

APPENDIX D

ACEC Document 31

Prime Agreement between Client and Engineer

© 1996

Rights and Privileges

This document is copyrighted to and published by the Association of Consulting Engineers of Canada (ACEC). It may not be reproduced or transmitted, in whole or in part, in any form or by any means without the expressed permission of the publisher.

Professionals contemplating changes to this document are advised to first consult with legal counsel.

The Association of Consulting Engineers of Canada booklet entitled "*Guidelines for Engineering Practice*" provides details on various provisions of this Agreement.

RECEIVED DEC 9 1999

ACEC Document 31

THIS AGREEMENT

made in duplicate as of the _____ day of _____,

BY AND BETWEEN

(hereinafter called the "Client")

AND

(hereinafter called the "Engineer")

WHEREAS the Client intends to engage the professional services of the Engineer in connection with the project as hereinafter described (the "Project"): (insert precise Project description)

AND WHEREAS the Client desires to have the Engineer perform the engineering services in connection with the Project as set out in Schedule A annexed hereto;

NOW THEREFORE, the Client and the Engineer, in consideration of their mutual duties and responsibilities to one another as hereinafter set forth, **AGREE AS FOLLOWS:**

ARTICLE 1

DEFINITIONS

- 1.1 **Agreement** - is this Prime Agreement for professional services, including Schedules A, B, C and D annexed hereto.
- 1.2 **Consultant** - shall mean registered/licenced professional engineers, architects or other specialists other than the Engineer, engaged by the Client directly.
- 1.3 **Contractor** - is the party contracting with the Client for the provision of labour, materials and equipment for the execution of the Work.
- 1.4 **Contract** - is the agreement between the Client and the Contractor for the provision of labour, materials and equipment for the execution of the Work by the Contractor.
- 1.5 **Contract Documents** - shall mean all documents relating to the Work issued by or through the Engineer which are incorporated into the Contract, and all variations and modifications thereto issued by or approved by the Engineer.
- 1.6 **Contract Time** - shall mean the period from the notice to proceed with the Work to the projected completion date for the Contract agreed to between the Client and the Contractor in the Contract.
- 1.7 **Cost Of The Work** - for purposes of fee computation under this Agreement, shall mean the total cost to the Client of the Work, (including all materials, equipment, labour, taxes, Contractor's overhead and profit provided in accordance with the Contract Documents)

AND SHALL INCLUDE:

- 1.7.1 The cost of all Installations carried out by parties other than the Contractor, as required by the Client;
- 1.7.2 The cost of all Work carried out under the Contract;
- 1.7.3 Refunds or sales tax exemptions on any materials and/or equipment;
- 1.7.4 The cost of Work carried out by direct labour or direct purchase of materials or equipment by the Client at prices pertaining during the Contract Time;
- 1.7.5 The provision of new or old materials by the Client;
- 1.7.6 The value of all deletions made by the Client from the Work after the Engineer has completed a design for the deleted items as a part of the Work;
- 1.7.7 The value of any monetary damages or set-offs retained by the Client from the Contractor with respect to the Work;

BUT SHALL NOT INCLUDE:

- 1.7.8 Professional fees, including engineering fees, or the fees of other Consultants or disbursements or the salary of the Client's representative or other Client's salary cost or other Client's administrative costs;
- 1.7.9 The cost of land purchase and easements;
- 1.7.10 The costs of items which do not form a part of or are required for the function of the Work.
- 1.8 **Field Services** - shall mean making such visits to the Project site at intervals appropriate to the stage of construction as the Engineer, in the Engineer's sole professional discretion, considers necessary to enable him/her to ascertain whether the Contractor is carrying out the Work in general conformity with the Contract Documents for the Project.



Association of Consulting Engineers of Canada
Association des ingénieurs conseils du Canada

- 1.9 **Project** - shall mean the Project described in the recitals to this Agreement.
- 1.10 **Services** - shall mean the Engineer's Basic Services and Additional Services as set forth in Schedule A.
- 1.11 **Shop Drawings** - shall mean drawings, diagrams, illustrations, schedules, performance charts, technical brochures and other data which are to be provided by the Contractor or by others to illustrate details of a portion of the Work.
- 1.12 **Substantial Performance** - shall have the meaning set out in the Ilen legislation at the place of the Work, or if such legislation shall not contain such definition, it shall mean that the Work is ready to be used or is being used for the purpose intended and is so certified by the Engineer.
- 1.13 **Sub-Consultant** - shall mean any registered/licenced professional engineers, architects or other specialists engaged by the Engineer in connection with the Project.
- 1.14 **Termination Expenses (Suspension Expenses)** - shall mean expenses incurred by the Engineer which are directly attributable to termination or suspension of the Services for reasons beyond the control of the Engineer, and shall include the Engineer's expenses reasonably and necessarily incurred in winding down his/her Services.
- 1.15 **Total Performance** - shall mean that the Work as appraised by the Engineer has been performed to the requirements of the Contract Documents, and is so certified by the Engineer.
- 1.16 **Work** - shall mean all labour, materials and equipment to be supplied and incorporated into the Project by the Contractor as required by the Contract Documents.

ARTICLE 2

CLIENT'S DUTIES AND RESPONSIBILITIES TO THE ENGINEER

THE CLIENT SHALL:

- 2.1 Instruct the Engineer fully in writing as to the Client's total requirements in connection with the Project, including the Client's Project budget and time constraints.
- 2.2 Make available to the Engineer all relevant information or data pertinent to the Project which is required by the Engineer. The Engineer shall be entitled to rely upon the accuracy and completeness of all information and data furnished by or through the Client, including information and data originating with the Client's Consultants, whether such Consultants are engaged at the request of the Engineer or otherwise. Where such information or data originates either with the Client or with the Client's Consultants, then the Engineer shall not be responsible to the Client for the consequences of any error or omission contained therein.
- 2.3 When required by the Engineer in writing, engage specialist Consultants directly to perform services necessary to enable the Engineer to carry out his/her Basic Services as set forth in Schedule A, such services to include but not be restricted to an accurate survey of the building site, site services report, geotechnical reports, quantity surveyor and all appropriate testing services. Such Consultants engaged by the Client shall be subject to the joint approval of the Client and the Engineer, and contracts for the provision of such services, whether arranged by the Client or the Engineer, shall be deemed to be direct contracts with the Client unless expressly provided otherwise.
- 2.4 Authorize the Engineer in writing to act as the Client's agent for such purposes as are necessary to the Engineer's rendering of Services pursuant to this Agreement.

- 2.5 Give prompt consideration to all sketches, drawings, specifications, tenders, proposals, contracts and other documents relating to the Project prepared by the Engineer, and whenever prompt action is necessary, inform the Engineer of the Client's decisions in such reasonable time so as not to delay the Services of the Engineer, or to prevent the Engineer from forwarding drawings or instructions to the Contractor or to Consultants or to Sub-Consultants.
- 2.6 Pay the Engineer as provided for in this Agreement.
- 2.7 Provide necessary advertising incidental to obtaining tenders, and provide or reimburse the Engineer for obtaining necessary legal, accounting, insurance, bonding and other counselling services in connection with the Project.
- 2.8 Arrange and make provision for the Engineer's entry and ready access to property (public and private) as well as to the Project site, as necessary to enable the Engineer to perform his/her Services.
- 2.9 Designate in writing an individual to act as the Client's representative, such person to have complete and exclusive authority to transmit instructions to and receive information from the Engineer.
- 2.10 Give prompt written notice to the Engineer whenever the Client or the Client's representative become aware of any defects or deficiencies in the Work or in the Contract Documents.
- 2.11 Obtain required approvals, licences and permits from municipal, governmental or other authorities having jurisdiction over the Project so as not to delay the Engineer in the performance of Services.
- 2.12 Expressly undertake not to enter into contracts in connection with the Project with Contractors or Consultants which describe duties and responsibilities of the Engineer which are inconsistent with the duties and responsibilities of the Engineer provided for in this Agreement, without obtaining the Engineer's prior written agreement thereto.
- 2.13 Attach and initial any additional duties and responsibilities of the Client to the Engineer which shall form a part of this Article 2: (attach, initial and date any additions)

ARTICLE 3

CONSTRUCTION ADMINISTRATION AND CO-ORDINATION

THE ENGINEER'S CONSTRUCTION ADMINISTRATION AND CO-ORDINATION FUNCTIONS PROVIDED FOR IN ARTICLES 3.1 THROUGH 3.5 INCLUSIVE SHALL PERTAIN ONLY TO THE EXTENT THAT THE SERVICES CONTEMPLATED BY PARAGRAPH A.7.1 IN SCHEDULE A HAVE BEEN RENDERED ON THE PROJECT.

IT IS UNDERSTOOD AND AGREED BY THE CLIENT AND THE ENGINEER THAT ONLY WORK WHICH HAS BEEN SEEN DURING THE CONSTRUCTION PERIOD BY THE ENGINEER CAN BE SAID TO HAVE BEEN APPRAISED, AND COMMENTS ON THE BALANCE OF THE WORK ARE ASSUMPTIONS ONLY, BASED UPON EXTRAPOLATION BY THE ENGINEER.

THE PERFORMANCE OF THE CONTRACT IS NOT THE ENGINEER'S RESPONSIBILITY NOR ARE THE ENGINEER'S FIELD SERVICES RENDERED FOR THE CONTRACTOR'S BENEFIT. THE CONTRACTOR ALONE IS RESPONSIBLE FOR THE QUALITY CONTROL OF THE WORK.

- 3.1 Authority for general administration and co-ordination of the Project shall reside in the Engineer to the extent provided for in this Agreement.
- 3.2 All notices, instructions, requests, claims or other communications by the Contractor, by the Consultants or by the Client to one another shall be made by or through the Engineer.
- 3.3 The Engineer shall make decisions on all claims of the Client and of the Contractor under the Contract, and on all matters relating to the interpretation of the Contract Documents.



- 3.4 The Engineer shall coordinate the activities of the Engineer's Sub-Consultants as well as those of the Client's Consultants on the Project to the extent that the Engineer is empowered to do so in the Consultants' contracts with the Client.
- 3.5 No acceptance by the Engineer of the Work or of the services of the Contractor or the Consultants, whether express or implied, shall relieve the Contractor or the Consultants from their responsibilities to the Client for the proper performance of such Work or services, and further, the Engineer shall not be responsible to the Client or to the Contractor or the Consultants for the means, methods, techniques, sequences, procedures and use of equipment, of any nature whatsoever, whether reviewed by the Engineer or not, which are employed by the Contractor or by the Consultants in executing, designing or administering any phases of the Work, or for placing into operation any plant or equipment or for safety precautions and programs incidental thereto.

ARTICLE 4

CERTIFICATIONS BY THE ENGINEER

- 4.1 The Engineer shall issue certifications as set forth in Paragraph A.7.9 in Schedule A only where Field Services have been performed by the Engineer as defined in Article 1.8.
- 4.2 In the event that the Engineer attends at the site of the Project in accordance with Paragraph A.7.2 of Schedule A, then the Engineer shall issue qualified certificates only in respect of such attendances.

ARTICLE 5

COST OF THE WORK AND CONTRACT TIME ESTIMATES

- 5.1 The parties expressly acknowledge and agree that the Cost of the Work and Contract Time estimates provided by the Engineer to the Client under this Agreement are subject to change and are contingent upon factors over which the Engineer has no control. The Engineer does not guarantee the accuracy of such estimates. Exact costs and time will be determined only when tenders have been received for the Work and when the Work has been performed.

ARTICLE 6

TERMINATION AND SUSPENSION

BY THE CLIENT:

- 6.1 If the Engineer is shown to be in default in the performance of any of the Engineer's material obligations set forth in this Agreement, then the Client may, by written notice to the Engineer, require such default to be corrected. If within 30 days after receipt of such notice such default shall not have been corrected or reasonable steps to correct such default shall not have been taken, the Client may, without limiting any other right or remedy the Client may have, immediately terminate this Agreement and make settlement for the cost of the Services rendered and disbursements incurred by the Engineer pursuant to this Agreement and remaining unpaid as of the effective date of such termination.
- 6.2 If the Client is unwilling or unable to proceed with the Project, the Client may suspend or terminate this Agreement by giving 30 days prior written notice to the Engineer. Upon receipt of such written notice, the Engineer shall perform no further Services other than those reasonably necessary to suspend or close out the Project. In such event the Engineer shall be paid by the Client for all Services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such suspension or termination, plus the Engineer's Suspension or Termination Expenses as defined in Article 1.14.

- 6.3 If the Engineer is practising as an individual and is unable to satisfactorily perform Services for a period of 30 consecutive days or for an aggregate of 45 days in any 3 month period, the Client may terminate this Agreement upon giving 7 days written notice to the Engineer, and shall pay for the Services rendered and disbursements incurred by the Engineer to the date of such termination.

BY THE ENGINEER:

- 6.4 If the Client is shown to be in default in the performance of any of the Client's material obligations set forth in this Agreement, including payment of the Engineer's fee as required herein, then the Engineer may, by written notice to the Client, require such default to be corrected. If within 30 days after receipt of such notice such default shall not have been corrected, the Engineer may, without limiting any other right or remedy he may have, immediately terminate this Agreement. In such event, the Engineer shall be paid by the Client for all Services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such termination plus the Engineer's Termination Expenses as defined in Article 1.14, in addition to any other rights or remedies the Engineer may have.
- 6.5 If the Engineer's Services are suspended by the Client at any time for more than 30 consecutive or non-consecutive days through no fault of the Engineer, then the Engineer shall have the right at any time until such suspension is lifted by the Client, without limiting any other right or remedy the Engineer may have, to terminate this Agreement upon giving written notice thereof to the Client. In such event the Engineer shall be paid by the Client for all Services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such suspension, plus the Engineer's Suspension Expenses as defined in Article 1.14.

ARTICLE 7

OWNERSHIP AND USE OF DOCUMENTS, PATENTS AND TRADEMARKS

- 7.1 All drawings, plans, models, designs, specifications, reports, photographs, computer software, surveys, calculations and other data, including computer print-outs, contained in the Contract Documents or which are otherwise used in connection with the Project, and prepared by or on behalf of the Engineer, are instruments of service for the execution of the Work and as such are the property of the Engineer, whether the Work is executed or not, and the Engineer reserves the copyright therein and in the Work executed therefrom, and they are not to be used on any other work without the prior written agreement and remuneration of the Engineer. The Client is entitled to a copy of the said documents and models for record and maintenance purposes, but only in connection with the Project. In the event that the said documents and models are used by the Client for purposes other than in connection with the Project, or if the said documents and models have been amended, altered or revised in any manner whatsoever without notice to the Engineer and without receiving the Engineer's prior written consent, the Engineer does not warrant the fitness of same for the Client's use, and the Client agrees to indemnify, hold harmless and defend the Engineer from and against all claims, demands, losses, damages, liability and costs (including costs between solicitor and own client) associated with such use by the Client.
- 7.2 Subject to Article 6, the Client and the Engineer agree that the Engineer's fee shall be payable by the Client even in the event that the Client does not, for any reason, proceed with the Work as described in the Contract Documents. The Client and the Engineer further agree that payment of the Engineer's fee by the Client pursuant to this Agreement shall be condition precedent to the Client's right to the use of the Contract Documents and models for all purposes in connection with the Project or under this Agreement.

- 7.3 All concepts, products or processes produced by or resulting from the Services rendered by the Engineer in connection with the Project, or which are otherwise developed or first reduced to practice by the Engineer in the performance of Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Engineer, and other than as hereinafter set forth in Article 7.4 the Client shall not use, infringe upon or appropriate such concepts, products or processes without the express written agreement and remuneration of the Engineer.
- 7.4 The Client shall have a permanent non-exclusive royalty-free license to use any concept, product or process which is patentable or capable of trademark, produced by or resulting from the Services rendered by the Engineer in connection with the Project, for the life of the Project, and for no other purpose or project.
- 7.5 The parties agree that the Engineer shall, for all purposes, be deemed to hold in his/her possession the original of the Contract Documents, including any computer-generated designs related thereto.

ARTICLE 8

BUILDING CODES AND BY-LAWS

- 8.1 The Engineer shall, to the best of his/her ability, interpret building codes and by-laws as they apply to the Project at the time of design, but it is expressly acknowledged and agreed by the Client that as the Work progresses, the building codes and by-laws may change or the interpretation by any public authority may differ from the interpretation of the Engineer, through no fault of the Engineer, and any extra cost necessary to conform to such changes or interpretations during or after execution of the Work will be paid by the Client in the event that the Engineer has received a prior authorization from such authorities in respect of such changes or interpretations.

ARTICLE 9

MEDIATION AND ARBITRATION

- 9.1 If requested in writing by either the Client or the Engineer, the Client and the Engineer shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. Failing such agreement, the mediator shall be appointed by reference to a Judge of the _____ Court.
- 9.2 If a dispute cannot be settled within a period of thirty (30) calendar days by the mediator appointed under Article 9.1, or such longer period as may be agreed to by the parties, the dispute may, with the prior written concurrence of both the Client and the Engineer, be referred to and finally resolved by way of binding arbitration by a single arbitrator. The arbitrator shall be appointed by agreement of the parties. Failing such agreement, the arbitrator shall be appointed by reference to a Judge of the _____ Court.
- 9.3 The place of the mediation/arbitration shall be the city closest to the location of the Project, unless the parties agree otherwise.
- 9.4 No one shall act as a mediator/arbitrator who is in any way financially interested in the conduct of the Project or in the business affairs of either the Client or the Engineer.
- 9.5 The laws of the Province where the Project is located shall govern this Agreement and any mediation/arbitration or litigation in respect thereof.
- 9.6 The award of an arbitrator under Article 9.2 shall be final and binding upon the parties, and shall be enforceable by them in any Court of competent jurisdiction."

ARTICLE 10

SUCCESSORS AND ASSIGNMENT

- 10.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors and assigns.
- 10.2 If a party to this Agreement who is an individual should desire to bring in a partner or partners, or if a party who is a partnership should desire to bring in a new partner or partners to share the benefits and obligations of this Agreement, they may do so by promptly notifying the other party in writing of such intended action.
- 10.3 If a party to this Agreement is a partnership, and a partner thereof either dies or retires then the remaining parties therein shall form a new successor partnership to share the benefits and obligations of this Agreement.
- 10.4 Except as set forth in this Article 10, neither party may assign this Agreement without the prior consent in writing of the other.

ARTICLE 11

NOTICES

- 11.1 All notices required by this Agreement to be given by either party shall be deemed to be properly given and received within three (3) business days if made in writing to the other party by certified mail, telegram, facsimile or personal delivery, addressed to the regular business address of such other party.

ARTICLE 12

ENTIRE AGREEMENT

- 12.1 This Agreement constitutes the sole and entire agreement between the Client and the Engineer relating to the Project, and supersedes all prior agreements between them, whether written or oral, respecting the subject matter hereof, and no other terms, conditions or warranties, whether express or implied, shall form a part hereof. This Agreement may be amended only by written instrument signed by both the Client and the Engineer.

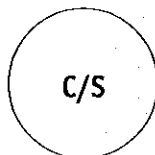
ARTICLE 13

ADDITIONAL TERMS

13.1 Attach and initial any additional terms which shall form a part of this Agreement: (attach and initial any additions)

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written by their duly authorized officers and representatives.

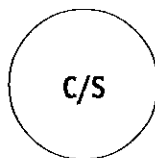
THE CORPORATE SEAL OF the **CLIENT** was hereunto affixed in the presence of:



Authorized Signatory

Authorized Signatory

THE CORPORATE SEAL OF the **ENGINEER** was hereunto affixed in the presence of:



Authorized Signatory

Authorized Signatory



Association of Consulting Engineers of Canada
Association des Ingénieurs-Consultants du Canada

SCHEDULE A

ENGINEER'S BASIC SERVICES AND ADDITIONAL SERVICES

GENERAL:

- A.1. The Engineer shall render Basic Services and Additional Services to the Client under this Agreement with that degree of care, skill and diligence normally provided in the performance of such services in respect of projects of similar nature to that contemplated by this Agreement at the time and place that such services are rendered:

- A.1.1 In rendering Basic Services and Additional Services on the Project, the Engineer may, at any stage of such services, engage Sub-Consultants to perform services necessary to enable the Engineer to carry out duties and responsibilities as set forth in this Agreement, subject to the agreement of the Client, which agreement shall not be unreasonably withheld.

THE BASIC SERVICES SHALL CONSIST OF:

A.2. Advisory and Consulting Services:

- A.2.1 With the Client's written authorization, acting as the Client's agent as required in connection with the Project;
- A.2.2 Preparing an engineering program based upon the Client's written instructions as set forth in Article 2.1;
- A.2.3 Assisting the Client by assessing and advising upon the appropriateness of the program of construction reviews and testing services which may be required by the Engineer or imposed by law in connection with the execution of the Work by the Contractor;
- A.2.4 Should the Client fail to provide the information required by the Engineer pursuant to Articles 2.2 and 2.3, then the Engineer shall advise the Client in writing as to further investigative work which in the Engineer's opinion is necessary prior to the preparation of the Contract Documents, and as agent for and on behalf of the Client, and with the Client's prior written approval, the Engineer shall engage Consultants to perform such investigative work at the Client's expense;
- A.2.5 If required by the Client, preparing and periodically updating a Cost of the Work estimate.

A.3. Conceptual Design Services:

- A.3.1 Preparing preliminary concept sketches and developing preliminary specification notes;

A.4. Preliminary Design Services:

- A.4.1 When required by the Engineer, obtaining advice and information from any Consultants retained directly by the Client to enable the Engineer to carry out duties and responsibilities as set forth in this Agreement;
- A.4.2 Preparing preliminary design drawings;
- A.4.3 Preparing outline specifications;

A.5. Final Design Services:

- A.5.1 Preparing working drawings;
- A.5.2 Preparing Project specifications;

A.6. Construction and Contract Administration Services:

IT IS UNDERSTOOD AND AGREED BY THE CLIENT AND THE ENGINEER THAT ONLY WORK WHICH HAS BEEN SEEN DURING THE CONSTRUCTION PERIOD BY THE ENGINEER CAN BE SAID TO HAVE BEEN APPRAISED, AND COMMENTS ON THE BALANCE OF THE WORK ARE ASSUMPTIONS ONLY, BASED UPON EXTRAPOLATION BY THE ENGINEER.

A.6.1 Tender Call Services:

- A.6.1.1 Assisting in the preparation of pre-qualification documents for bidding Contractors, if required;
- A.6.1.2 Preparing tender call Contract Documents and bidding proposal documents;
- A.6.1.3 Coordinating all Contract Documents prepared by the Engineer, the Consultants and Sub-Consultants on the Project;
- A.6.1.4 Reviewing tenders submitted and advising as to Contractor selection;
- A.6.1.5 Assisting in the preparation of the Contract.

A.7. Field Services:

- A.7.1 Making such visits to the Project site at intervals appropriate to the stage of construction as the Engineer, in the Engineer's sole professional discretion, considers necessary to enable him/her to ascertain whether the Contractor is carrying out the Work in general conformity with the Contract Documents for the Project.
- A.7.2 Field Services are NOT to be provided under this Agreement, but should the Client request the Engineer in writing to attend at the Project site for any reason, then the Engineer may do so, but the Engineer's Services shall not include those described in Article 1.8. In such event, the Contractor shall remain solely responsible for any defects or deficiencies in the Work, and the Engineer's sole responsibility to the Client shall be as set forth in the Engineer's written response to the Client's request, in the form of a qualified report, letter or certificate.
- A.7.3 Where required by the Engineer during this phase of the Services, obtaining advice, data and information from any Consultants retained directly by the Client.
- A.7.4 Subject to Article 3.4, coordinating the activities of all Consultants and Sub-Consultants on the Project.
- A.7.5 Reviewing Shop Drawings submitted by the Contractor or by others for the sole purpose of ascertaining that the information set forth therein generally conforms with stated design intent for the Work. Responsibility for the detailed design inherent in such Shop Drawings shall remain with the Contractor and with any other party submitting same.
- A.7.6 Monitoring compliance with the program of construction reviews and testing referred to in Paragraph A.2.3 in Schedule A, and keeping the Client informed through periodic reports.
- A.7.7 Interpreting the Contract Documents when requested to do so by the Client or by the Consultants or the Contractor.
- A.7.8 Subject to any applicable lien legislation at the place of the Work, conducting Substantial and Total Performance reviews of the Work, noting defects and deficiencies observed in the Work and reviewing the correction of same when completed by the Contractor.
- A.7.9 Subject to Article 4, certifying the Cost Of The Work, the Contractor's Substantial and Total Performance of the Work and the Contractor's periodic applications for payment.
- A.7.10 Attending meetings necessary to the coordination of the design, Field Services and execution of the Work.
- A.7.11 Preparing and issuing notices of change, change orders and other necessary Project documentation during the course of the execution of the Work.



A.8. Post-Construction Services:

- A.8.1 Conducting a final overall Project review prior to the expiration of the Contractor's warranty period and advising the Contractor and the Client in writing as to continuing or newly observed defects or deficiencies in the Work.

A.9. Attach and Initial any additional Basic Services of the Engineer to the Client which shall form a part of this Agreement: (attach, initial and date any additions)

¹ One of the two sub-paragraphs A.7.1. or A.7.2 must be deleted and initialled.

² By law, in some jurisdictions, only A.7.1 may be rendered.

A.10. ENGINEER'S ADDITIONAL SERVICES

The following Additional Services which shall be considered to be additional to the Engineer's Basic Services set forth in this Schedule A, and which are not considered to be typical or customary services, may be provided by the Engineer to the Client at the written request of the Client, and for which the Engineer shall be paid an additional fee pursuant to Schedule B:

- A.10.1 Preparing reports relating to the Client's long-range or other plans not included in the Basic Services.
- A.10.2 Preparing an alternative design or systems design not included in the Basic Services.
- A.10.3 Assisting in the preparation of detailed pre-construction Project operating cost budgets, or whole-life cost estimates.
- A.10.4 Revising reports, estimates, preliminary studies and design development studies provided by the Engineer pursuant to the Basic Services, for reasons over which the Engineer has no control.
- A.10.5 Revising, designs, drawings, plans, specifications or any of the Contract Documents after their initial completion for reasons over which the Engineer has no control.
- A.10.6 Preparing designs not included in the tender set of Contract Documents.
- A.10.7 Preparing Contract Documents for alternative prices requested by the Client relating to portions of the Work not awarded.
- A.10.8 Providing special analysis of the Client's needs, such as operational analysis and preparing operating or maintenance manuals, operating drawings or charts.
- A.10.9 Preparing for special reviews and testing of the Work.
- A.10.10 Preparing bills of materials, measuring quantities of Work performed and preparing Shop Drawings.
- A.10.11 Performing scheduling and expediting services during construction.
- A.10.12 Providing Additional or extended Services made necessary by:
 - A.10.12.1 Work damaged by fire or other causes during the term of the Contract;
 - A.10.12.2 Defective Work of the Contractor;
 - A.10.12.3 Unreasonable prolongation of the Contract Time due to strikes, or for other reasons beyond the control of the Engineer;
 - A.10.12.4 The Contractor's default under the Contract arising out of the Contractor's delinquency or insolvency or of those employed by him;
 - A.10.12.5 Deficient or defective services, information or operations provided by the Client pursuant to Article 2;
 - A.10.12.6 Additional Services necessitated by the occurrence of emergencies on site.
- A.10.13 Providing Additional Services arising out of separate contracts, cost-plus contracts and pre-tendered contracts.

- A.10.14 Providing advice and instructions to the Client beyond the scope of advice and instructions referred to in the Basic Services.

- A.10.15 Preparing record drawings.

- A.10.16 Providing furnishing drawings.

- A.10.17 Assisting in litigation, arbitration, negotiation or other legal or administrative proceedings on behalf of the Client, and all necessary preparation in respect thereof.

- A.10.18 Preparing applications and supporting documents for governmental grants, loans or advances in connection with the Project.

- A.10.19 Subject to Schedule D, preparing or reviewing environmental assessments and impact studies, and assisting in obtaining approvals of authorities having jurisdiction over the environmental aspect of the Project.

- A.10.20 Providing renderings or models for the Client's use.

- A.10.21 Obtaining, on the Client's behalf, required approvals, licences and permits from municipal and governmental authorities having jurisdiction over the Project.

SCHEDULE B

ENGINEER'S FEES FOR BASIC SERVICES AND ADDITIONAL SERVICES

B.1 Payment of Fees for Basic Services:

- B.1.1 The Client shall pay to the Engineer when invoiced for the Basic Services set forth in Schedule A, a fee as hereinafter set forth. The Engineer's accounts are due when presented and accounts unpaid by the Client 30 days after presentation shall bear monthly interest at chartered bank prime rate of interest plus % , which is equivalent to an annual rate of interest of %.

- B.1.2 The Client agrees that it shall pay to the Engineer, in addition to the fee agreed to in this Agreement, the amount of any goods and services or other taxes on the said fee, including any taxes which first came into effect after the date of this Agreement.

- B.1.3 The fee for the Engineer's Basic Services set forth in Schedule A is as follows: (insert basis for fee, Engineer's current hourly fee rates, % of Cost of the Work, lump sum, etc.).

- B.1.4 In the event that the Client disputes any portion of the Engineer's fees, the Client shall provide the Engineer with written notice of such dispute within 30 calendar days following receipt of the invoices for disputed fees and the reasons therefor. The Client shall be entitled to withhold only the amount of the fees in dispute and the balance of the fees not in dispute shall be paid by the Client without deduction or set-off. The parties agree to use their best efforts to diligently pursue resolution of any fees in dispute within 30 calendar days of the Client's written notice of dispute. If resolution is not achieved, the fees in dispute shall be referred to mediation and arbitration in accordance with Article 9 of this Agreement. The Client's failure to dispute the Engineer's fees within 30 calendar days of receipt of any invoice shall be deemed to be a waiver of all claims which the Client has with respect to such invoice.

B.2 Reimbursable Expenses for Basic and Additional Services:

The Client shall pay to the Engineer when invoiced the following disbursements made by the Engineer in carrying out Basic and Additional Services pursuant to Schedule A, which shall be increased to cover office services and handling by % where such expenses are incurred by the Engineer.



The expense of transport, subsistence and lodging in connection with the Project beyond kilometres of the Engineer's office. Car expenses shall be charged at per kilometre, and other means of travel at cost.

The expense of long distance telephone calls, telegrams, telex and facsimile.

The expense of reproduction and delivery of information, drawings, specifications and other documents necessary to the Project, and fees paid for securing approvals, permits or licences from regulatory agencies having jurisdiction over the Project.

The expense of providing and maintaining Project site offices, telephones, facsimile as required for use by the Engineer and the Engineer's Sub-Consultants.

The expense of all advertising incidental to the Project and obtaining all necessary legal, accounting, insurance, bonding and other counselling services pertaining to the Project as well as computer charges and related expenses as agreed to between the Client and the Engineer.

The expense of any federal, provincial or municipal tax payments required to be made by the Engineer in respect of the Services, including any goods and services, customs, excise or any other taxes, including any taxes which may first become payable in respect of the Services after the execution of this Agreement.

The expense of any special or increased insurance coverage required by the Client according to paragraph C.4 of Schedule C.

All other costs reasonably incurred by the Engineer in the performance of Basic and Additional Services in connection with the Project where the Engineer has obtained the prior written approval of the Client therefor.

B.3 Payment of Fees for Additional Services:

B.3.1 The Client shall pay to the Engineer when Invoiced for the Additional Services set forth in Schedule A, a fee as hereinafter set forth. The Engineer's accounts are due when presented and accounts unpaid by the Client 30 days after presentation shall bear monthly interest at chartered bank prime rate plus 2% which is equivalent to an annual rate of interest of _____ %.

B.3.2 No deduction or set-off shall be made by the Client from the fee payable to the Engineer.

B.3.3 The fee for the Engineer's Additional Services set forth in Schedule A is as follows:

- a payment based upon an hourly rate for the Engineer's personnel as hereinafter set forth:

SCHEDULE C

INSURANCE, DAMAGES AND LIABILITY OF THE ENGINEER

C.1 In consideration of the provision of the Services by the Engineer to the Client under this Agreement, the Client agrees that any and all claims which the Client has or hereafter may have against the Engineer, the Engineer's servants, employees, Subconsultants and representatives, in respect of the Services, howsoever arising, whether in contract or in tort, shall be absolutely limited to:

- (a) Claims brought within a period of six years from the date of the termination or suspension of the Engineer's Services or of the date of the Certificate of Substantial Performance, whichever shall first occur, or within such shorter period as may be prescribed by any limitation statute in the Province where the Project is located.
- (b) The amount of the Engineer's (Project) professional liability insurance available at the date that a claim is brought against the Engineer by the Client, including the deductible portion therein. If for any reason such insurance shall not be available or shall not apply to any claim made by the Client against the Engineer in respect of the Services, then the liability of the Engineer to the Client under this Agreement shall be absolutely limited to the re-performance at the Engineer's own cost of those Services which are proven at law to constitute errors, omissions or negligent acts on the part of the Engineer or anyone for whom the Engineer may be responsible at law.

C.2 For all purposes of this limitation of liability provision, it is agreed by the Client and the Engineer that as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued, including any final confirmation thereof, in any and all events not later than the date of the termination or suspension of the Engineer's Services or of the date of the Certificate of Substantial Performance of the Work, whichever shall first occur, and as to any acts or failures to act occurring after the date of Substantial Performance, not later than the date of issuance of the final certificate for payment on the Project by the Engineer.

C.3 The Engineer's liability with respect to any claims arising out of this Agreement shall be absolutely limited to direct damages arising out of the Services, and the Engineer shall bear no liability whatsoever for any consequential loss, injury or damage incurred by the Client, including but not limited to claims for loss of profits and loss of markets.

It is further agreed that the Engineer shall not be liable for damages, interest, costs or any other expense arising out of the failure of any manufactured product or any manufactured or factory assembled system of components to perform in accordance with the manufacturer's specifications, advertising, product literature or written documentation on which the Engineer reasonably relied in the preparation of the design or Contract Documents.

C.4 The Engineer's (Project) professional liability insurance policy certificate of coverage (shall apply exclusively to the Project and to no other project and) shall be available for inspection by the Client at all times upon request. Prior to the date of the execution of this Agreement, if the Client wishes, because of particular circumstances or otherwise, to increase the amount of the coverage of such policy, or to obtain other special or increased insurance coverage, then the Engineer shall cooperate with the Client to obtain such increased or special insurance coverage at the Client's expense.



Association of Consulting Engineers of Canada
Association des Ingénieurs-Consultants du Canada

- C.5 The Engineer's (Project) professional liability insurance policy shall remain in force from the date of execution of the Agreement and, subject to availability at reasonable cost, for years after the date of Substantial Performance of the Work, and shall contain a cancellation clause requiring the insurer to give the Client 30 calendar days prior written notice of any cancellation of such policy.
- C.6 This Schedule C shall survive the completion of the Project and the completion of the Engineer's Services under this Agreement.

SCHEDULE D

POLLUTANTS AND HAZARDOUS WASTES

- D.1 The Client recognizes that projects involving pollutants and hazardous wastes, as defined below, create extraordinary risks. In consideration of the said extraordinary risks and in consideration of the Engineer providing the Services to the Client in connection with the Project on which pollutants and hazardous wastes are involved, the Client agrees that the Engineer's liability to the Client with respect to any matter in any way arising out of the Engineer's involvement with pollutants and hazardous wastes associated with this Agreement shall be limited to or otherwise protected against as provided in paragraphs A and B below.
- A. The Engineer's liability to the Client in connection with pollutants and hazardous wastes is absolutely limited, both in contract and in tort, for any and all claims arising out of or in connection with the Project to a total maximum aggregate amount not to exceed the cost of reperformance of the Services at the sole cost of the Engineer for that portion of the Services proven to be in error. It is further agreed that such limitation shall be exclusive of the liability of the Engineer to the Client which may otherwise be provided for in this Agreement for claims unrelated to pollutants and hazardous wastes.
- B. In further consideration of the Engineer providing the Services to the Client in connection with the Project in which pollutants and hazardous wastes are involved, the Client agrees that in connection with incidents and claims initiated by third parties involving pollutants and hazardous wastes, the Client (to the extent that the Engineer is not covered by insurance in respect thereof) shall indemnify, defend and hold harmless the Engineer of and from any and all suits, actions, legal, administrative or arbitration proceedings, claims, demands, damages, penalties, fines, losses, costs and expenses of whatsoever kind or character, arising or alleged to arise out of the Services of the Engineer or any claims against the Engineer arising or alleged to arise from the acts, omissions or work of others. Such indemnification shall apply to the fullest extent permitted by law, regardless of fault or breach of contract by the Engineer and shall include the fees and charges of lawyers in defending or advising the Engineer as to such claims under the Agreement. Without limiting the generality of the foregoing, such indemnity extends to claims which arise out of the actual or threatened dispersal, discharge, escape, release or saturation (whether sudden or gradual) of any pollutant or hazardous waste in or into the atmosphere, or on, on to, upon, in or into the surface or subsurface soils, water or water courses, persons, objects or any other tangible matter.
- D.2 Nothing herein shall relieve the Engineer from obligations to provide the Services required by this Agreement, and generally as required by standard engineering practice current as of the date of performance of the Services, and nothing herein shall apply to claims, damages, losses or expenses which are finally determined at law to result from the Engineer's intentionally wrongful acts.
- D.3 For all purposes of this Schedule D, 'pollutants and hazardous wastes' shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation, smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste, including, without limitation, pollutants, hazardous or special wastes as defined in any federal, provincial or municipal laws.