

Standard Construction Document CCDC 5B (2010)

**Construction Management Contract
- for Services and Construction**

Project.....

SUPPLEMENTARY GENERAL CONDITIONS

For use only in the Province of Alberta

The *Owner* and the *Construction Manager* agree that in this agreement, Article A-9 - PAYMENT is amended as follows:

Delete paragraphs 9.1.4 and 9.1.5 and substitute:

- .4 upon *Substantial Performance of the Work*, the major lien fund together with such *Value Added Taxes* as may be applicable to such payment, as set out in GC 5.6 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, and
- .5 upon the issuance of the final certificate for payment, the unpaid balance of the *Construction Manager's Fee* for the *Services*, the reimbursable expenses for the *Services*, the *Price of the Work*, and the minor lien fund when due, together with such *Value Added Taxes* as may be applicable to such payment, as set out in paragraph 5.8.4 of these Supplementary General Conditions.

The *Owner* and the *Construction Manager* agree that in this agreement, the General Conditions are amended as follows:

Delete GC 5.5.1 and substitute:

- 5.5.1 When the *Construction Manager* is of the opinion that the *Work* is substantially performed, the *Construction Manager* shall prepare and submit to the *Owner*, with a copy to the *Consultant*:
 - .1 a comprehensive list of items to be completed or corrected -- failure to include an item on the list does not alter the responsibility of the *Construction Manager* to complete the *Contract* -- and
 - .2 a certificate of *Substantial Performance of the Work* for verification by the *Consultant*.

Delete GC 5.5.2 and substitute:

5.5.2 The *Consultant* will review the *Work* to verify the validity of the certificate of *Substantial Performance of the Work* and shall promptly, and in any event, no later than 15 calendar days after receipt of the *Construction Manager's* list and certificate of *Substantial Performance of the Work*:

- .1 advise the *Construction Manager* in writing, with a copy to the *Owner*, that the *Work* is not substantially performed and give reasons why, or
- .2 verify in writing the certificate of *Substantial Performance of the Work*, with a copy to the *Owner* and the *Construction Manager*.

Within 3 calendar days after the date of issue of the certificate, as verified by the *Consultant*, the *Construction Manager* shall post the certificate in a conspicuous place at the *Place of the Work* to which the certificate relates.

Delete GC 5.6 in its entirety and substitute:

GC 5.6 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

5.6.1 After the *Consultant* verifies the certificate of *Substantial Performance of the Work*, the *Construction Manager* shall:

- .1 submit an application for payment of the major lien fund,
- .2 submit CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Construction Manager* in the *Substantial Performance of the Work* and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.

5.6.2 After the receipt of an application for payment from the *Construction Manager* and the statement as provided in paragraph 5.6.1, the *Consultant* will issue a certificate for payment of the major lien fund.

5.6.3 The *Owner* shall, within 10 calendar days after the date of the certificate for payment of the major lien fund, place the major lien fund in a bank account in the joint names of the *Owner* and the *Construction Manager*.

5.6.4 When 45 calendar days have expired from the date of issue of the certificate of *Substantial Performance of the Work*, as verified by the *Consultant*, and if no builders' liens have been registered for the *Work*, the *Owner* shall promptly release the major lien fund to the *Construction Manager*.

5.6.5 If a builders' lien has been registered for the *Work*, the *Owner* will not make any further payments to the *Construction Manager* until that builders' lien has been discharged.

Delete GC 5.7 in its entirety and substitute:

GC 5.7 PROGRESSIVE RELEASE OF HOLDBACK

- 5.7.1 When the *Construction Manager* or a *Subcontractor* is of the opinion that the work of that *Subcontractor* is substantially performed, the *Construction Manager* or that *Subcontractor* shall prepare and submit to the *Owner*, with a copy to the *Consultant*:
- .1 a comprehensive list of the items to be completed or corrected -- failure to include an item on the list does not alter the responsibility of the *Construction Manager* and that *Subcontractor* to complete the work of that subcontract -- and
 - .2 a certificate of substantial performance in respect of that *Subcontractor*'s subcontract, for verification by the *Consultant*.
- 5.7.2 The *Consultant* will review the *Subcontractor*'s work to verify the validity of the certificate of substantial performance in respect of that *Subcontractor*'s subcontract and shall promptly, and in any event, no later than 15 calendar days after receipt of the *Subcontractor*'s list and certificate:
- .1 advise the *Construction Manager* and *Subcontractor* in writing, with a copy to the *Owner*, that the *Subcontractor*'s work is not substantially performed and give reasons why, or
 - .2 verify in writing the certificate of substantial performance in respect of that *Subcontractor*'s subcontract, with a copy to the *Owner*, the *Construction Manager* and *Subcontractor*.
- Within 3 calendar days after the date of issue of the certificate, as verified by the *Consultant*, the person issuing the certificate shall post the certificate in a conspicuous place at the *Place of the Work* to which the certificate relates.
- 5.7.3 After the *Consultant* verifies the certificate of substantial performance in respect of a *Subcontractor*'s subcontract, the *Subcontractor* shall submit CCDC 9B 'Statutory Declaration' to state that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Subcontractor* in the performance of that *Subcontractor*'s work and for which the *Owner* or the *Construction Manager* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.
- 5.7.4 After the receipt of an application for payment from the *Construction Manager* and the *Subcontractor*'s statement as provided in paragraph 5.7.3, the *Consultant* will issue a certificate for payment of that *Subcontractor*'s portion of the major lien fund and provide a copy of such certificate to the *Owner*, the *Construction Manager*, and the *Subcontractor*.

- 5.7.5 When 45 days have expired from the date of issue of the certificate of substantial performance in respect of that *Subcontractor's* subcontract, as verified by the *Consultant*, and no builders' liens have been registered for the *Work*, the *Owner* shall promptly release that *Subcontractor's* portion of the major lien fund to the *Construction Manager*. If no builders' liens have been registered for the *Work*, the *Construction Manager* shall promptly release that portion of the major lien fund to that *Subcontractor*.
- 5.7.6 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Construction Manager* and that *Subcontractor* shall ensure that such subcontract work or *Products* are protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

Delete GC 5.8.4 and substitute:

- 5.8.4 Subject to the provision of paragraph 10.4.1 of G.C. 10.4 - WORKERS' COMPENSATION, and subject to no builders' liens being registered for the *Work*, the *Owner* shall at the expiration of 45 calendar days from total completion of the *Work* referred to in the Builders' Lien Act of Alberta, pay the *Construction Manager* as provided for in Article A-9 of the Agreement - PAYMENT.

Add new GC 12.2.11:

- 12.2.11 All provisions of GC 12.2 – WAIVER OF CLAIMS, are subject to the provisions of the Limitations Act of Alberta and amendments thereto.

Delete GC 12.3.1 and substitute:

- 12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under the *Contract* is one year from the date of *Substantial Performance of the Work*, as verified by the *Consultant*.