with such lien or claim and the EPCM Contractor shall pay any and all costs and expenses incurred by the Owner in so discharging or otherwise dealing with the lien or claim, including but not limited to, legal fees on a solicitor-and-own-client (full indemnity) basis. Any amounts so expended by the Owner may be deducted from any amounts due the EPCM Contractor whether under this Contract or otherwise.

Article 38- Liability and Indemnity for Third Party Claims

38.1 To the extent that the EPCM Contractor is not acting as agent of the Owner, the EPCM Contractor shall be liable to and shall indemnify, and hold harmless the Owner, its officers, directors, Personnel, consultants and agents for all losses, damages and expenses, including legal fees on a solicitor-and-own-client (full indemnity) basis, which they or any of them may incur as a result of claims, demands, actions or proceedings made or taken against them by persons not party to the Contract for:

(a) any acts or omissions in connection with the performance, purported performance or non-performance of the Contract or of the Services by the EPCM Contractor or its Subcontractors or their respective Personnel or agents;

(b) any acts or omissions of the Owner, Other Contractors or their respective Personnel or agents, or in connection with such acts or omissions, while acting under the direction and control of the EPCM Contractor, its Subcontractors or their respective Personnel or agents; or

(c) any liability, claims, damages, penalty, fines, costs and expenses arising from the failure of the EPCM Contractor or its Subcontractors, or their respective Personnel or agents to comply with the Law.

38.2 The EPCM Contractor shall, at its sole expense, if requested by the Owner, defend those persons entitled to be indemnified pursuant to Section 38.1. The Owner shall have the right, if it so elects, to participate in any such defence and the EPCM Contractor shall have the right to settle claims to a maximum of $* without first consulting with the Owner and thereafter only with the consent of the Owner.

38.3 In the event that the Owner considers that the failure by the EPCM Contractor to settle any claim, demand, action or proceeding to which it or others are entitled to be indemnified by the EPCM Contractor would be detrimental to its interests, it may so notify the EPCM Contractor. If, within * Work Days of the notice, the EPCM Contractor fails to conclude a settlement with the claimant, or fails to advise the Owner that a settlement would prejudice the EPCM Contractor’s insurance coverage for such claim, demand, action or proceeding, then the Owner may settle the claim, demand, action or proceeding in such amount as it considers reasonable and the EPCM Contractor shall immediately pay to the Owner all or such portion of the amount so paid in settlement as the Owner designates as the EPCM Contractor’s liability. However such settlement by the Owner shall not require the EPCM Contractor to repay the Owner
where the *EPCM Contractor* notified the *Owner* that such settlement would prejudice the *EPCM Contractor’s* insurance coverage for such claim, demand, action or proceeding.

38.4 The *Owner* shall indemnify the *EPCM Contractor* for all third party claims that relate to, or arise out of, the *EPCM Contractor* performing the *Services* as agent of the *Owner* in compliance with Article 9 - Agency or the performance of its obligations pursuant to Section 23.7 and, subject to Section 38.6, all legal costs on a solicitor-and-own-client (full indemnity) basis.

38.5 The *Owner* shall indemnify the *EPCM Contractor*, its *Subcontractors*, and their respective officers and directors from and against all claims, demands, losses, damages, expenses, actions and proceedings made or taken by persons not party to the *Contract* and which arise on account of and are attributable to the *Owner’s* obligations expressly set out in this *Contract*.

38.6 Pursuant to Sections 38.4 and 38.5, the *Owner* shall be entitled to retain and instruct counsel to act for and on behalf of those indemnified parties and to settle, compromise and pay any claim, demand, action or proceeding without first obtaining prior approval from the party in whose favour the indemnity has been provided. The *EPCM Contractor* shall, and any indemnified party shall, co-operate in all respects in contesting any third party claim for which the *Owner* has accepted responsibility.

**Article 39 - Liability and Indemnity**

39.1 To the extent that the *EPCM Contractor* is not acting as agent of the *Owner*, the *EPCM Contractor* shall be liable to and shall indemnify the *Owner* for all losses, damages and expenses, relating to, caused by or resulting from the actions of the *EPCM Contractor* or its *Subcontractors*, on account of:

(a) all physical damage to the *Services*, the *Work Site*, the property of the *Owner* or *Other Contractors* or property under the care, custody or control of the *Owner* or *Other Contractors*; and

(b) the cost to repair or make good any and all damage to roads, bridges, railroads, highways, land adjacent to the *Owner’s Site*, irrigation canals or facilities, ditches or equipment excepting out normal use and tear, other than as part of the *Services*.

39.2 Except to the extent to which coverage is provided by a policy or policies of insurance, as applicable, and excepting out the indemnifications set out in Article 27 - Protection of Intellectual Property and Article 28 - Confidentiality, and any payment arising pursuant to Section 33.4 or 34.7, neither the *Owner* or the *EPCM Contractor* and their respective officers, directors, *Personnel*, consultants or contractors shall be liable to the each other, or anyone claiming through or under one or more of them, whether by way of indemnity or by reason of breach of contract or in tort, including liability for negligence and breach of statutory duty, or on any other legal or equitable basis, for:

(a) special, punitive, indirect, economic or consequential loss or damage;
(b) loss of use, whether complete or partial, of the Services or existing facilities of the Owner or third parties;
(c) loss of product;
(d) loss of revenue, overhead and profit; or
(e) loss of any contract that may be suffered by the other party.

39.3 The EPCM Contractor shall contractually bind its Subcontractors to the limitations on liability set out in Section 39.2 for the benefit of both the EPCM Contractor and the Owner.

39.4 Notwithstanding any other provision of the Contract, the EPCM Contractor’s total aggregate liability to the Owner shall be limited to $*. 

[Note to Users: The Committee suggests that the parties negotiate whether the following indemnities obligations of the EPCM Contractor should be carved-out of the cap:
Article 27 - Protection of Intellectual Property;
Section 35.3, EPCM Contractor indemnification for taxes;
Section 36.4, EPCM Contractor indemnification for WCB premiums;
Article 37 - Liens
Article 38 - Liability and Indemnity for Third Party Claims
Article 42 - Independent Contractor]

39.5 In the event of a sale by the Owner of the Work Site, the Owner agrees to cause the purchaser to enter into an agreement whereby the purchaser covenants to be bound by and to afford to the EPCM Contractor the benefit of Sections 39.2 and 39.3.

Article 40 - Insurance Provided by EPCM Contractor

[Note to Users: There are numerous approaches to insuring project risks. These provisions are drafted to show one example of how the insurance can be structured. Insurance must be determined on a project-specific basis and users should consult their risk managers and insurance professionals to determine the most suitable insurance for each project.]

40.1 The EPCM Contractor shall, and shall ensure that its Subcontractors shall, without limiting any of the obligations or liabilities under the Contract, continuously carry during the performance of the Services, at their own expense and cost, the following insurance coverage with limits where applicable not less than those shown in the respective items as set out below:

(a) employer’s liability insurance for all Personnel engaged in the Services and not covered by workers’ compensation, in the amount of $*;
1. General

This Appendix defines the Owner’s Requirements for the Services for the Project.

Brief Description of the Facilities

Brief Description of:
1.1.1. Scope
1.1.2. Engineering Scope
1.1.3. Procurement Scope
1.1.4. Construction Management Scope

The Facilities shall be complete, fully operable and maintainable, in accordance with industry standards for________________, and shall conform to the Owners operational requirements. The planned commercial operation date for the project is xxxxxxxx date

The date of completion of Services will be the date stated in the Final Completion Notice (see Appendix I for the standard form)

Should the Owner require, and both parties agree, the date of completion may be extended following the issue of the Final Completion Notice to include the warranty periods of the Works Contractors.

Furthermore, should the Owner require, and both parties agree, the EPCM Contractor Services may be extended further to include the operation and maintenance of the Facilities for periods of time to be determined.

Pursuant to Article xxx, the EPCM Contractor will submit to the Owner, for approval, the Project Execution Plan (PEP) on or before ________________.

The EPCM Contractor will provide support to the Owner in environmental regulatory applications.

1.8 Appointment of Prime Contractor

2. Engineering

2.1. Detailed Engineering Scope
2.2. Engineering Design Deliverables
2.3. FEED (Front End Engineering Document)
2.4. Conceptual Design
2.5. Design Base Memorandum (DBM)
2.6. Engineering Cost of Service Estimate
2.7. Modularization Strategy
2.8. Automation Plan
2.9. Engineering Management
2.10. Engineering Quality
   2.10.1 Building Codes & Statutes
   2.10.2 Owners Standards & Specifications
2.11. Procurement
2.11.1. Material Requisitions
2.11.2. Material Technical Bid Evaluations
2.11.3. Equipment Technical Bid Evaluations
2.11.4. Works Contractors Bid Evaluations
2.12. Construction & Field Engineering Support
2.13. Constructability Reviews
2.14. Value Engineering Studies
2.15. Safety in design Studies

3. Procurement
3.1. Procurement Protocols For:
   3.1.1. Bulk Material
   3.1.2. Owner’s Tagged Equipment
   3.1.3. Long Lead & Schedule Driven Items
   3.1.4. FEED Estimate and Schedule Support
3.2. Vendor Data
3.3. Operating Manuals and Spare Parts
3.4. Quality Surveillance
3.5. Expediting Procedure
3.6. Customs Clearances and Insurance
3.7. Transportation, Logistics, and Warehousing
3.8 Logistics/Materials Management/Receiving Inspection/Check-in, Storage, etc.
3.9. Qualified Carriers – Local & International
3.10. Approved Vendor/Supplier of Choice Lists
3.11. Material Receiving and Distribution

4. Construction Management
4.1. Construction Execution
   4.1.1. Labor & Industrial Relations
   4.1.2. Resource Availability
   4.1.3. Environmental, Health, Safety, and Site Security
   4.1.4. Emergency Services
   4.1.5. Mobilization of Both EPCM & Works Contractors
   4.1.6. Construction Quality Control
   4.1.7. Personnel Housing and Transportation
   4.1.8. Construction Infrastructure
   4.1.9. Construction Equipment
   4.1.10. Construction Services
   4.1.11. Construction Supervision
   4.1.12. Demobilization, Demolition, Salvage and Abandonment
   4.1.13. Red Line and As-Built Drawing
   4.1.15. Vendor Support
4.2. Apprenticeship Employment Plan
4.3. Work Site Policies and Procedures (NTD – see also Appendix F)
4.4. Productivity Enhancement Program(s)
4.5. Scaffolding
4.6. Site Access
4.7. Site Bulletins/Notices
4.8. Site Vehicles (Operation, Permits, etc.)
4.9. Site Offices and Facilities
4.10. Site Services (Access roads maintenance & snow removal, parking, debris removal, temporary heat, light, power, washrooms, parking, time control, brass alleys, etc.)
   (NTD – place comprehensive list here)
4.11. Site Utilities (electrical power, gas, fire and potable water, telephone, internet, etc.)
   (NTD – place comprehensive list here)
4.12. Snow removal ~ Responsibility for, in work areas
4.13. Workface Planning – see Attachment A
4.15. Cranes/Checklists/Certification
4.16. Critical Lifts/Lift Studies
4.17. Direct Hire Labour (Minor work)
4.18. Equipment, Small Tools, Consumables
4.19. Communication Plan
4.20. Interface & Integration of Management Systems
   4.20.1. Interface (With Owner’s Programs)
   4.20.2. Integration (With Owner’s Programs)

5. Organizational Plan
5.1. Accounting Plan
5.2 Team Building Plan
5.3 Rewards and Recognition
5.4 Retention & Development
5.5. Organization Charts ~ Owner and EPCM Contractor
5.6 Owner’s Key Personnel/Areas and Limits of Authority
5.7. Responsibility Matrix
5.8. Staffing Plan / Contacts List

6. Project Safety Plan
6.1. Risk Management
   6.1.1. Risk Management
   6.1.2. Risk Identification, Assessment, Mitigation, & Monitoring Plan
6.2. Independent Project Review
6.3. Operability and Maintainability Review
6.4. PHA, HAZOP, SIL Review
6.5. Incident Investigation & Reporting
6.6. Work Permit Procedures
6.7. Lock Out Procedures
6.8. Loss Management
6.9. Safe Work Procedures
6.10. Safety Meetings
6.11. Weather (Work policy in extremes of temperature)
6.12. Drug & Alcohol Policy
6.13. Emergency Evacuation
6.15. First Aid/Medical Facilities
6.16. HAZOP Studies

7. Regulatory Compliance & Stakeholder Relations
7.1. Environmental Management
7.2. Application and Permitting
7.3. Management of Regulatory Changes
7.4. Site Reporting

8. Quality Management
8.1. QA/Shop Supervision
8.2. Quality Management Program
8.3. Inspection & Test Plan (ITP)

9.1. Records Management & Document Control
9.2. System Management & IT Plan
9.3. Models – Review & Maintenance
9.4. Vendor Data Management
9.5. Information Management & Support for Interface Management
9.6. Information Exchange
9.7. Information Quality and Integrity
9.8. Information Turn Over Protocols
9.9. Requests for Information (RFI) Procedure

10. Financial
10.1. Financial Control/Reporting
10.2. Cash Forecasting
10.3. Financial Audit
10.4. Financial Loss Management
10.5. Cash Management
10.6. Claims Management

11. Project Controls
11.1. Project WBS
11.2. Cost Estimate and Control Base
11.3. Contingencies
11.4. Performance and Progress Monitoring
11.5. Project Cost Control System
11.6. Project Reporting
11.7. Overall Project Master Schedule
11.8. Industry Benchmarking
11.9. Reporting and Stewardship

12. Contracts
12.1. Contracting Program for Works Contractors
12.2. SubContracting Plan
   12.2.1. Off Site Fabrication Shops
   12.2.2. Specialized Work
12.3. Construction Contracting Strategy
12.4. Pre-qualified Works Contractor Lists

13. Ready for Operations *(NTD – see also Appendix F)*
13.1. Operating Plan Prior to RFO Mobilization
13.2. Turn Over Plan / As-Built Drawings
13.3. Deficiency List
13.4. Start Up Support

14. Commissioning
14.2. Commissioning Procedures
14.3. Commissioning Services

15. Operations and Maintenance
15.1. Operations Design
15.2. Maintenance Design
15.3. Turn Around Design

16. Administration
16.1. Accounting Procedures

17. Management of Change *(NTD – see also Appendix F)*
17.1. Management of Change (MOC)

18. Information Systems
18.1. Information Technology
18.2. Information Systems
18.3. System Management
18.4. Embassy Support
18.5. Information Management and Systems (interface between Owner’s systems and EPCM Contractor’s systems)
18.6. Job Execution Authorization

**ATTACHMENT A – WORKFACE PLANNING for EPCM CONTRACTS**
WORKFACE PLANNING FOR EPCM CONTRACTS

Owner requires that Engineering, Procurement and Construction Management (EPCM) Contractor work with and support the Construction Contractor with its requirement to implement Workface Planning, in accordance with the Construction Owners Association of Alberta (COAA) model as published on the COAA website (www.coaa.ab.ca). The EPCM Contractor shall review and comment on the Construction Contractor submitted Workface Execution Plan taking into account the minimum standards of the COAA model contents and shall monitor Construction Contractor’s implementation in being in accordance with terms and conditions agreed between Owner and Construction Contractor.

The Construction Contractor’s - Workface Planning Execution Plan, complete with a Workface Planning Score Card, shall be prepared by the Construction Contractor and submitted to the EPCM Contractor for review and Owner for review and approval no later than 90 days in advance of the beginning of permanent plant installations at the Site or as otherwise agreed. The EPCM Contractor comments shall be submitted to the Owner for review and may be incorporated with the Owners comments and submitted to the Construction Contractor for inclusion to the Plan prior to approval by Owner.

The EPCM Contractor shall, as part of work scope as require by Owner, conduct periodic audits and ongoing surveillance of the Construction Contractors - Workface Planning efforts including its lower tier subcontractors using the Workface Planning Score Card at the frequency and times noted therein. Owner shall monitor and reserves the right at any time deemed necessary to audit the Construction Contractor using the Workface Planning Score Card on the execution of the Construction Contractor’s Workface Execution Plan throughout the duration of the contract to determine if Workface Planning is being implemented in accordance with the agreed upon Workface Planning Execution Plan. In cases where significant deviations to the Workface Planning Execution Plan are identified either by the Owner or the EPCM Contractor: the Construction Contractor shall immediately prepare an action plan for correction of the deficiencies and shall immediately implement this plan upon approval of the owner.

The Construction Contractor will divide a Work Design Area into a series of preferred Construction Work Packages (each a “CWP”). These CWP’s will be issued to the Owner and EPCM Contractor in order to align relevant portions of the overall Scope of Work with the EPCM Contractor deliverables e.g.: Engineering Work Packages (EWP’s), Materials and Equipment. With Owner participation, Construction Contractor and EPCM Contractor shall discuss and
form agreement for mutual benefit with regard to these packaging boundaries. This cooperation shall continue throughout the project to completion.

If EPCM Contractor and Construction Contractor can not agree on the EWP/CWP breakdown the Owner together with the EPCM Contractor and Construction Contractor will formulize an agreement that is beneficial to the overall project.

During the EDS or preliminary engineering stage of the project, as a result of agreement between the EPCM Contractor and the Construction Contractor, the Construction Contractor will identify the CWP’s and develop a CWP Release Plan that will specify the number, approximate manhour size, and release date of each CWP. The CWP Release Plan will include standard templates to be used, the number of packages, and planned craft loading to accomplish the tasks in the CWP’s. Construction Contractor shall submit the CWP Release Plan to the EPCM Contractor for review and Owner for review and approval. If Owner or EPCM Contractor has comments on the initial submittal and if requested by Owner, the Construction Contractor will resubmit the CWP Release Plan which will include Owner’s and/or EPCM Contractors comments in order to gain Owner’s approval. The date of the Construction Contractor’s initial submittal of the CWP Release Plan is to be agreed upon between Owner and Construction Contractor at the beginning of the EDS or preliminary engineering phase.

Each CWP will include but not limited to the following:

- A detailed description of the Scope of Work for a defined area that has been released for execution by the Construction Contractor
- A detailed Bill of Materials (BOM) specifying all quantities making up the scope of Work released by the CWP.
- A schedule detailing commencement and completion dates for scope of Work released by the CWP.
- Technical requirements, references and information pertinent to the scope of Work released in the CWP.
- Safety considerations with respect to the Work / Risk Assessment.

As Issued-for-Construction (IFC) CWP’s are released, the Construction Contractor and/or its lower tier subcontractors shall provide the following:

- Roles and responsibilities for Construction Contractor and Sub-Contractors
- Safety considerations with respect to the Work / Risk Assessment.
- Dedicated, suitably trained Workface Planners who have either completed the COAA Fundamentals Course or equivalent Owner-developed course to break the CWP into a series of specific Workface Planning work
packages called Field Installation Work Packages (FIWP’s). These dedicated Workface Planners will be accountable to complete and sign off as ready the FIWP’s before the FIWP is released to the crew.

- Dedicated Integration Planner with assigned responsibility to coordinate and lead the efforts of the Workface Planners and resolve anticipated conflicts proactively between the different FIWP’s.
- Dedicated Resource Coordinators with assigned responsibility for areas such as material identification and control, scaffolding, construction equipment, specialty tools, and other resources needed to support the Workface Planning effort.
- Experienced personnel including craft supervision to review the scope and completeness of FIWP’s.
- Work force and leadership to execute FIWP’s.
- Personnel and systems to report progress and performance of FIWP’s in an agreed upon format and frequency with the Owner.
- Prepare and maintain detailed schedules and spreadsheets tracking, monitoring, and closing-out FIWP’s from start to completion of each FIWP during the construction phase of the project.
- Provide quality assurance personnel to audit compliance to FIWP instructions and requirements

Prior to the CWP’s reaching IFC stage, the Construction Contractor and/or its lower tier subcontractors shall develop a preliminary FIWP Release Plan for each CWP indicating the approximate size and planned release date for each FIWP. The Owner and EPCM Contractor will review the Contractor’s FIWP Release Plan and Owner shall approve with input from the EPCM Contractor. If Owner or EPCM Contractor has comments on the initial submittal and if requested by Owner, the Construction Contractor will resubmit the FIWP Release Plan which will include Owner’s and/or EPCM Contractor comments in order to gain Owner’s approval. The date of the Contractor’s initial submittal of the FIWP Release Plan is to be agreed upon between Owner, EPCM Contractor and Construction Contractor during the EDS or preliminary engineering phase of the project.

The EPCM Contractor shall be responsible for the following:

- Review and comments on the Construction Contractor’s - CWP Release Plan, CWP – EWP alignment and other appropriate items, these comments shall be submitted to the Owner for review and may be included with the Owners comments and submitted to the Construction Contractor for inclusion to the Plan prior to approval by Owner
- Review the detailed description of the CWP Scope of Work for a defined area and submit comments to Owner for review and may be include with the Owner’s Comments and submitted to the Construction Contractor for
inclusion in the Plan prior to the release for execution by the Construction Contractor

- Monitor, audit and perform ongoing surveillance on the Construction Contractor’s - CWP Release Plan and its execution as requested by Owner

- Review and comments on the Construction Contractor’s – FIWP Release Plan, comments shall be submitted to the Owner for review and may be included with Owners comments and submitted for inclusion to the Plan prior to approval by Owner

- Monitor, audit and perform ongoing surveillance on the Construction Contractor’s – FIWP Release Plan and its execution as requested by Owner
(b) automobile liability insurance covering all licensed motor vehicles owned or leased by the *EPCM Contractor* having a limit of not less than $* inclusive per accident for bodily injury, death and damage to property;

(c) aircraft and watercraft liability insurance covering all owned or non-owned aircraft or watercraft, if used in the performance of the *Services*, having a limit of not less than $* inclusive per occurrence for bodily injury, death, and damage to property and not less than $* for aircraft passenger hazard. Such insurance shall include the *Owner* as an additional insured with respect to *Services* performed by the *EPCM Contractor* and its *Subcontractors*;

(d) all risks property insurance covering all property including valuable papers that is owned, rented or leased by the *EPCM Contractor* and to be used for the performance of the *Services* for the full replacement cost value of such property. Such insurance shall contain a waiver of the insurers’ rights of subrogation against the *Owner*, its officers, directors, *Personnel*;

(e) employee dishonesty insurance covering all *Personnel* engaged in the *Services* having a limit of not less than $* each occurrence;

(f) professional errors and omissions liability insurance in an amount not less than $* each claim and in the annual aggregate and such insurance shall be maintained for a further period of * years from the issuance of the *Final Completion Notice*;

(g) commercial general liability insurance covering all operations in connection with the *Contract* (except for operations covered by wrap-up liability insurance provided for by the *Owner*) on an occurrence basis with a combined single limit not less than $* inclusive of each accident or occurrence for third party bodily injury, including death, personal injury and damage to property, including loss of use thereof. Such coverage shall include but not be limited to the following:

(i) blanket contractual liability;

(ii) sudden and accidental pollution liability;

(iii) products and broad form completed operations;

(iv) broad form property damage;

(v) cross liability and severability of interest clause;

(vi) non-owned automobile liability; and

(vii) the *Owner* as an additional insured with respect to *Services* performed by the *EPCM Contractor* and its *Subcontractors*.

40.2 Insurance coverage in Subsections 40.1(c) and 40.1(g) will be primary to the *Owner* to the extent of fault of the *EPCM Contractor* or its *Subcontractors*. 
40.3 The EPCM Contractor shall and shall ensure that its Subcontractors shall:

(a) provide the Owner with a certificate of insurance for the policies described in Section 40.1 within * Work Days of written notice of award of the Contract or prior to commencement of the Services, whichever is earlier, and certificates of insurance evidencing renewal of these policies within * Work Days of their expiry date where such policies expire prior to the issuance of a Final Completion Notice;

(b) be responsible for the deductibles relating to insurance proceeds under the insurance required pursuant to Section 40.1;

(c) place all policies with insurers which are licensed to provide insurance in the Province of Alberta with an A.M. Best rating of no less than *, and in a form acceptable to the Owner; and

(d) ensure that all policies pursuant to Section 40.1 provide for at least 30 days prior written notice to the Owner of cancellation or change that is material to the Contract.

40.4 If the EPCM Contractor or its Subcontractors fail to furnish the Owner with a certificate of insurance for each policy required to be obtained pursuant to Section 40.1, or if after furnishing the certificate of insurance, the policies lapse, are cancelled or are materially changed, then in every case the Owner may, but shall not be obligated to, obtain and maintain such insurance in the name of the EPCM Contractor or any Subcontractor. The cost thereof (including Subcontractor’s insurance costs) shall be payable by the EPCM Contractor to the Owner on demand, and the Owner may at its election deduct the cost from any monies which are due or may become due to the EPCM Contractor.

40.5 Neither the providing of insurance by the EPCM Contractor in accordance with the requirements of this Article 40 - Insurance Provided by EPCM Contractor, nor the insolvency, bankruptcy, or failure of any insurance company to pay any claim shall be held to relieve the EPCM Contractor from any other provisions of the Contract with respect to liability of the EPCM Contractor, or otherwise.

Article 41 - Insurance Provided by Owner

41.1 The Owner will maintain from the Commencement Date and at its own expense policies of insurance as described in Section 1.1(a) and 1.1 (b) and such policies shall include the EPCM Contractor and its Subcontractors as unnamed insureds for Services performed:

(a) course of construction insurance to a limit of the value of the full replacement cost of the Facilities covering all risks of direct physical loss or damage to the Facilities, Goods and Procured Goods, temporary structures used in the erection of the Facilities, including such property at temporary or off-site storage and project lay-down areas, in transit to and from the Work Site or in storage while at the Work Site, before and during erection and until completed and while awaiting
tests and during testing and commissioning until issuance of a *Final Completion Notice*, and in relation to such insurance:

(i) the *Owner* shall be responsible for the deductibles relating to insurance proceeds unless otherwise agreed between the *Owner* and *EPCM Contractor*;

(ii) the policy shall contain a waiver of the insurers’ rights of subrogation against any person, corporation or organization owned or controlled by any insured who is employed in the performance of the services, by whose fault or negligence the loss or damage is caused; and against any other insured by whose fault or negligence the loss or damage was caused;

(iii) the policy shall provide for at least 30 days prior written notice to the *EPCM Contractor* of cancellation or change that is material to the *Contract*.  

[Note to Users: The description of the property to be insured may be modified depending upon the scope of work and allocation of responsibilities for testing and commissioning and where the *Owner* elects to insure the equipment used by the *Works Contractor*. The scope of coverage should specify if transit insurance is to include inland or marine transit, or both]

(b) commercial general liability insurance covering any operations in connection with the *Facilities*, including temporary or off-site storage and project lay-down areas, on an occurrence basis with a combined single limit not less than $* inclusive of each accident or occurrence for third party bodily injury, including death, personal injury and damage to property, including loss of use thereof and in the aggregate for products and completed operations. Such insurance shall include but not be limited to the following:

(i) blanket contractual liability;

(ii) sudden and accidental pollution liability;

(iii) products and completed operation coverage is to be maintained for a period of not less than * months from the date of issuance of the *Functional Completion Notice*;

(iv) broad form completed operations;

(v) non-owned automobile liability;

(vi) broad form property damage;

(vii) blasting, pile driving, caisson work, underground work (XCU coverage); and
(viii) cross liability and severability of interest; and

(c) in relation to the insurance described in Subsection 41.1(b):

(i) such insurance shall be primary to any other insurance maintained by an insured;

(ii) the negligent party or parties shall be responsible for the deductibles relating to insurance proceeds for damage to third parties;

(iii) the policy shall contain a waiver of the insurers’ rights of subrogation against any person, corporation or organization owned or controlled by any insured who is employed in the performance of the services, by whose fault or negligence the loss or damage is caused; and against any other insured by whose fault or negligence the loss or damage was caused; and

(iv) the policy shall provide for at least 30 days prior written notice to the EPCM Contractor of cancellation or change that is material to the Contract.

[Note to Users: The completed operations period commences upon the expiry date of the CGL wrap-up liability policy and runs for the specified number of months following completion. It appears that there may be commissioning done after Functional Completion and that there also may be a delay between the end of commissioning and issuance of the Final Completion Notice. Any Services performed at the Facilities by the EPCM Contractor following Functional Completion would not be covered under this policy unless such Services fall within the definition of the "Completion Operations Hazard" in the insurance policy.]

41.2 The Owner makes no representation or warranty with respect to the extent or adequacy of the insurance protection to be provided by it described in Section 41.1 and the EPCM Contractor and its Subcontractors shall satisfy themselves as to the coverage afforded by such policies and the adequacy thereof. The furnishing of this insurance by the Owner shall not limit any of the obligations or liabilities of the EPCM Contractor or Subcontractors as expressed elsewhere in the Contract.

41.3 The Owner shall provide the EPCM Contractor with a certificate of insurance for the policies described in Section 41.1 and certificates of insurance evidencing renewal of these policies within *Work Days of their expiry date where such policies expire prior to issuance of a Final Completion Notice.

41.4 The EPCM Contractor shall not be entitled to any Compensation to duplicate the insurance coverage provided by the Owner pursuant to Section 41.1 and the Compensation shall not include the cost of premiums for the insurance to be provided by the Owner.
41.5 The *Owner* has the sole right to act as agent on behalf of the *EPCM Contractor* in the settlement of any claim(s) under the policies to be provided by the *Owner* pursuant to Section 41.1.

### Article 42 - Independent Contractor

42.1 For the purposes of the *Contract* and the *Services*, the *EPCM Contractor* shall be an independent contractor and not be the agent or employee of the *Owner*, except to the extent that the *Owner’s Requirements* or the *Contract* specify that the *EPCM Contractor* shall act as the *Owner’s* agent in relation to some, or all, of the *Procurement Services* and *Construction Management Services*.

42.2 All persons employed or retained by the *EPCM Contractor* in connection with the performance of its obligations shall be its *Personnel* or those of its *Subcontractors*, as the case may be, and not the employees of the *Owner* in any respect.

42.3 The *EPCM Contractor* shall indemnify and hold harmless the *Owner*, against all claims, demands, losses, damages, expenses, actions and proceedings whatsoever, including legal fees on a solicitor-and-own-client (full indemnity) basis, which may be incurred by the *Owner* as a result of any determination by any tribunal or court that any *Personnel* provided by the *EPCM Contractor* pursuant to this *Contract* are for any purposes employees of the *Owner*, except as a result of the policies and practices of the *Owner* or to the extent of actions undertaken by the *EPCM Contractor*, as specified in the *Owner’s Requirements* or the *Contract*, where the *EPCM Contractor* acts as the *Owner’s* agent in relation to some, or all, of the *Procurement Services* and *Construction Management Services*.

42.4 The *EPCM Contractor* shall have no authority whatsoever to make any statement, representation or commitment of any kind, or to take any action, which may be binding on the *Owner*, except as provided for in this *Contract*, as authorized in writing by the *Owner* or in connection with the performance of the *Procurement Services* or *Construction Management Services* where the *Owner’s Requirements* specify that the *EPCM Contractor* shall act as the *Owner’s* agent in relation to some, or all, of the *Procurement Services* and *Construction Management Services*.

### Article 43 - Conflict of Interest

43.1 The *EPCM Contractor* shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with the *Owner’s* best interests. This obligation shall apply to the activities of the *EPCM Contractor* and its *Subcontractors* and their respective *Personnel* and agents, in their relations or dealings with the *Personnel* of the *Owner* and their families, and other third parties, arising from the *Contract* or the performance of the *Services*. The efforts made by the *EPCM Contractor* in this regard shall include, but shall not be limited to, establishing reasonable precautions to prevent *Subcontractors* and their respective *Personnel* from offering, or providing entertainment, gifts, loans, payments or other considerations to the *Owner’s Personnel*, consultants and agents or their family members.
Article 44 - Audit Access

44.1 To the extent that the EPCM Contractor is not acting as agent of the Owner, the EPCM Contractor shall:

(a) preserve the Records in good order during the Contract Time and for a period of * years thereafter;

(b) permit authorized representatives of the Owner to review the Records at all reasonable times during the Contract Time, and for a period of two years thereafter for the purposes of:

(i) determining the EPCM Contractor’s compliance with all of the terms of the Contract, including, but not limited to:

(a) claims pursuant to Article 31 - Delays Caused by the EPCM Contractor;

(b) the Policies; and

(c) verifying of all Services performed and charges under Appendix C – Reimbursable Costs and Fee and other charges payable under the Contract.

44.2 Where the EPCM Contractor is acting as agent of the Owner, the Owner shall, at all reasonable times, have full access to all Records produced by the EPCM Contractor as agent.

[Note to Users: Breadth of audit is to be negotiated on a project-specific basis]

Article 45 - Representatives and Notices

45.1 The Owner’s Representative is the person identified as such in Appendix J – Key Personnel and Addresses for Notice. The Owner’s Representative has the authority to bind the Owner on all matters relating to the Services and the Contract, and all communications to or with the Owner’s Representative shall be deemed to be communications to or with the Owner.

45.2 EPCM Contractor’s Representative is the person identified as such in Appendix J – Key Personnel and Addresses for Notice. The EPCM Contractor shall not change the EPCM Contractor’s Representative, except with the prior approval of the Owner. The EPCM Contractor’s Representative has the authority to bind the EPCM Contractor on all matters relating to the Services and the Contract, and all communications to or with EPCM Contractor’s Representative shall be deemed to be communications to or with the EPCM Contractor.

45.3 Unless otherwise specifically indicated in the Contract, all notices, approvals, consents, authorizations and other communications required or permitted pursuant to the Contract,
shall be in writing and shall be communicated to the *EPCM Contractor’s Representative* or the *Owner’s Representative*, as the case may be, and shall be delivered by personal delivery, courier or facsimile to the parties at the addresses and facsimile numbers set out in Appendix J – Key Personnel and Addresses for Notice.

45.4 Either party may change its address or facsimile number for service by providing the other party with 10 days notice of such a change.

45.5 Where such electronic transmission meets the minimum requirements set forth in the *Electronic Transactions Act* (Alberta), e-mail may be used for communication between the parties, but e-mail shall not be used for the communication of a notice which is prescribed by the *Contract*.

**Article 46 - Survival**

46.1 If the *Contract* or any part of the *Services* is terminated pursuant to Article 33 - Termination for Convenience or Article 34 - Termination for Cause, then Article 21 - Warranty shall survive such termination, as applicable.

46.2 Any terms, covenants, provisions or conditions of the *Contract* which expressly or by their nature survive the termination of the *Contract* shall continue in full force and effect subsequent to and notwithstanding such termination, and shall not be merged with the termination, until such terms, covenants, provisions and conditions are satisfied or by their nature expire.

**Article 47 - General**

47.1 No waiver of any right, power or privilege by a party shall limit or affect that party’s rights with respect to any failure, delay or breach of the *Contract* by the other party.

47.2 Each of the parties hereto shall execute such further documents and give such further assurances as are required to give effect to the *Contract*.

47.3 If a court of competent jurisdiction determines that any provision of this *Contract* is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions of the *Contract*.

47.4 All of the covenants and agreements in this *Contract* contained on the part of either party shall apply and enure to the benefit of and be binding upon their respective legal representatives, successors and assigns.

47.5 Each of the parties hereby represents and warrants that it has the power and authority to enter into the *Contract* and to perform all of its obligations hereunder.

47.6 The *Contract* constitutes the entire agreement between the parties with respect to the *Services* and supersedes and replaces all previous communications, representations and agreements, either written or verbal.
47.7 This Contract shall be governed by and construed in accordance with the laws of the Province of Alberta, and, subject to Appendix I – Dispute Resolution Procedure, the parties attorn to the jurisdiction of the Courts of the Province of Alberta.

47.8 This Contract shall be executed by the parties, or their representatives, in person with original signatures, but may be executed in counterpart. Subsequent documents may be executed by the parties, or their representatives, and such execution may be by way of facsimile or electronic transfer.

TO EVIDENCE THEIR AGREEMENT, the parties have executed and delivered this Contract, by their duly authorized officers, as of the effective date indicated on the first page.

Owner:

Per:  
Name:  
Per:  
Name:  
[apply corporate seal]

EPCM Contractor:

Per:  
Name:  
Per:  
Name:  
[apply corporate seal]
SMALL TOOLS, OFFICE SUPPLIES & EQUIPMENT AND CONSUMABLES & EXPENDABLES LIST

This list is provided as a guide and is not deemed to be a full and complete list.
PART I
SMALL TOOLS, OFFICE SUPPLIES & EQUIPMENT LIST
The following schedule of small tools, office supplies and equipment is included as a guide in defining and/or classifying items as small tools, office supplies and equipment, and is not deemed to be a full and complete list.

<table>
<thead>
<tr>
<th>Category</th>
<th>Items</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong></td>
<td>Adapter – socket drive</td>
</tr>
<tr>
<td></td>
<td>Adding Machine</td>
</tr>
<tr>
<td></td>
<td>Adzes</td>
</tr>
<tr>
<td></td>
<td>Agitators – paint</td>
</tr>
<tr>
<td></td>
<td>Air Hoses</td>
</tr>
<tr>
<td></td>
<td>Aligner – metal door frame</td>
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<tr>
<td></td>
<td>Aligner – pipe, lever type</td>
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<tr>
<td></td>
<td>Anvil</td>
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<tr>
<td></td>
<td>Augers</td>
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<tr>
<td></td>
<td>Axes</td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>Band-it-tool</td>
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<tr>
<td></td>
<td>Banding Machine</td>
</tr>
<tr>
<td></td>
<td>Bar – crow, wrecking, pitch point</td>
</tr>
<tr>
<td></td>
<td>Belts – safety, pole climbing</td>
</tr>
<tr>
<td></td>
<td>Bender – conduit pipe, rebar, sheet metal, tubing</td>
</tr>
<tr>
<td></td>
<td>Binder/Cinch – load and chains/belts/cables</td>
</tr>
<tr>
<td></td>
<td>Block – metal, snatch single all</td>
</tr>
<tr>
<td></td>
<td>Block – Metal, snatch single sheave</td>
</tr>
<tr>
<td></td>
<td>Block – Cable type all</td>
</tr>
<tr>
<td></td>
<td>Block – Metal, snatch double sheave</td>
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<tr>
<td></td>
<td>Block – Cable type all</td>
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<tr>
<td></td>
<td>Block – metal, triple sheave, cable all</td>
</tr>
<tr>
<td></td>
<td>Block – wood, snatch all</td>
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<tr>
<td></td>
<td>Block – wood, single sheave, rope all</td>
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<tr>
<td></td>
<td>Block – wood, double sheave, rope all</td>
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<tr>
<td></td>
<td>Block – metal, single sheave, chain all</td>
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<tr>
<td></td>
<td>Block – metal, double sheave, chain all</td>
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<tr>
<td></td>
<td>Block – metal, triple sheave, chain all</td>
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<td></td>
<td>Book Cases</td>
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<tr>
<td></td>
<td>Box – rod heated</td>
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<tr>
<td></td>
<td>Box – gang, metal</td>
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<tr>
<td></td>
<td>Box – tool, hand</td>
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<tr>
<td></td>
<td>Brace – carpenter</td>
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<tr>
<td><strong>C</strong></td>
<td>Cabinet – File – all</td>
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<tr>
<td></td>
<td>Cable – Welding</td>
</tr>
<tr>
<td></td>
<td>Calculators – handheld, desk – all</td>
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<tr>
<td></td>
<td>Calliper – Inside 6”</td>
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<tr>
<td></td>
<td>Calliper – Outside 6”</td>
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<tr>
<td></td>
<td>Calliper – Vernier 12”</td>
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<tr>
<td></td>
<td>Cameras – video, Polaroid and still with lenses and tripods – all</td>
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<tr>
<td></td>
<td>Car mover</td>
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<tr>
<td></td>
<td>Carrier</td>
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<tr>
<td></td>
<td>– Brick, timber</td>
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<tr>
<td></td>
<td>– Hand</td>
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<tr>
<td></td>
<td>Cart – Welding, cylinder trucks</td>
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<tr>
<td></td>
<td>Caulking gun</td>
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<td></td>
<td>Caulking irons</td>
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<tr>
<td></td>
<td>Cement, masonry jointing tools</td>
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<td></td>
<td>Chains – Log and cable</td>
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<tr>
<td></td>
<td>Chain – Measuring, complete with reducer - 100 ft.</td>
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<tr>
<td></td>
<td>Chain – Measuring, complete with reducer – 200 ft.</td>
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<tr>
<td></td>
<td>Chair – Measuring, Engineer’s with reel</td>
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<tr>
<td></td>
<td>Chairs – all</td>
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<tr>
<td></td>
<td>Charger – Battery 6 and 12 volt</td>
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<td></td>
<td>Chisels</td>
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<tr>
<td></td>
<td>– Hand</td>
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<tr>
<td></td>
<td>– Wood, metal</td>
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<tr>
<td></td>
<td>Chuck – Drill ½”, ¾”</td>
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<tr>
<td></td>
<td>Chuck – Nipple ½” to 2” with adapter and wrench</td>
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<tr>
<td></td>
<td>Chuck – Electric hammer ½” to ¾”</td>
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<tr>
<td></td>
<td>Chuck – Electric hammer ¼” to ½”</td>
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<tr>
<td></td>
<td>Clamp – Pipe line up straight</td>
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<tr>
<td></td>
<td>Clamp – Pipe line up angle</td>
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<tr>
<td></td>
<td>Clamp – Pipe line up elbow</td>
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<td></td>
<td>Clamp – Pipe line up flange</td>
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<td></td>
<td>Clamp – Plate lifting all</td>
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<td></td>
<td>Cleaner – Vacuum, wet/dry</td>
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<td></td>
<td>Climber – Pole adjustable</td>
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<tr>
<td></td>
<td>Clock – Watchman’s</td>
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<tr>
<td></td>
<td>Concrete Floats – All</td>
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<tr>
<td></td>
<td>Concrete Buddie - Hand</td>
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<tr>
<td></td>
<td>Consumables – paper (including letterhead), pens, pencils (wood &amp; mechanical), erasers, white out, staples, paper and bulldog clips, knives and blades, scissors, ruler and other straight edges, scales, file folders and hangers, white, chalk and peg boards, markers, tape dispensers and tape, computer disks, push pins, binders, elastics</td>
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<tr>
<td></td>
<td>Cooler</td>
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<tr>
<td></td>
<td>– Water, electric</td>
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<tr>
<td></td>
<td>– Construction</td>
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<tr>
<td></td>
<td>Creeper – Auto mechanic</td>
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<tr>
<td></td>
<td>Cutter – Angle iron</td>
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<td></td>
<td>Cutter – BX armor</td>
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<td></td>
<td>Cutter – Bolt all</td>
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<tr>
<td></td>
<td>Cutter – Cable</td>
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<tr>
<td></td>
<td>Cutter – Hydraulic with heavy duty cutter head</td>
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<tr>
<td></td>
<td>Cutter – gasket, machine, vise mount or hand</td>
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<tr>
<td></td>
<td>Cutter – Pipe all</td>
</tr>
<tr>
<td></td>
<td>Cutter – Pipe, saran</td>
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<tr>
<td></td>
<td>Cutter – Pipe, soil snap offing leads</td>
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<tr>
<td></td>
<td>Cutter – Tubing</td>
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<tr>
<td><strong>D</strong></td>
<td>Desk – wood, metal – all</td>
</tr>
<tr>
<td></td>
<td>Die – Bolt ¼: to 1”</td>
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<tr>
<td></td>
<td>Die – Heat 1” to 2” ratchet</td>
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<tr>
<td></td>
<td>Digger</td>
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<td></td>
<td>– Post hole</td>
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<tr>
<td></td>
<td>– Hand and screw type</td>
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<td></td>
<td>Dispensers – water, coffee, cups, paper – all</td>
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<td></td>
<td>Dollies – Warehouse truck 700 lo.</td>
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<tr>
<td></td>
<td>Drawing Files – stick – all</td>
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<tr>
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<td>Drill – Hand</td>
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<td></td>
<td>Drill – Air</td>
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<td></td>
<td>Drill – Electric, heavy duty ¼”, ½”</td>
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<tr>
<td></td>
<td>Drill – Electric, heavy duty ½”, ¾”</td>
</tr>
<tr>
<td></td>
<td>Drill – electric, hammer ½”</td>
</tr>
</tbody>
</table>
• Drill press stand – ¾”
• Driver – Electric, screw

E
• Edger(s)
• Electric Erasers
• Embosser – Label lettering – all
• Emery wheel stands
• Extension cord – Electrical
• Extension - Socket

F
• Facsimile Machine
• Fan – Electric all
• Fan – Electric, exhaust 24” to 36”
• Field Radio Base Station and handheld transceivers
• Files – Construction
• Fire extinguisher – Hand operated for temporary construction
• Flaring tools
• Flatters
• Float – Concrete with hand smooth 60”
• Float – Concrete with hand corrugated 40”
• Float
  – Concrete, hand
  – Metal, wood
• Floodlights
• Forge – Blacksmith, hand operated
• Fork – Pitch 4-tine
• Furnace – Butane with shield (plumbers)

G
• Gas mask
• Gauge – Set centre
• Gauge – Set drill
• Gauge – Set thickness
• Gauge – Height, venire 6”
• Gauge – Screw pitch
• Gauge
  – Pressure
  – Water, air
• Glass cutters
• Grease – Dispenser, transfer pump
• Grinder – Pencil, air or electric
• Grinder - Air right angle
• Grinder – Electric, bench 2-wheel all
• Grinder – Electric, bench, straight
• Grinder – Right angle heavy duty air or electric with guard
• Grinder – Electric, die ¼” chuck
• Grinder – Electric, portable 5” and 6”
• Grinder – Electric, flexible shaft
• Grips – Cable, all
• Groover – Victaulic pipe
• Gun – Grease, air or electric
• Gun – Jet line, CO2
• Gun – Powder activated all
• Gun – Rivet, pop
• Gun – Soldering (electric)
• Gun – Paint spray
• Gun – Insect spray

H
• Hacksaw frames
• Hammer – Sledge, all
• Hammer – Claw, all
• Hammer – Panel beaters
• Hammer – Ball peen, cross-peen
• Heater – LPG, all
• Heater – Electric, all
• Heater – Oil – salamander
• Helmets – Welding
• Hickeys
• Hods
• Hoes
• Hoists – Chain with 30 ft. pull chain up to 4 tons
• Hoist – Come-along, all
• Hook – Pipe, concrete 3”
• Hook – Timber
• Hook – Cant
• Horns
  – Signal
  – Loud hailer and siren
• Horses – Carpenter, mason, all
• Hose – Air, water, welding, steam, garden, fire, all
• Hose – Pump suction and discharge
• Hose – Construction tools
• Hydrometer

I
• Ice tongs
• Indicator – Dian
• Indicator – Dian, test
• Iron – Soldering, electric, heavy duty

J
• Jack – Hydraulic, all
• Jack – Journal, 15-ton with lever bar
• Jack – Porta power, all
• Jack – Railroad, all
• Jack – Reel, all
• Jitterbug, hand, concrete

K
• Kettles – Paint
• Knives – Putty, draw
• Knockout set – ½” to 1¼” hand operated

L
• Ladder – A frame, wood, metal, all
• Ladder – Extension, wood, metal, all
• Ladder
  – Step
  – Wood, metal, all
• Ladle – Lead
• Lanterns
• Level – Carpenter, mason, all
• Level – Precision machinist, all
• Level – Torpedo magnetic
• Lighting – drafting
• Lights – Flood

M
• Machine – drafting
• Machine – Pexto bender, crimper
• Machine – Spark plug cleaner with tester
• Mattocks
• Mauls
• Meter – Amp, clip-on (Type A)
• Meter – AMP, volt AC
• Meter – Volt, ohm, with case
• Micrometer – Depth 2” to 32”
• Micrometer – Inside 1½” to 8”
• Micrometer – Outside 2” to 6”
• Mops – Head, bucket, stick, wringer

N
• Nailer – Automatic
• Nibbler – Sheet metal
• Nozzles – Water, air, steam hose

Error! Unknown document property name.
O
- Oil can – All
- Oilier – Line, lubricator
- Oilier – Rigid

P
- Paint – Shaker electric
- Pencil – Engraving electric
- Photocopier
- Picks
- Pins – Drift and taper
- Plane – Adjustable, bench
- Plane – Electric, heavy duty
- Pliers
- Plumbob – All
- Plumbers friend
- Pole – Range, engineering
- Pot – Lead melting
- Press – Drill stand
- Protractor – Pipe
- Puller – Wire lightweight
- Puller – Gear 6”
- Puller – Nail
- Puller – Gear, chain type
- Pulley – Cable, single
- Pulley – Cable, triple
- Pulley – 90° angle
- Pulley – Well 9” to 14”
- Pump – Submersible – 110V – 1 ½”
- Pump – Hand test 100 PSI
- Pump
  - Lubrication
  - Hand
- Pump - Tire
- Punch – Center automatic
- Punch – Sheet metal, hand Witney No. 8
- Punch – Sheet metal, hand Witney No. 10
- Punches – paper – all

R
- Radios
- Radius – Gauges
- Rake – Garden
- Rake – Stone
- Rammer – Bench, hand
- Rasps – Wood
- Ratchet – Wrenches open end

S
- Sander – Electric, air
- Saw
  - Hacksaw
  - Power
- Saw – Chain, electric, gas
- Saw – Jig, electric
- Saw – Electric portable builder’s, 4 ½” to 12”
- Saw – Reciprocal and sabre, air operated
- Saw
  - Reciprocal and Sabre
  - Electric
- Saw – Porta band
- Saw – Hand, all
- Saw – Table
- Scale – Optical tooling
- Scoops – Hand
- Scrapers
- Screwdrivers - Electric
- Screwdriver – Hand, all
- Screw stop
- Scriber – Pocket (diamond tip)
- Scriber – Pocket (tungsten carbon point)
- Shackles
- Shaft – Universal drive 41” to 50”
- Shear – Electric, hand
- Shear – Angle iron 2 X 2 X ¼
- Shovels – All
- Skreeds – Manual
• Torch – Argon
• Torch
  – Gas
  – Propane
• Torch – Arc air gougers
• Torch – Straight cutting
• Trolley – I-beam
• Trowels – Cement, mortar, plaster, mastic, all
• Truck
  – Platform
  – 4-wheel
  – Hand
• Truck
  – Warehouse
  – 2-wheel
  – Hand
• Tube rollers
• Turnbuckles – Eye-to-eye, all
• Typewriters – all

\[ V \]
• Vacuum cleaner – Wet/dry
• Vibrator – Electric, 2 ft. X 1” head
• Vibrator – Electric, 7 ft. X 1” head
• Vise – Bench, yoke 1/8” to 6”
• Vise – Bench, chain 1/8” to 5”
• Vise – Bench, machine stationary 3” to 6”
• Vise – Bench, machine swivel 3”, 4”
• Vise – tri-stand, chain 1/8” to 5”
• Vise – tri-stand, yoke 1/8” to 2½”

\[ W \]
• Waste baskets – all, including garbage cans of all types
• Weed trimmer – Electric, gas, manual
• Wheelbarrow – All
• Winches – Manual 1-ton
• Wrenches
  – Impact
  – Air, electric, ½”, ¾” and ¾” drive
    including metric and imperial sockets
• Wrench – Adjustable, all
• Wrench
  – Box end
  – Complete set, metric and imperial

Error! Unknown document property name.
PART II
CONSUMABLES & EXPENDABLES LIST

The following list of consumable and expendable supplies is included as a guide in defining and/or classifying items as consumable and expendable supplies that are applicable to this Contract, and is not deemed to be a full and complete list.

A
• Abrasives
• Acid – Battery and soldering
• Adaptors on regulators – Oxygen and acetylene
• Adhesives – Glue, tape, etc.
• Anti-freeze – Construction equipment
• Apparel – Wet weather, protective (Does not include fire retardant outerwear)

B
• Badge and employee identifications
• Bags – Paper, cotton and burlap
• Bands – Rubber and steel for banding machines
• Barrel pins
• Batteries – Flashlight, blasting, automotive construction equipment and charging
• Battery water
• Belts – Fan and other for construction equipment
• Belt lacings and dressing
• Bits
  – Steel, wood, masonry
  – Drill or brace
  – Portable or stationary
  – Powered or manual
• Blades
  – Hacksaw, brick saw, circular saw, rip saw, concrete/steel cutoff saw, jigsaw, sabre saw, band saw
  – Wood, metal, masonry
  – Portable or stationary
• Bolts – For miscellaneous temporary construction use
• Boots – Rubber
• Brads
• Brazing and soldering flux
• Bricks – Rubbing
• Brooms
• Brush cleaning materials

C
• Buckets – Water and cement

D
• Ice (including hauling)
• Ink

E

F

G
• Gas mask parts - Construction
• Gasoline, oil, grease, and diesel fuel – Construction
• Gloves
  – Leather, canvas, plastic, rubber, rubber-dipped
  – Electrician, welder, general worker
• Glue
• Glycerine – Construction
• Glyptal – Electric sealing compound
• Goggles – Safety, welding
• Graphite
• Grease – For construction
• Grind wheels
• Grinding compound

H
• Handles – Hammer, shovel, rake, pick, adze, axe, sledge, mattock, hoe, float, file
• Hard hats
• Hard hat liners
• Hardware cloth – Construction
• Hasps
• Head lamps – Hard hats
• Hinges
• Hose coupling – Construction

I

Error! Unknown document property name.
• Paint, oil, brushes and pots – Used on tools and equipment in daily maintenance
• Paint thinner
• Paper – Sandpaper, towels, toilet, wrapping and other like items
• Paper – Building, tar, roofing and other like items
• Paper clips
• Paper towel
• Paste – Scoldering
• Pencils
• Permatex – Construction
• Pins, chaining
• Pipe dope – Litharge and glycerine
• Pipe joint cement
• Pipe joint tape – Teflon
• Pipe tool parts – Replacement dies, cutter wheels, wrench parts
• Plugs – Electrical
• Plungers for air tools
• Poles, range field fabrication
• Protective clothing (Does not include fire retardant outerwear)
• Putty

R
• Rags – Cleaning
• Razor blades – For scrapers
• Refills for fire extinguishers
• Respirator – Disposable
• Respirator filter pads
• Rollers – Tube
• Rope
  – Manila, sisal, jute, synthetic fibre, wire
  – For miscellaneous lashing, construction
• Router bits
• Rulers
• Rust preventatives

S
• Safety belts, harnesses all
• Safety clothing – disposable coveralls, foot coverings, gloves, mitts, all
• Safety hearing protectors and earplugs, all
• Safety rope with clips
• Safety signs, signals and literature
  (Syncrude Site, including Work Site, and highway)
• Safety vests – Reflective
• Salt tablets and dispensers
• Sandpaper
• Sanding discs
• Sand cord – Construction
• Screens – Sand and other screened material
• Shear pins – Construction equipment
• Shellac – Other than finish
• Soap
• Soapstone’s
• Solder
• Sponges
• Sprays – Insecticide
• Steel wedges – Construction temporary
• Steel Wool
• Stone – Rubbing
• Straps – For goggles

T
• Tags – Material, tool, shipping
• Tape – Gum, scotch, cambric
• Tempilsticks
• Thermos jug
• Thumbtacks, push pins
• Threading oil
• Tire and tube repairs such as bots, patches, cores, stems
• Toilet tissue
• Torches, highway flares
• Tubes – Mailing
• Tubs
  – Cleaning/washing, storing
  – Construction
• Turpentine – Paint
• Twine – Wrapping

W
• Washers
  – Hose, cut, lock
  – Construction
• Waste – wiping
• Water – drinking, distilled
• Water and heater hose for equipment
• Wedges – Steel temporary
• Wheels – Abrasive

Z
• Zerk fittings – Construction equipment
APPENDIX C
REIMBURSABLE COSTS AND FEES

1. Definitions

1.1. Capitalised and italicised terms in this Appendix that are not expressly defined herein shall have the same meaning set forth in the main body of the Contract.

1.2. The following terms, wherever capitalised and italicised in this Appendix, or in any document produced pursuant to the terms of the Contract, shall have the following meanings:

(a) **Staffing Agency Invoice** means the invoice, including GST, received by the **EPCM Contractor** from a personnel rental agency for the cost of its **Staffing Agency Personnel** assigned to the **Services**;

(b) **Staffing Agency Personnel** means any personnel hired by the **EPCM Contractor** from a Personnel rental agency to perform the **Services**, or any portion thereof, and who receive their wages and benefits directly from the personnel rental agency and not from the **EPCM Contractor**;

(c) **Base Rate** means the actual wage paid, on an hourly basis, to an individual **Staff member** which shall be calculated as follows:

(i) for **Work Site Employees**, **Home Office Staff**, **Project Hire Employees** and **Staffing Agency Personnel**, the hourly rate paid, if paid by the hour, or if paid by the month or year, calculated by dividing the annualized salary by 2,080 hours; and

(ii) for **Contract Personnel**, the hourly rate paid by the **EPCM Contractor** which includes the **Contract Personnel’s Burden**;

(d) **Burden** means all benefits of whatever type or nature which are set forth in Section 2.8 (Burden);

(e) **Contract Personnel** means individuals who are not employees of the **EPCM Contractor** and are not **Subcontractors** but who have been retained by the **EPCM Contractor** to perform **Services** under a contract to the **EPCM Contractor** and who are responsible for the cost of their own burden;

(f) **Consumables and Expendables** means items that are used or used up during performance of the **Services** and do not form part of the permanent **Services** or **Construction Work** including, but not limited to, the consumables and expendables listed in Exhibit [“X”]; [Note to Users: The Owner and EPCM Contractor may want to consider formulating a list of consumables and expendables that can be attached as an Exhibit to this Appendix C; see “Small Tools, Office Supplies & Equipment and Consumables &
Expendables List” on the 2008 COAA Best Practices Contract Documents CD or contact COAA for a copy of this document;

(g) Fee means the payment made by the Owner to the EPCM Contractor for profit and which shall include and cover all of the EPCM Contractor’s costs not otherwise recovered in the Base Rate, Burden or Overhead, or paid as a Reimbursable Expense;

(h) Home Office Overhead has the meaning set forth in Section 2.9(c);

(i) Home Office Staff means the employees of the EPCM Contractor who provide Services at the home office of the EPCM Contractor but does not include Project Hire Employees;

(j) Job Classification means the classification of positions as set forth in Exhibit 1 - Schedule of Rates attached to and incorporated in this Appendix;

(k) Monthly Staff List means the list, prepared by the EPCM Contractor, of all Staff who are anticipated to perform the Services in the following calendar month and shall include the following information for each person:

(i) name and payroll/identification number;

(ii) employee status: whether a Work Site Employee, Home Office Staff, Staffing Agency Personnel or Contract Personnel;

(iii) if the person is Staffing Agency Personnel, the organization employing the person;

(iv) Job Classification;

(v) eligibility for premium pay for overtime work as set out in Exhibit 1 – Schedule of Rates; and

(vi) Base Rate;

(l) Non-Reimbursable Employee means the EPCM Contractor’s employees, agents and subcontractors listed in Exhibit 3 – Non-Reimbursable Employees, attached to and incorporated in this Appendix, whose payroll costs are recovered through the application of Overhead on Staff;

(m) Office Supplies and Equipment means, but is not limited to, the office supplies and equipment listed in Exhibit [“X”]; [Note to Users: The Owner and EPCM Contractor may want to consider formulating a list of office supplies and equipment that can be attached as an Exhibit to this Appendix C; see “Small Tools, Office Supplies & Equipment and Consumables & Expendables List” on the 2008 COAA Best Practices Contract Documents CD or contact COAA for a copy of this document];

(n) Overhead means either or both of Work Site Overhead and Home Office Overhead as context dictates;
(o)  *Project Hire Employees* means employees of the *EPCM Contractor* who are hired for a limited term for the *Project*;

(p)  *Reimbursable Expense* means *Owner* authorized costs incurred by the *EPCM Contractor* for which reimbursement by the *Owner* is provided under Section 4 (Reimbursable Expenses);

(q)  *Salary Range* means a salary range set forth in Exhibit 1 – Schedule of Rates which corresponds to a particular *Job Classification*;

(r)  *Small Tools* means tools with a replacement value of less than $2,000.00; [Note to Users: The Owner and EPCM Contractor may want to consider formulating a list of small tools that can be attached as an Exhibit to this Appendix C; see “Small Tools, Office Supplies & Equipment and Consumables & Expendables List” on the 2008 COAA Best Practices Contract Documents CD or contact COAA for a copy of this document]

(s)  *Staff* means all of the *Work Site Employees, Home Office Staff, Project Hire Employees, Contract Personnel* and *Staffing Agency Personnel* assigned by the *EPCM Contractor* to perform the *Services* and are reimbursable in accordance with Exhibit 1 – Schedule of Rates;

(t)  *Staff Expenses* means those expenses incurred by *Staff* members, and approved, which are claimed as an expense on an individual *Staff* member’s expense account for which the *EPCM Contractor* is reimbursed by the *Owner*;

(u)  *Work Site Assignment Policy* means the site assignment policy of the *EPCM Contractor* as approved in writing by the *Owner* and attached hereto as Exhibit 4 – Work Site Assignment Policy;

(v)  *Work Site Employees* means the employees of the *EPCM Contractor* who provide *Services* at the *Work Site* but does not include *Project Hire Employees*;

(w)  *Work Site Overhead* has the meaning set forth in Section 2.9(a).

2.  **Reimbursement for Staff**

2.1.  Monthly Staff List, Job Classifications and Salary Ranges

(a)  The *EPCM Contractor* shall provide the *Owner* with the *Monthly Staff List* no later than the last *Work Day* of each month. The *Monthly Staff List* shall forecast the *Staff* that will be performing the *Services* during the subsequent month.

(b)  The *EPCM Contractor* may amend the *Monthly Staff List* during the month that the *Services* are performed by adding other *Staff* to the list, provided that such *Staff* has been authorized by the *Owner* to work on the *Project*.
(c) The **EPCM Contractor** shall only be reimbursed for **Staff** who have been identified in the **Monthly Staff List** provided, however, that reimbursement is for only that portion of their time spent providing the **Services**.

(d) Subject to Section 2.1(e), the **Salary Ranges** are subject to review by **EPCM Contractor** once per calendar year during performance of the **Services**, and any adjustment to Exhibit 1 - **Schedule of Rates**, shall be subject to the written approval of the **Owner**.

(e) The **EPCM Contractor** shall be reimbursed for increases in **Base Rates** paid by the **EPCM Contractor** to all **Staff**, except **Staffing Agency Personnel**, after [_______ days] written notice to the **Owner** of such increase where such increase to the **Base Rate** is:

(i) within the salary ranges set forth in Exhibit 1 – **Schedule of Rates**, (except where the **Owner** has authorized in writing an increase above the **Salary Range**);

(ii) administered in good faith and in accordance with the established practices of the **EPCM Contractor**; and

(iii) made no more that once in each calendar year, except where the **Owner** has authorized in writing such increase.

2.2. Calculation of Reimbursement for Staff

(a) In accordance with the other provisions of this Section 2 (Reimbursement for Staff), the **EPCM Contractor** shall be reimbursed for **Staff** as follows:

<table>
<thead>
<tr>
<th></th>
<th>Work Site Employees</th>
<th>Home Office Staff</th>
<th>Project Hire Employees</th>
<th>Contract Personnel</th>
<th>Staffing Agency Personnel</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Base Rate</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Staffing Agency Invoice</strong></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Burden</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Site or Home Office Overhead (as applicable)</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Fee</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

[**Note to Users**: This chart represents one example of how costs are allocated and should be negotiated to reflect each Project specific application.]
2.3. Work Site Employees

(a) The *EPCM Contractor* shall be reimbursed by the *Owner* for the hours during which the *Services* are performed by *Work Site Employees* on the following basis:

(i) reimbursement in accordance with Section 2.3(b) for actual hours of *Services* performed by *Work Site Employees*; and

(ii) payment of the overtime premium of 0.5 times the *Base Rate* for those hours of *Services* in excess of the *Project* work week, as notified by the *Owner* from time to time, performed by *Work Site Employees* who are eligible for premium pay for overtime work, as set forth in Exhibit 1 – Schedule of Rates, provided however this premium shall not be subject to the application of *Overhead, Burden or Fee*.

(b) The *Owner* shall reimburse the *EPCM Contractor* for *Work Site Employees* by paying the *EPCM Contractor* for each hour of *Services* actually performed:

(i) the sum of:

(A) the *Base Rate* for *Work Site Employees* in accordance with the *Job Classification* specified for each individual multiplied by the applicable *Burden* multiplier, as provided for in Section 2.8 (Burden);

(B) the *Work Site Overhead* mark-up, in accordance with Section 2.9 (Overhead); and

(C) the costs associated with the *Work Site Assignment Policy*;

(ii) which sum shall be multiplied by the *Fee* mark-up in accordance with Section 2.10 (Fee).

*[Note to Users: Section 2.3(b) is based on each hour of Services actually performed but needs to be considered on a Project specific basis; example formulas may be added to illustrate the calculations.]*

2.4. Home Office Staff

(a) The *EPCM Contractor* shall be reimbursed by the *Owner* for the hours during which the *Services* are performed by *Home Office Staff* in the home office of the *EPCM Contractor* on the following basis:

(i) reimbursement in accordance with Section 2.2(a), Exhibit 1 (Schedule of Rates) and Exhibit 2 (Home Office Overhead and Burden) for actual hours of *Services* performed by *Home Office Staff* at the home office of the *EPCM Contractor*;

(ii) reimbursement in accordance with Section 2.3(b), except that the reference to *Work Site Employees* shall be read as *Home Office Staff*, for
actual hours of Services performed by Home Office Staff outside of the home office of the EPCM Contractor; and

(iii) payment of the overtime premium of 0.5 times the Base Rate for those hours of Services in excess of the Project work week, as notified by the Owner from time to time, performed by Home Office Staff who are eligible for premium pay for overtime work, as set forth in Exhibit 1 – Schedule of Rates, provided however this premium shall not be subject to the application of Overhead, Burden or Fee.

(b) The Owner shall reimburse the EPCM Contractor for Home Office Staff performing Services in the home office of the EPCM Contractor by paying the EPCM Contractor for each hour of Services actually performed:

(i) the sum of:

(A) the Base Rate for Home Office Staff in accordance with the Job Classification specified for each individual multiplied by the applicable Burden multiplier, as provided for in Section 2.8 (Burden);

(B) the Home Office Overhead mark-up, in accordance with Section 2.9 (Overhead); and

(C) the Burden in accordance with Section 2.8(a);

(ii) which sum shall be multiplied by the Fee mark-up in accordance with Section 2.10 (Fee).

[Note to Users: Section 2.4(b) is based on each hour of Services actually performed but needs to be considered on a Project specific basis; example formulas may be added to illustrate the calculations.]

2.5. Project Hire Employees

(a) The Owner shall reimburse the EPCM Contractor for Project Hire Employees performing Services at the Work Site by paying the EPCM Contractor for each hour of Services actually performed:

(i) the sum of:

(A) the Base Rate for Project Hire Employees in accordance with the Job Classification specified for each individual multiplied by the applicable Burden multiplier, as provided for in Section 2.8 (Burden);

(B) the Work Site Overhead mark-up, in accordance with Section 2.9 (Overhead); and

(C) the Burden in accordance with Section 2.8(a), as applicable;
(ii) which sum shall be multiplied by the Fee mark-up in accordance with Section 2.10 (Fee).

(b) The Owner shall reimburse the EPCM Contractor for Project Hire Employees performing Services in the home office of the EPCM Contractor by paying the EPCM Contractor for each hour of Services actually performed:

(i) the sum of:

(A) the Base Rate for Project Hire Employees in accordance with the Job Classification specified for each individual multiplied by the applicable Burden multiplier, as provided for in Section 2.8 (Burden);

(B) the Home Office Overhead mark-up, in accordance with Section 2.9 (Overhead); and

(C) the Burden in accordance with Section 2.8(a), as applicable;

(ii) which sum shall be multiplied by the Fee mark-up in accordance with Section 2.10 (Fee).

2.6. Contract Personnel

(a) Contract Personnel shall not be eligible for premium pay for overtime hours.

(b) The Owner shall reimburse the EPCM Contractor for Contract Personnel by paying to the EPCM Contractor for each hour of Services actually performed by the Contract Personnel:

(i) the sum of:

(A) the Base Rate for Contract Personnel, in accordance with the Job Classification specified for each individual, multiplied by the Burden multiplier, as provided for in Section 2.8 (Burden); and

(B) the Work Site Overhead mark-up, in accordance with Section 2.9 (Overhead);

(ii) which sum shall be multiplied by the Fee mark-up applied in accordance with Section 2.10 (Fee).

2.7. Staffing Agency Personnel

(a) Unless otherwise agreed to by Owner, Staffing Agency Personnel shall not be eligible for premium pay for overtime hours.

(b) The Owner shall reimburse the EPCM Contractor for Staffing Agency Personnel by paying to the EPCM Contractor for Services performed by the Staffing Agency Personnel the Staffing Agency Invoice plus a markup for Fee in accordance with Section 2.10 (Fee).
2.8. Burden

(a) *Burden* includes but is not limited to:

(i) accidental death and dismemberment plan (AD&D) (basic and optional);

(ii) bereavement leave;

(iii) Canada/Quebec Pension Plan;

(iv) deferred profit sharing plan;

(v) dental plan;

(vi) Employment Insurance and supplement unemployment benefit plan;

(vii) extended health care and enhanced medial services plan, including foreign travel plan;

(viii) incentive plans;

(ix) bonuses;

(x) life insurance (basic, dependent and optional);

(xi) long term disability;

(xii) maternity/paternity leave;

(xiii) pension plan;

(xiv) prescription drug plan;

(xv) provincial health care premiums;

(xvi) RRSP (group plan);

(xvii) savings plan;

(xviii) sick leave/weekly indemnity;

(xix) stand-by pay;

(xx) statutory or other publicly or religiously celebrated holidays;

(xxi) stock purchase plan;

(xxii) supplemental hospital insurance;

(xxiii) survivor income benefit;

(xxiv) travel insurance;
(xxv) vacations;

(xxvi) vision/hearing plan; and

(xxvii) worker’s compensation (WCB) premiums.

[Note to Users: this list to be considered on a Project specific basis]

(b) For greater certainty, Burden shall not include Overhead.

(c) The EPCM Contractor shall be reimbursed using a multiplier for the Burden in accordance with this Section.

(d) In each calendar year starting in the year 20__, the EPCM Contractor shall be reimbursed for the Burden by multiplying the Base Rate for actual hours charged by the EPCM Contractor pursuant to this Appendix by 1.___ for actual hours during which the Services are performed by all Staff, except Contract Personnel and Staffing Agency Personnel. [Note to Users: Need to address the burden rates for normal and overtime hours.]

(e) For each calendar year subsequent to 20__, the EPCM Contractor shall be reimbursed for Burden in accordance with Section 2.8(d), except that the multiplier stipulated therein shall be re-calculated to reimburse the EPCM Contractor for Burden such that the actual Burden from the previous year shall be used as the basis for reimbursement in the current year and shall be calculated in the following manner:

(i) the EPCM Contractor shall determine the actual Burden incurred for the previous calendar year as a percentage of the Base Rate paid to all of its full and part-time employees for that same period;

(ii) the EPCM Contractor shall apportion each of the components of Burden incurred in the previous year, corresponding with the list set forth in Sections 2.8(a)(i) to 2.8(a)(xxvii), adding as needed any further categories, as an expressed percentage of the total Burden incurred by the EPCM Contractor for all of its employees for the previous year;

(iii) the EPCM Contractor shall provide to the Owner evidence of the calculations referred to in Sections 2.8(e)(i) and 2.8(e)(ii), and the Owner shall have the right to audit documentation regarding this calculation and the Burden paid by the EPCM Contractor related to all of its full and part-time employees for the previous year;

(iv) following the first year that the calculation referred to in Section 2.8(e)(ii) is performed, which will calculate the Burden multiplier for the 20__ calendar year, and each subsequent year during performance of the Services, the Owner may, subject always to Section 2.8(f), elect to not reimburse the EPCM Contractor for any further programs or benefits or enhancements which increases, year over year, the calculated percentage of overall Burden of any particular
category of Burden, provided however, the Owner shall reimburse the EPCM Contractor for any increase in Burden mandated or required by Law or settled in accordance with Appendix J – Dispute Resolution Procedure;

(v) the Owner shall, subject always to Section 2.8(f), advise the EPCM Contractor, in writing, when it accepts the calculation of the Burden for the previous year;

(vi) when the Owner has advised the EPCM Contractor that it has accepted the calculation of the Burden for the previous year the percentage calculated as the percentage of Base Rate for Burden for the previous year shall be converted to a multiplier that shall then replace the multiplier to the Base Rate to reimburse the EPCM Contractor for the Burden for the current calendar year;

(vii) changes in the multiplier to reimburse the EPCM Contractor for the Burden shall be effective January 1st of each year during performance of the Services for which the above calculation is performed; and

(viii) where the calculation and acceptance of the Burden multiplier is not made until after January 1st of any given year during performance of the Services, the EPCM Contractor shall continue to apply the multiplier for the previous year until the multiplier for the current year is calculated and accepted, upon which, the EPCM Contractor shall prepare and submit to the Owner an adjustment of invoices submitted in the current year to account for any adjustment in the multiplier used to reimburse the EPCM Contractor for Burden and the EPCM Contractor shall be paid, or shall pay to the Owner, as the case may be, the amount of such adjustment within 15 days of delivery of the invoice for adjustment to the Owner.

(f) Where the EPCM Contractor disputes:

(i) the election of the Owner in Section 2.8(e)(iv) to not reimburse the EPCM Contractor for any further programs or benefits or enhancements; or

(ii) any notice from the Owner in Section 2.8(e)(v) that it has accepted the calculation of the Burden for the previous year;

such election or notice, or both, shall not be effective until the dispute thereof is settled in accordance with the Appendix J – Dispute Resolution Procedure.

2.9. Overhead

(a) Work Site Overhead means the overhead of the EPCM Contractor for Staff working on the Work Site and shall include the following:

(i) business development;
(ii) business licenses;

(iii) business losses and financing costs;

(iv) charitable and other donations;

(v) *Consumables and Expendables*;

(vi) corporate governance;

(vii) employee development and training programs including *Work Site* orientation;

(viii) employee termination and severance costs;

(ix) holding (storekeeping, handling and the like);

(x) insurance premiums purchased specifically for the *Project*;

(xi) legal costs, subject to approval in writing by the *Owner*, that are incurred by the *EPCM Contractor* in resolving disputes with third parties;

(xii) maintenance, obsolescence & deterioration of equipment used solely to provide the *Services*;

(xiii) *Office Supplies and Equipment*;

(xiv) penalties or fines incurred for any reason;

(xv) professional and corporate registrations;

(xvi) recruitment;

(xvii) salaries and burdens for *Non-Reimbursable Employees*;

(xviii) security services;

(xix) *Small Tools*;

(xx) taxes, except those expressly paid to the *EPCM Contractor* by the *Owner* pursuant to the *Contract*;

(xxi) basic personal protective equipment including, but not limited to, hard hat, safety boots, safety glasses and hearing protection; and

(xxii) cost of electronic communication devices and base plans associated with such electronic communication devices.

[Note to Users: this list to be considered on a Project specific basis]

(b) The *EPCM Contractor* shall be reimbursed for *Work Site Overhead* by applying an hourly fee of $________ per hour, for both *Work Site* and overtime hours,
during which Services are performed by Work Site Employees and Contract Personnel.

(c) Home Office Overhead means the home office overhead of the EPCM Contractor and shall include the following:

(i) administrative & financial co-ordination;

(ii) building maintenance;

(iii) business development;

(iv) business licenses;

(v) business losses and financing costs;

(vi) charitable and other donations;

(vii) Consumables and Expendables;

(viii) corporate governance;

(ix) depreciation of buildings and equipment other than in respect of equipment used solely to provide the Services;

(x) employee development and training programs including Work Site orientation activities;

(xi) heat, water, light and all other utilities;

(xii) inter-office and inter-departmental communications (including all software and hardware);

(xiii) interest on capital invested;

(xiv) legal costs, subject to approval in writing by the Owner, that are incurred by the EPCM Contractor in resolving disputes with third parties;

(xv) local telephone and courier;

(xvi) Office Supplies and Equipment;

(xvii) penalties or fines incurred for any reason;

(xviii) profession and corporate registrations;

(xix) property insurance;

(xx) recruitment;

(xxi) rent and all equipment, except as expressly provided for in this Appendix;
(xxii) reproduction costs in the home office of the EPCM Contractor;

(xxiii) research and development;

(xxiv) safety programs;

(xxv) salaries and burdens for Non-Reimbursable Employees;

(xxvi) Small Tools; and

(xxvii) taxes, except those expressly paid to the EPCM Contractor by the Owner pursuant to the Contract.

[Note to Users: this list to be revised by the EPCM Contractor and the Owner on a case by case basis]

(d) The EPCM Contractor shall be reimbursed for Home Office Overhead by applying an hourly fee of $_______ per hour for regular and overtime hours during which Services are performed by Home Office Staff.

(e) In each calendar year starting in the year 20___, the EPCM Contractor shall be reimbursed for Overhead by multiplying the Base Rate for actual hours charged by the EPCM Contractor pursuant to this Appendix by 1.____ for actual hours during which the Services are performed by all Staff, except Contract Personnel and Staffing Agency Personnel.

(f) For each calendar year subsequent to 20____, the EPCM Contractor shall be reimbursed for Overhead in accordance with Section 2.9(e), except that the multiplier stipulated therein shall be re-calculated to reimburse the EPCM Contractor for Overhead such that the actual Overhead from the previous year shall be used as the basis for reimbursement in the current year and shall be calculated in the following manner:

(i) the EPCM Contractor shall determine the actual Overhead incurred for the previous calendar year as a percentage of the Base Rate paid to all of its full and part-time employees for that same period;

(ii) the EPCM Contractor shall apportion each of the components of Overhead incurred in the previous year, corresponding with the list set forth in Sections 2.9(a)(i) to 2.9(a)(xxii), adding as needed any further categories, as an expressed percentage of the total Overhead incurred by the EPCM Contractor for all of its employees for the previous year;

(iii) the EPCM Contractor shall provide to the Owner evidence of the calculations referred to in Sections 2.9(f)(i) and 2.9(f)(ii), and the Owner shall have the right to audit documentation regarding this calculation;

(iv) following the first year that the calculation referred to in Section 2.9(f)(ii) is performed, which will calculate the Overhead multiplier for the 20____ calendar year, and each subsequent year during
performance of the Services, the Owner may, subject always to Section 2.9(g), elect to not reimburse the EPCM Contractor for any incremental increase in Overhead provided however, the Owner shall reimburse the EPCM Contractor for any increase in Overhead mandated or required by Law or settled in accordance with Appendix J – Dispute Resolution Procedure;

(v) the Owner shall, subject always to Section 2.9(g), advise the EPCM Contractor, in writing, when it accepts the calculation of the Overhead for the previous year;

(vi) when the Owner has advised the EPCM Contractor that it has accepted the calculation of the Overhead for the previous year the percentage calculated as the percentage of Base Rate for Overhead for the previous year shall be converted to a multiplier that shall then replace the multiplier to the Base Rate to reimburse the EPCM Contractor for Overhead for the current calendar year;

(vii) changes in the multiplier to reimburse the EPCM Contractor for Overhead shall be effective January 1st of each year during performance of the Services for which the above calculation is performed; and

(viii) where the calculation and acceptance of the Overhead multiplier is not made until after January 1st of any given year during performance of the Services, the EPCM Contractor shall continue to apply the multiplier for the previous year until the multiplier for the current year is calculated and accepted, upon which, the EPCM Contractor shall prepare and submit to the Owner an adjustment of invoices submitted in the current year to account for any adjustment in the multiplier used to reimburse the EPCM Contractor for Overhead and the EPCM Contractor shall be paid, or shall pay to the Owner, as the case may be, the amount of such adjustment within 15 days of delivery of the invoice for adjustment to the Owner.

(g) Where the EPCM Contractor disputes:

(i) the election of the Owner in Section 2.9(f)(iv) to not reimburse the EPCM Contractor for increased incremental costs of Overhead; or

(ii) any notice from the Owner in Section 2.9(f)(v) that it has accepted the calculation of the Overhead for the previous year;

such election or notice, or both, shall not be effective until the dispute thereof is settled in accordance with the Appendix J – Dispute Resolution Procedure.

(h) In the event that the Owner approves an increase to the hourly fee to compensate the EPCM Contractor for Overhead in accordance with this Section, the increased hourly fee to compensate the EPCM Contractor for either Work Site Overhead or Home Office Overhead, or both as the case may be, shall become effective the first day of the calendar month following the approval.
2.10. Fee

(a) The EPCM Contractor shall be paid the following Fees, which are expressed as multipliers, for the different types of Staff members:

(i) Work Site Employees, Home Office Staff, Project Hire Employees and Contract Personnel shall be subject to either a:

(A) Fee multiplier of [_____] ; or

(B) [_____] % mark-up;

of the sum of Base Rate, applicable Burden and Overhead, in accordance with Section 2 (Reimbursement for Staff); and

(ii) Staffing Agency Personnel shall be subject to either a:

(A) Fee multiplier of [_____] ; or

(B) [_____] % mark-up;

of Staffing Agency Invoices, in accordance with Section 2 (Reimbursement for Staff).

3. Non-Reimbursable Employees

3.1. The salaries, payroll burdens, overhead and administration costs related to Non-Reimbursable Employees are included in the Overhead hourly fee applied to Staff. The EPCM Contractor shall receive no additional compensation for Non-Reimbursable Employees except as provided in Section 3.2.

3.2. The Owner may request the services of Non-Reimbursable Employees to perform a specified task or to provide consultation and expertise not otherwise contemplated in the Contract. The EPCM Contractor shall be reimbursed for services performed by Non-Reimbursable Employees that the Owner requests in writing. Even where reimbursement is approved by the Owner, in no event shall the Owner be liable to pay for any services by Non-Reimbursable Employees other than those identified in the request, or for more hours than EPCM Contractor has estimated as required to satisfy the request.

4. Reimbursable Expenses

(a) Excepting that the EPCM Contractor shall not be entitled to any mark-up for goods and services procured by the EPCM Contractor for and in the name of the Owner other than the appropriate reimbursement for actual hours spent performing Procurement Services, the EPCM Contractor shall be entitled to reimbursement in respect of:

(i) Subcontractor invoices;
(ii) *Staff Reimbursable Expenses* in accordance with the *EPCM Contractor’s* staff expense policy (at cost) titled “[Note to Users: Insert title of staff expense policy.]”;

(iii) rental costs of tools, machinery and equipment not owned by the *EPCM Contractor* and used solely in the performance of the *Services*;

(iv) an amount for depreciation and fees for tools, equipment and machinery owned by the *EPCM Contractor*;

(v) consumables specifically acquired for the *Services* & not recovered as overhead;

(vi) the cost of all equipment and services required for the office of the *EPCM Contractor* at the *Work Site* not recovered as *Overhead*;

(vii) deposits lost arising out of the provision of the *Services*;

(viii) costs paid in royalties or patent license fees, in respect of *Intellectual Property* owned by others; damages for infringement of patents and costs of defending suits subject always to the obligation of the *EPCM Contractor* to indemnify the *Owner* pursuant to the Contract; costs of protection of *Intellectual Property* generated in the course of performing the *Services* including, but not limited to, costs relating to filing an application, fees payable to the competent authorities to grant *Intellectual Property* or its territorial extension or extension of duration, translation costs;

(ix) premiums for all bonds and project specific insurance which the *EPCM Contractor* is required, by the *Contract Documents*, to purchase and maintain;

(x) losses and expenses sustained by the *EPCM Contractor* for matters which are the subject of the insurance coverages obtained pursuant to insert *INSURANCE* when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable;

(xi) charges for long distance charges, photocopying, reproduction of documents, courier services, and petty cash items;

(xii) costs incurred due to emergencies affecting the health and safety of persons or property;

(xiii) legal costs, subject to approval in writing by the *Owner*, that are incurred by the *EPCM Contractor* in resolving disputes with third parties;

(xiv) costs incurred by the *EPCM Contractor*, with the *Owner*’s permission, in expediting the rejected work or the warranty work of *Works Contractors*
and costs incurred by the *EPCM Contractor* in correcting defects or deficiencies in the work undertaken by his own forces and repairing damages resulting therefrom either during the course of construction or the warranty period except those arising from a negligent or willful act of the *EPCM Contractor*;

(xv) basic personal protective equipment including, but not limited to, hard hat, safety boots, safety glasses and hearing protection;

(xvi) hazard-specific personal protective equipment including, but not limited to, gloves, fire retardant clothing, breathing apparatus;

(xvii) health and safety equipment such as monitors and detectors, fire extinguishers, signage, security tape, fencing and flagging;

(xviii) the cost of computer time and usage in accordance with the method determined by the parties; and

(xix) such other costs directly incurred by the *EPCM Contractor* in the performance of the *Contract*.

5. **Non-Reimbursed Costs**

5.1. The *EPCM Contractor* is not entitled to reimbursement of the following unless otherwise agreed to in writing by the *Owner*:

(a) resources made available to the *EPCM Contractor* at no charge;

(b) free issue items;

(c) value of contributions in kind;

(d) unnecessary, unapproved or ill-considered expenses;

(e) entertainment or hospitality expenses except such reasonable expenses wholly and exclusively necessary for carrying out the *Services*;

(f) extra over costs of leasing compared with purchase;

(g) cost of events for which the *Contract* requires the *EPCM Contractor* to insure; and

(h) traffic and parking fines of *Staff*. 
6. **Taxes**

6.1. The *EPCM Contractor* shall identify on each invoice the amount of GST as a separate line item, immediately following the summation of all other charges and costs.

6.2. All taxes other than the GST for which the *EPCM Contractor* seeks reimbursement, except for those included in *Base Rates, Burden, Overhead* and *Fee*, shall be itemized, including, but not limited to import duties, provincial sales tax and other similar government or regulatory assessments.
EXHIBIT 1

Schedule of Rates

SALARY RANGES FOR REIMBURSABLE PERSONNEL

<table>
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<tr>
<th>Location</th>
<th>Position</th>
<th>Salary Range</th>
<th>Typical/Norm</th>
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EXHIBIT 2(B)
Project Hire Employees Overhead and Burden

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<th>Burden</th>
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EXHIBIT 3
Non-reimbursable Employees

NON-REIMBURSABLE PERSONNEL CLASSIFICATIONS
EXHIBIT 4

Work Site Assignment Policy
APPENDIX F
KEY PERFORMANCE INDICATORS

Introduction

Performance should be measured and reported for all key project parameters which typically include safety, cost, schedule, quality, and other parameters specific to the Owner or Project. These key performance indicators (“KPI’s”) are a defined set of deliverables that cover the life cycle of the Project and are trended over time to facilitate objectives, transparent, auditable, and consistent measurement of Contractor’s performance.

Documentation of Contractor performance is intended to rate how well the Contractor is managing the Project, demonstrate the Contractor’s ability to continue to perform work on the current Contract, and indicate if the Contractor is qualified to perform work on future projects. The applicable KPI’s and the specific performance targets should be defined at the start of each phase of the Project so that it is clearly understood what is reflective of exceptional and unacceptable performance.

Performance monitoring and reporting provides an opportunity for the Owner and Contractor to proactively manage the project, and may determine the administration of contract fees, incentives, or penalties as applicable. Progress against the KPI’s should be reviewed by the Parties at agreed intervals with the designated representatives of the Owner and Contractor. Subsequently, the evaluation documents are important documents for both the Contractor and Owner since they will define the future relationship between these organizations.

Contractor performance reports shall provide the project status, project progress, and variance analysis for each of the key performance indicators. Such reports should be at an appropriate level of detail and may be of various formats, subject to the tools and techniques utilized to measure, track and report Contractor performance.

Key Performance Indicators

1. **Safety** - specified safety performance

   Has the safety program been implemented consistently and is it achieving the expected results?

2. **Cost** - total installed cost compared with approved project budget

   Earned value progress is commonly included in performance reporting. Earned value compares the value of work performed (at the allocated budget rate) to the actual cost of work performed.

3. **Schedule** - actual progress compared with planned progress

   Schedule variance tracking and variance analysis to assess the potential impacts to the overall project are a critical area of project performance tracking and reporting. Early detection can be extremely valuable and may alleviate the need for costly corrective action.
4. **Quality** - *actual functional performance compared with performance specification and guarantee*

Project quality management processes, tools, and techniques are designed to guarantee project success for the benefit of both the Contractor and the Owner. While there are numerous quality applications that are necessary to achieve this, the real test is *does it perform in conformance with the contract requirements?*

5. **Other** - *Owner or project specific metrics that may vary for each phase of the Project*
Appendix H – Forms
Release and Certificate of Final Payment

1. This is Appendix H – Forms, Release and Certificate of Final Payment, referred to in the Engineering, Procurement and Construction Management Contract effective ________, 20__ (the “Contract”).

2. The capitalised and italicised terms used and not defined in this Appendix H – Forms, Release and Certificate of Final Payment, shall have the meanings given to them in the Contract.

3. In consideration of $1.00, the sufficiency of which is hereby acknowledged, the Contractor solemnly declares that:

(a) the Contractor has made full payment, or will make full payment from the final payment to be received from the Owner, of all costs, charges and expenses incurred by the Contractor or on its behalf for the Work, Goods and Procured Goods supplied in connection with the Contract, or otherwise used in connection with the Work;

(b) to Contractor's best knowledge and belief, each of its Subcontractors have made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labour, services, materials and equipment in connection with the Contract, or otherwise used by them in connection with the Work;

(c) all assessments, levies and charges under the Employment Insurance Act, the Workers' Compensation Act and other legislation in respect of the Contract have been paid and, to the Contractor's best knowledge and belief, each and all of its Subcontractors have paid such assessments, levies and charges on their own account;

(d) the Contractor unconditionally releases and forever discharges the Owner and acknowledges that it has not claim against the Work Site or the property of the Owner for any builder's liens or other liens of whatsoever kind or nature arising out of or in connection with the performance of the Contract;

(e) the Contractor unconditionally releases and forever discharges the Owner from any and all claims, demands, actions or proceedings arising out of the performance of the Work of which it has knowledge, and in respect of which notice in writing has not, by the date hereof, been given by the Contractor to the Owner; and

(f) the Contractor acknowledges and agrees that nothing herein contained relieves it of any obligations under the provisions of the Contract which by their nature survive completion of the Work including, without limitation, warranties, guarantees and indemnities.

The Contractor makes this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at ________, in the Province of Alberta, this ___ day of ____________, 20__

A Commissioner for Oaths in and for the Province of Alberta.

(Signature)

(Name of Contractor’s Representative signing)
APPENDIX H1 – FORMS
KEY PERSONNEL CONFIDENTIALITY, PROPRIETARY INFORMATION AND CONSENT AGREEMENT
DATED EFFECTIVE __________________, 20___

TO: _______________________________
    (the "EPCM Contractor")

AND TO: _______________________________
    (the "Owner")

I, _____________________, in consideration of the Owner consenting to my participation in the performance of certain work (the "Services") by the EPCM Contractor for the Owner pursuant to an agreement (the "Agreement") made between the Owner and the EPCM Contractor dated as of ____ day of ________________, 20___ with respect to __________________ [Project]; and for the further consideration of $1.00, from each of the EPCM Contractor and Owner, the receipt and the sufficiency of which are hereby acknowledged, do hereby agree, separate and apart from the EPCM Contractor, as follows:

1. I have had my role and responsibilities explained to me by the EPCM Contractor, or I have reviewed a copy of the Agreement and agree to observe the terms and conditions that relate to employees, subcontractors, and those otherwise engaged by the EPCM Contractor.

2. I acknowledge that the Owner has an interest in securing the performance of the Services by the EPCM Contractor and that the ability of the EPCM Contractor to perform the Services primarily depends on my continued engagement with the EPCM Contractor.

3. I shall perform for the EPCM Contractor such duties as may be assigned to me by the EPCM Contractor from time to time pertaining to the Services. I agree that all inventions, copyright, copyrightable works, discoveries, improvements, industrial designs and other intellectual and proprietary rights conceived, originated or prepared by me, arising directly or indirectly from the performance of the Services, are and shall be the exclusive property of the Owner or the EPCM Contractor as determined in accordance with the terms of the Agreement.

4. I shall not, without the prior written consent of the EPCM Contractor and the Owner, either during or for a 5 year period after my engagement by the EPCM Contractor, use or disclose any information acquired by me in the course of or by reason of my participation in the performance of the Services, nor will I disclose to any person engaged by the EPCM Contractor any such information, including, without limitation, any information as to technology, policies, operations, processes or formulae used, owned or supervised by the Owner or by any of its affiliates. At the termination of the Agreement or earlier if so required, I shall forthwith return to the Owner all confidential information in my possession.

I agree that, if any provision in this undertaking is found to be invalid or otherwise unenforceable by law, such provision shall be severed, and the remaining provisions shall continue in full force and effect.

Witness (print name in full)  Name (print in full)
Position:
Appendix H – Forms

Statutory Declaration

IN THE MATTER OF an Engineering, Procurement and Construction Management Contract bearing no. ______________________ and dated the _____ day of ______________, 20___

Between:

____________________________________________
(Insert full name of Owner) and

____________________________________________
(Insert full name of Contractor)

hereinafter referred to as the “Contractor”,

for _________________________________________
(Description and location of work)

___________________________________________,

and IN THE MATTER OF (INDICATE BY checkmark in APPLICABLE BOX)

☐ a Progress Claim covering work done up to the _____ day of
_______, 20___

☐ the Functional Completion Certificate

☐ the Final Completion Notice

WITNESS:

I,_____________________________________, of _____________________________________
(Print or type name of Declarant)                       (Declarant’s city/town and province of residence)

doi solemnly declare:

(1) that I am ______________________________________________________________
(Print or type Declarant’s title or position with the Contractor)

and as such have personal knowledge of the Contract and of the facts and matters stated herein.

(INDIQUE BY checkmark in APPLICABLE BOX)

☐ that, up to the date of the attached progress claim, the Contractor has
complied with all its lawful obligations to its workers in respect of the
work contracted for and has discharged all of its lawful obligations to
its subcontractors and its suppliers except for the amounts owing which
total $_________________ (if nil, state nil). A detailed explanatory
statement of the amounts owing, including any amounts in dispute must
be attached as part of this Statutory Declaration; or

☐ that, up to the date hereof, the Contractor has complied with all its
lawful obligations to its workers, its subcontractors and its suppliers in
respect of the work contracted for and to all tax authorities respecting the payment of all applicable taxes arising from or related to the performance of the work under the Contract, except for the amounts owing which total $__________________ (if nil, state nil). A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration; or

☐ that, up to the Final Completion Notice, the Contractor has complied with all its lawful obligations to its workers, its subcontractors and its suppliers in respect of the work contracted for and discharged and satisfied all lawful claims against it that arose out of the performance of this Contract except for the amounts owing which total $__________________ (if nil, state nil). A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration.

And I make this SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

DECLARED before me at ______________________
this ____ day of ____________, 20___

(Signature of person before whom the Declaration is made)

(Print name of person before whom the Declaration is made)

(Signature of Declarant)

A Notary Public, Commissioner for Oaths etc.

(Please state authority for receiving Declarations Notaries to affix Notarial Seal)

NOTICE

If this Declaration is not complete in every detail, it will be returned for completion and payment will be delayed.

Those sections of the Criminal Code of Canada which deal with offenses relating to affidavits are hereby brought to the attention of the Declarant.