



ASSOCIATION OF CONSULTING  
ENGINEERING COMPANIES | CANADA

**ASSOCIATION OF CONSULTING ENGINEERING COMPANIES–CANADA**

**DOCUMENT NO. 32 - 2011**

**AGREEMENT BETWEEN ENGINEER AND SUB-CONSULTANT**

For use when a prime consultant Engineer wishes to engage a Sub-Consultant engineer. Professionals contemplating any changes in this Agreement are advised to first consult with legal counsel.

**Rights and Privileges**

This document is published under copyright by the Association of Consulting Engineering Companies–Canada (ACEC). Permission is granted exclusively to ACEC members to copy and/or distribute this document for its intended use. Users contemplating changes to the agreement outlined in this document may, and are encouraged to, append supplementary conditions to the document.

Users are advised to first consult with legal counsel prior to agreeing to any changes to the agreement outlined in this document.

1981  
Revised 1999  
Revised 2011

## TABLE OF CONTENTS

AGREEMENT .....	1	22. Suspension Expenses .....	8
A-1 The Sub-Consultant Services .....	1	23. Termination Expenses .....	8
A-2 Agreement and Amendments .....	2	24. Value Added Taxes .....	8
A-3 Sub-Consultant Agreement Documents .....	2	25. Work .....	8
A-4 Fees and Reimbursable Expenses .....	2	26. Working Day .....	8
A-5 Payment .....	3	GENERAL CONDITIONS .....	9
A-6 Notices .....	3	Part 1 Agreement Documents .....	9
A-7 Language of the Contract .....	4	Part 2 Law Of The Contract .....	9
A-8 Succession .....	4	Part 3 Rights And Remedies .....	9
DEFINITIONS .....	6	Part 4 Assignment .....	10
1. Client .....	6	Part 5 Sub-Consultant's Responsibilities .....	10
2. Construction Administration Services .....	6	Part 6 Engineer's Responsibilities .....	12
3. Construction Contract .....	6	Part 7 Construction Administration .....	13
4. Construction Contract Documents .....	6	Part 8 Certifications By The Engineer .....	14
5. Construction Contract Time .....	6	Part 9 Construction Cost And Contract Time Estimates .....	15
6. Construction Cost .....	6	Part 10 Termination And Suspension .....	15
7. Consultant or Consultant of the Client .....	7	Part 11 Ownership And Use Of Documents, Patents .....	16
8. Contractor .....	7	And Trademarks .....	16
9. Engineering Agreement .....	7	Part 12 Building Codes And By-Laws .....	17
10. Fees .....	7	Part 13 Project Ownership, Identification And .....	18
11. Hazardous Substances .....	7	Confidentiality .....	18
12. Notice .....	7	Part 14 Insurance And Liability .....	18
13. Place of the Work .....	7	Part 15 Dispute Resolution .....	20
14. Project .....	7	Part 16 Payment .....	20
15. Reimbursable Expenses .....	7	Part 17 Severability .....	21
16. Shop Drawings .....	7	SCHEDULE A - SCOPE OF SUB-CONSULTANT .....	A-1
17. Sub-Consultant Agreement .....	7	SERVICES .....	A-1
18. Sub-Consultant Documents .....	8	SCHEDULE B - SUB-CONSULTANT'S FEES AND .....	B-1
19. Sub-Consultant Field Services .....	8	REIMBURSABLE EXPENSES .....	B-1
20. Sub-Consultant Services .....	8		
21. Substantial Performance of the Work .....	8		

# **AGREEMENT BETWEEN ENGINEER AND SUB-CONSULTANT**

dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

by and between:

hereinafter called the “*Engineer*” *(Insert legal name and address)*

**and:**

hereinafter called the “*Sub-Consultant*”. *(Insert legal name and address)*

## **AGREEMENT**

The *Engineer* and *Sub-Consultant* agree as follows:

### **A-1 THE SUB-CONSULTANT SERVICES**

1.1 The *Sub-Consultant* will provide *Sub-Consultant Services* in connection with the following *Project*:

*(Insert name and a short description of the Project)*

The location of the *Project* (the “*Place of the Work*”) is as follows:

*(Insert the address, location or legal description of the site of the Work)*

1.2 The *Sub-Consultant* will provide *Sub-Consultant Services* for the *Project* in accordance with Schedule A –SCOPE OF SUB-CONSULTANT SERVICES.

1.3 Any change to the *Sub-Consultant Services* listed in Schedule A –SCOPE OF SUB-CONSULTANT SERVICES will be made by written order signed by both parties identifying the change plus adjustments, if any, to the *Sub-Consultant’s Fees* and *Reimbursable Expenses* and time for completion of the *Sub-Consultant Services*.

**A-2 AGREEMENT AND AMENDMENTS**

- 2.1 This *Sub-Consultant Agreement* constitutes the entire agreement between the *Sub-Consultant* and the *Engineer* relating to the *Project*, and supersedes all prior agreements between them, whether written or oral, respecting the *Sub-Consultant Services*. No other terms, conditions or warranties, whether express or implied, form a part of this *Sub-Consultant Agreement*.
- 2.2 This *Sub-Consultant Agreement* may be amended only by a written document signed by both the *Sub-Consultant* and the *Engineer*.

**A-3 SUB-CONSULTANT AGREEMENT DOCUMENTS**

The following sections and documents form part of and are incorporated into the *Sub-Consultant Agreement*:

In this *Sub-Consultant Agreement*:

- Agreement
- Definitions
- General Conditions
- Schedule A –SCOPE OF SUB-CONSULTANT SERVICES
- Schedule B – SUB-CONSULTANT’S FEES AND REIMBURSABLE EXPENSES

Other documents:

\*

*\* (Insert here, attaching additional pages if required, a list of all other sections and documents, including any supplementary conditions, other schedules and lists that are to be incorporated into the Sub-Consultant Agreement. )*

**A-4 FEES AND REIMBURSABLE EXPENSES**

- 4.1 The *Fees* for the *Sub-Consultant Services* are set forth in Schedule B – SUB-CONSULTANT’S FEES AND REIMBURSABLE EXPENSES.
- 4.2 *Reimbursable Expenses* are the costs and charges identified in Schedule B – SUB-CONSULTANT’S FEES AND REIMBURSABLE EXPENSES that are incurred by the *Sub-Consultant* in performing the *Sub-Consultant Services*.

**A-5 PAYMENT**

- 5.1 The *Engineer* will pay to the *Sub-Consultant* the *Fees* and *Reimbursable Expenses* set out in this *Sub-Consultant Agreement*.
- 5.2 The *Sub-Consultant* will issue monthly invoices for *Fees* and *Reimbursable Expenses*, together with applicable *Value Added Taxes*.
- 5.3 The *Sub-Consultant* will invoice any work not anticipated in the *Sub-Consultant Agreement* separately at the same time as its monthly invoices and show authority for that work by reference to the corresponding change order. The *Engineer* will not be responsible for paying for any work not anticipated in the *Sub-Consultant Agreement* or approved by a change order.
- 5.4 The *Sub-Consultant's* invoices are due when presented. Invoices unpaid by the *Engineer* within the earlier of:
- (a) 7 days after the *Engineer* receives payment from the *Client* in respect of the *Services* reflected in the *Sub-Consultant's* invoice; or
  - (b) 45 days after presentation of the *Sub-Consultant's* invoice,
- will bear interest of                      % per annum calculated monthly.

**A-6 NOTICES**

- 6.1 A *Notice* will be addressed to the recipient at the address set out below. The delivery of a *Notice* will be by personal delivery, receipted courier delivery or by facsimile. A *Notice* delivered by one party in accordance with this *Sub-Consultant Agreement* will be deemed to have been received by the other party on the first *Working Day* after actual delivery. An address for a party may be changed by *Notice* to the other party setting out the new address in accordance with this Article.
- 6.2 Although the parties may use electronic communications for the purposes of general communication, e-mail will not be used for delivery of a *Notice*.
- 6.3 The addresses for the parties are as follows:

*Sub-Consultant\**

*(name of Sub-Consultant)\**

*(address)*

*(facsimile number)*

*Engineer\**

*(name of Engineer)\**

*(address)*

*(facsimile number)*

*\*(If it is intended that a specific individual or officer must receive the Notice, indicate that individual's name and/or office.)*

#### **A-7 LANGUAGE OF THE CONTRACT**

- 7.1 *(For use in the Province of Quebec.)* The parties confirm their wish that this *Sub-Consultant Agreement* as well as any other related documents including future amendments, *Notices* and correspondence be drawn in English. Parts of the *Sub-Consultant Agreement* may be included as available in English or in French or both, according to the language or languages in which they originally were drawn.

*Les parties confirment leur volonté que cette convention de même que tous les documents s'y rattachant, y compris tous amendements, avis et correspondance futures, soient rédigés en anglais. Des portions de la Convention d'ingénierie sont incluses telles que disponibles, soit en français ou en anglais ou les deux, selon la langue ou les langues dans lesquelles la portion pertinente de la Convention d'ingénierie aura été rédigée à l'origine.*

#### **A-8 SUCCESSION**

- 8.1 This *Sub-Consultant Agreement* will inure to the benefit of and be binding upon the parties, and upon their executors, administrators, successors and permitted assigns.

*(Signatures next follow)*

**IN WITNESS WHEREOF** the parties hereto have executed this *Sub-Consultant Agreement* as of the day and year first above written.

**ENGINEER**

**WITNESS**

*(only required where the Engineer is an individual)*

*name of Engineer*

*signature*

*signature*

*name and title of person signing*

*name and title of person signing*

*signature*

*signature*

*name and title of person signing*

*name and title of person signing*

**SUB-CONSULTANT**

**WITNESS**

*(only required where the Sub-Consultant is an individual)*

*name of Sub-Consultant*

*signature*

*signature*

*name and title of person signing*

*name and title of person signing*

*signature*

*signature*

*name and title of person signing*

*name and title of person signing*

*Where legal jurisdiction, local practice, or Sub-Consultant or Engineer requirements calls for:*

- (a) *proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Sub-Consultant Agreement for and on behalf of the corporation or partnership; or*
- (b) *the affixing of a corporate seal, this Sub-Consultant Agreement should be properly sealed.*

## DEFINITIONS

1. **Client**  
*Client* means the person or entity identified as such in the *Engineering Agreement* between the *Client* and the *Engineer*, whereby the *Client* has engaged the *Engineer* to act as the prime consultant on the *Project*.
2. **Construction Administration Services**  
*Construction Administration Services* means those services, if any, which relate to the administration of the *Construction Contract* and which are identified as such in Schedule A – SCOPE OF SUB-CONSULTANT SERVICES and which form part of the *Sub-Consultant Services*.
3. **Construction Contract**  
*Construction Contract* means the contract between the *Client* and the *Contractor* for the performance of the *Work* by the *Contractor*.
4. **Construction Contract Documents**  
*Construction Contract Documents* means all documents relating to the *Work* issued by or through the *Engineer* that are incorporated into the *Construction Contract*, and all variations and modifications thereto issued or approved by the *Engineer*.
5. **Construction Contract Time**  
*Construction Contract Time* means the period from the notice to proceed with the *Work* issued to the *Contractor* to the completion date of the *Work* in accordance with the *Construction Contract*.
6. **Construction Cost**  
*Construction Cost* means the total cost to the *Client* of the *Work* designed by the *Sub-Consultant*, and includes:
  - (a) all materials, equipment, labour, *Value Added Taxes*, *Contractor's* overhead and profit provided in accordance with the *Construction Contract Documents*;
  - (b) the cost of all installations for the *Project* carried out by parties other than the *Contractor*;
  - (c) the cost of all *Work* carried out under the *Construction Contract*;
  - (d) refunds or sales tax exemptions on any materials or equipment, or both;
  - (e) the cost of *Work* carried out by direct labour or direct purchase of materials or equipment by the *Client* at prevailing prices;
  - (f) the value of new or old materials provided by the *Client*;
  - (g) the value of all deletions made by the *Client* from the *Work* after the *Engineer* or the *Sub-Consultant* has completed a design for the deleted items as a part of the *Work*; and
  - (h) the value of any monetary damages or set offs retained by the *Client* from the *Contractor* with respect to the *Work*;but does not include:
  - (i) *Fees and Reimbursable Expenses* of the *Engineer* and *Sub-Consultant*;
  - (j) the fees and reimbursable expenses of *Consultant of the Client*;
  - (k) the salary of the *Client's* representative or other salary and administrative costs of the *Client*;
  - (l) the cost of land and any related rights or easements; or



- (m) the costs of items, such as equipment, furniture or fixtures, that do not form a part of the *Construction Contract*.
7. **Consultant or Consultant of the Client**  
*Consultant* or *Consultant of the Client* means a registered or licenced professional engineer, architect or other specialist engaged directly by the *Client*, other than the *Engineer* or sub-consultants of the *Engineer*.
8. **Contractor**  
*Contractor* means a person or entity contracting with the *Client* to perform some or all of the *Work*.
9. **Engineering Agreement**  
*Engineering Agreement* means the agreement between the *Client* and the *Engineer*.
10. **Fees**  
*Fees* means those fees that are identified in Schedule B – SUB-CONSULTANT’S FEES AND REIMBURSABLE EXPENSES and which are payable by the *Engineer* to the *Sub-Consultant*.
11. **Hazardous Substances**  
*Hazardous Substances* means any toxic or hazardous solid, liquid, gaseous, thermal, or electromagnetic irritant or contaminant, and includes, without limitation, pollutants, moulds, and hazardous and special materials and wastes whether or not defined as such in any federal, provincial, territorial, or municipal laws, statutes, or regulations.
12. **Notice**  
*Notice* means a written communication between the parties that is delivered in accordance with the provisions of Article A-6 – RECEIPT OF AND ADDRESSES FOR NOTICES. Use of the verb “**to notify**” means to send a *Notice* in the above manner.
13. **Place of the Work**  
*Place of the Work* means the designated site or location of the *Work*.
14. **Project**  
*Project* means the total endeavour contemplated in the *Engineering Agreement* of which the *Sub-Consultant Services* and the *Work* may be the whole or a part.
15. **Reimbursable Expenses**  
*Reimbursable Expenses* means those expenses that are identified in Schedule B – SUB-CONSULTANT’S FEES AND REIMBURSABLE EXPENSES and which are payable by the *Engineer* to the *Sub-Consultant*.
16. **Shop Drawings**  
*Shop Drawings* means drawings, diagrams, illustrations, schedules, performance charts, technical brochures and other data that are provided by the *Contractor* or by others to illustrate details of a portion of the *Work*.
17. **Sub-Consultant Agreement**  
*Sub-Consultant Agreement* means this Agreement between the *Engineer* and the *Sub-Consultant* including all of the documents listed in Article A-3 - SUB-CONSULTANT AGREEMENT DOCUMENTS and any amendments thereto.

**18. Sub-Consultant Documents**

*Sub-Consultant Documents* means drawings, plans, models, designs, specifications, reports, photographs, computer software if proprietary to the *Sub-Consultant*, surveys, calculations and other data, including computer print outs, contained in the *Construction Contract Documents* or which are otherwise used in connection with the *Project*, and which were prepared by or on behalf of the *Sub-Consultant* and are instruments of service for the execution of the *Work*.

**19. Sub-Consultant Field Services**

*Sub-Consultant Field Services* means applying such selective sampling procedures at the *Place of the Work* as the *Sub-Consultant*, in his or her sole professional discretion considers necessary to enable the *Sub-Consultant* to ascertain whether the *Contractor* is carrying out the *Work* in general conformity with the *Construction Contract Documents* for those aspects of the *Work* which fall within the *Sub-Consultant Services*.

**20. Sub-Consultant Services**

*Sub-Consultant Services* means those services that are identified in Schedule A – SCOPE OF SUB-CONSULTANT SERVICES.

**21. Substantial Performance of the Work**

*Substantial Performance of the Work* means, where defined in the lien legislation applicable to the *Place of the Work*, the meaning given to that term in the lien legislation. If such legislation is not in force or does not contain such definition or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* will have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Engineer* or by the certifier, if any, appointed under the *Construction Contract*, as the case may be.

**22. Suspension Expenses**

*Suspension Expenses* means expenses incurred by the *Sub-Consultant* including demobilization and remobilization expenses, which are directly attributable to suspension of the *Sub-Consultant Services* as a result of suspension of the services of the *Engineer* by the *Client* or suspension of *Sub-Consultant Services* by the *Engineer*.

**23. Termination Expenses**

*Termination Expenses* means expenses incurred by the *Sub-Consultant* which are directly attributable to termination of the *Sub-Consultant Services* and include the *Sub-Consultant's* expenses reasonably and necessarily incurred in winding down the *Sub-Consultant Services*.

**24. Value Added Taxes**

*Value Added Taxes* means such sum as levied upon the *Fees*, *Reimbursable Expenses* and the *Work* by a Federal, Provincial or Territorial Government and is computed as a percentage of the same and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the payment or collection of which is imposed by legislation.

**25. Work**

*Work* means the total construction and related services required by the *Construction Contract*.

**26. Working Day**

*Working Day* means a day other than a Saturday, Sunday, statutory holiday or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*. Reference to a day, other than a *Working Day*, indicates a calendar day.

## GENERAL CONDITIONS

### PART 1 AGREEMENT DOCUMENTS

- GC 1.1 If there is a conflict within the *Sub-Consultant Agreement*, the order of priority of the documents which make up the *Sub-Consultant Agreement*, from highest to lowest, will be:
- (a) Agreement;
  - (b) Definitions;
  - (c) Any supplementary conditions to the General Conditions;
  - (d) General Conditions;
  - (e) Schedule A – SCOPE OF SUB-CONSULTANT SERVICES;
  - (f) Schedule B – SUB-CONSULTANT’S FEES AND REIMBURSABLE EXPENSES;
  - (g) Other schedules to the *Sub-Consultant Agreement*.
- GC 1.2 The documents which make up the *Sub-Consultant Agreement* are complementary, and what is required by any one will be as binding as if required by all.
- GC 1.3 Words and abbreviations with well known technical or trade meanings are used in the *Sub-Consultant Agreement Documents* in accordance with such recognized meanings.
- GC 1.4 References in the *Sub-Consultant Agreement Documents* to the singular will be considered to include the plural as the context requires.
- GC 1.5 References in the *Sub-Consultant Agreement Documents* to regulations and codes are considered to be references to the latest published version as of the signature date of the *Sub-Consultant Agreement*, unless otherwise indicated.

### PART 2 LAW OF THE CONTRACT

- GC 2.1 The law of the *Place of the Work* will govern the interpretation of the *Sub-Consultant Agreement*.
- GC 2.2 The *Engineer* acknowledges receipt of sufficient information from the *Sub-Consultant*, including information concerning the *Fees* and *Sub-Consultant Services*, so as to allow the *Engineer* to assess the nature, extent and cost of the *Sub-Consultant Services* and the obligations which the *Engineer* assumes under this *Sub-Consultant Agreement*.

### PART 3 RIGHTS AND REMEDIES

- GC 3.1 Except as expressly provided in the *Sub-Consultant Agreement Documents*, the duties and obligations imposed by the *Sub-Consultant Agreement Documents* and the rights and

remedies available thereunder will be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

- GC 3.2 No action or failure to act by the *Sub-Consultant* or *Engineer* will constitute a waiver of a right or duty afforded or imposed under this *Sub-Consultant Agreement*, except as may be specifically specified in writing.

#### **PART 4 ASSIGNMENT**

- GC 4.1 Neither party may assign this *Sub-Consultant Agreement* in whole or part without the written consent of the other, which consent will not be unreasonably withheld.

#### **PART 5 SUB-CONSULTANT'S RESPONSIBILITIES**

- GC 5.1 The *Sub-Consultant* is bound by the legislation governing the *Sub-Consultant's* profession. Nothing in this *Sub-Consultant Agreement* requires the *Sub-Consultant* to derogate from obligations prescribed by law that are binding upon the *Sub-Consultant*.
- GC 5.2 The *Sub-Consultant* will provide its *Sub-Consultant Services* to the *Engineer* in accordance with this *Sub-Consultant Agreement* and with that degree of care, skill and diligence normally provided by engineers in the performance of comparative services for projects of a similar nature to that contemplated by this *Sub-Consultant Agreement*.
- GC 5.3 The *Sub-Consultant* will perform and be responsible for the *Sub-Consultant Services*, outlined under Schedule A - SCOPE OF SUB-CONSULTANT SERVICES, to meet the requirements of this *Sub-Consultant Agreement*.
- GC 5.4 The *Sub-Consultant* will recommend to the *Engineer* that further investigations, surveys, tests and analyses be obtained if necessary, in the *Sub-Consultant's* opinion, for the proper execution of the *Sub-Consultant Services* or of the *Work* to which the *Sub-Consultant Services* relate.
- GC 5.5 The *Sub-Consultant* will maintain detailed records of *Reimbursable Expenses* and personnel hours worked for *Sub-Consultant Services* performed for which the *Fees* are computed on an hourly basis. These records will be maintained to acceptable accounting standards and made available to the *Engineer* at mutually convenient times during the term of the *Sub-Consultant Agreement* and for a period not exceeding one year following completion of the *Services*.
- GC 5.6 The *Sub-Consultant* will have the same responsibilities, obligations and liabilities to the *Engineer* under the *Sub-Consultant Agreement* as the *Engineer* has to the *Client* under the *Engineering Agreement* for those responsibilities, obligations and liabilities related to the performance of the *Sub-Consultant Services*, provided the *Engineer* has notified the *Sub-Consultant* of those responsibilities, obligations and liabilities prior to execution of this *Sub-Consultant Agreement*. However, the *Sub-Consultant* :
- (a) will not be responsible for the performance by the *Contractor*, subcontractors, suppliers or any other contractors of the *Work* or for the failure of any of them to carry out the *Work* in accordance with the *Construction Contract*;

- (b) will not be responsible for nor control, direct or supervise, the construction methods, means, techniques, sequences or procedures of the *Contractor*, subcontractors, suppliers, or any other contractors;
  - (c) will not be responsible for the acts or omissions of the *Consultant of the Client*, or the *Contractor*, subcontractors, suppliers, or any other contractor;
  - (d) will not be responsible for safety precautions and programs required in connection with the *Work* or for general site safety at the *Place of the Work* under applicable health and construction safety legislation at the *Place of the Work*;
  - (e) will not be responsible for the advice of any independent expert engaged either by the *Engineer*, *Client* or the *Contractor*, whether or not recommended by the *Sub-Consultant*; and
  - (f) will not be responsible for making exhaustive or continuous on-site reviews.
- GC 5.7 The *Sub-Consultant* will comply with all *Client* policies and rules regarding workplace safety, environmental practices, drugs and alcohol, provided by the *Engineer* to the *Sub-Consultant* prior to execution of this *Sub-Consultant Agreement*, which policies and rules may be amended from time to time.
- GC 5.8 The *Sub-Consultant* is responsible should the *Sub-Consultant*, or anyone acting under the *Sub-Consultant's* supervision, act in a manner that is inconsistent with the provision of the *Sub-Consultant Services* or with the *Client's* rules and policies under GC5.7 or with the laws of the *Place of the Work*.
- GC 5.9 The *Sub-Consultant* will perform the *Sub-Consultant Services* in coordination with the services of the *Engineer* as well as with other *Consultants of the Client* and sub-consultants engaged by the *Engineer* on the *Project*.
- GC 5.10 The *Sub-Consultant* is not responsible for manufacturing defects in equipment, material or supplies specified or recommended by the *Sub-Consultant*.
- GC 5.11 If the *Client* provides equipment or materials for a part of the *Project* where the *Sub-Consultant* has responsibilities under this *Sub-Consultant Agreement*, the *Sub-Consultant* may request the *Engineer* to have the equipment or materials tested or verified or validated by an appropriate certificate of compliance before being used for the purposes intended by the *Sub-Consultant*. Should either the *Client* or the *Engineer* or both decline the request of the *Sub-Consultant* to test, verify or certify the equipment or materials, the *Sub-Consultant* will have no liability for defects in or the adequacy of the equipment or materials.

Upon receipt of the requested test or verification reports or certificate of compliance, the *Sub-Consultant* will *notify* the *Engineer* of the *Sub-Consultant's* acceptance or refusal of the equipment or materials, with or without such reservations as the *Sub-Consultant* considers to be appropriate. Should either the *Client* or the *Engineer* or both insist upon using the equipment or materials notwithstanding the objection or reservations of the *Sub-Consultant*, the *Sub-Consultant* will have no liability for defects in or the adequacy of the equipment or materials

GC 5.12 The *Sub-Consultant* is entitled to rely upon the accuracy and completeness of records, information, data and specifications furnished by:

- (a) government authorities and public utilities; and
- (b) manufacturers and suppliers of equipment, material or supplies.

Should such records, information, data and specifications prove to be erroneous or inaccurate, the *Sub-Consultant* is entitled to make the necessary changes to the *Sub-Consultant Documents* at the expense of the *Engineer*.

GC 5.13 Where the *Sub-Consultant* does not provide *Construction Administration Services* under this *Sub-Consultant Agreement* but the *Engineer* nevertheless requests the *Sub-Consultant* to attend at the *Place of the Work* for any reason, the *Sub-Consultant* will not incur any liability to the *Engineer* for having attended at the *Place of the Work* unless the *Engineer* makes a specific request to the *Sub-Consultant* in writing stating why the *Engineer* has requested the *Sub-Consultant's* attendance and the *Sub-Consultant* has agreed to attend for that sole purpose. In such event, the only responsibility of the *Sub-Consultant* will be to respond to the *Engineer's* specific request provided such request falls within the mandate and competence of the *Sub-Consultant*.

GC 5.14 The *Sub-Consultant* will not accept a commission or other compensation from a manufacturer, supplier or contractor involved in the *Project*. The *Sub-Consultant* will have no financial interest in the materials or equipment specified or recommended by the *Sub-Consultant* as part of the *Work*. However, ownership of less than 1% of the securities issued by a company whose securities are traded on a recognized securities exchange will not be deemed to constitute a financial interest.

## **PART 6 ENGINEER'S RESPONSIBILITIES**

GC 6.1 The *Engineer* will instruct the *Sub-Consultant* in writing as to the *Engineer's* requirements of the *Sub-Consultant* for the performance of the *Work*.

GC 6.2 The *Engineer* will make available to the *Sub-Consultant* all relevant information or data pertinent to the *Project* which is required by the *Sub-Consultant*. The *Sub-Consultant* will be entitled to rely upon the accuracy and completeness of information and data furnished by or through the *Engineer*, including information and data originating with the *Engineer's* other sub-consultants or a *Consultant of the Client*. Where such information or data originates either with the *Client*, a *Consultant of the Client*, the *Engineer* or the *Engineer's* other sub-consultants, then the *Sub-Consultant* is not responsible to the *Engineer* for the consequences of any error or omission contained therein.

GC 6.3 The *Engineer* will give prompt consideration to all sketches, drawings, specifications, tenders, proposals, contracts and other documents relating to the *Project* prepared by the *Sub-Consultant*. The *Engineer* will promptly consider requests by the *Sub-Consultant* for directions or decisions and diligently inform the *Sub-Consultant* of the *Engineer's* direction or decision within a reasonable time so as not to delay performance of the *Sub-Consultant Services*.

- GC 6.4 The *Engineer* will pay the *Sub-Consultant's Fees and Reimbursable Expenses* as provided for in this *Sub-Consultant Agreement*.
- GC 6.5 The *Engineer* will arrange and make provision for the *Sub-Consultant's* access to the *Place of the Work* as necessary to enable the *Sub-Consultant* to perform the *Sub-Consultant Services*.
- GC 6.6 The *Engineer* will designate in writing an individual to act as the *Engineer's* representative who will have authority to communicate instructions to and receive information from the *Sub-Consultant*.
- GC 6.7 The *Engineer* will promptly notify the *Sub-Consultant* in writing whenever the *Engineer* becomes aware of any defects or deficiencies in the *Sub-Consultant Services*, the *Sub-Consultant Documents* or those aspects of the *Work* or in the *Construction Contract Documents* which fall within the responsibilities of the *Sub-Consultant*.
- GC 6.8 The *Engineer* will confer with the *Sub-Consultant* when issuing interpretations or clarifications of the *Sub-Consultant Documents* relative to aspects of the *Work* which are the responsibility of the *Sub-Consultant* and obtain the advice of the *Sub-Consultant* before acting upon *Shop Drawings*, samples or other submissions of the *Contractor*, or change orders affecting aspects of the *Work* which are the responsibility of the *Sub-Consultant* under this *Sub-Consultant Agreement*.
- GC 6.9 The *Engineer* will advise the *Sub-Consultant* of the identity of other sub-consultants of the *Engineer* or of *Consultants of the Client*, or of others providing services on the *Project* which may affect or relate to aspects of the *Work* for which the *Sub-Consultant* is responsible under this *Sub-Consultant Agreement*.
- GC 6.10 At the written request of the *Sub-Consultant*, the *Engineer* will either directly engage or arrange for the services of a specialist to provide information or to perform ancillary services that are necessary to enable the *Sub-Consultant* to properly carry out its responsibilities under this *Sub-Consultant Agreement*. The *Sub-Consultant* is entitled to reasonably rely upon the information provided by the specialist.
- GC 6.11 The *Engineer* will authorize the *Sub-Consultant* to act as the *Engineer's* agent for such purposes as are necessary to the *Sub-Consultant's* provision of the *Sub-Consultant Services*. Where the *Sub-Consultant* acts as the *Engineer's* agent pursuant to a written authorization, the *Engineer* is responsible for the authorized actions of the *Sub-Consultant* as agent of the *Engineer*. The *Engineer* will indemnify the *Sub-Consultant* for damages and expenses incurred by the *Sub-Consultant*, including reasonable legal fees, when acting as agent of the *Engineer*.

## **PART 7 CONSTRUCTION ADMINISTRATION**

- GC 7.1 Authority for general co-ordination of the *Project* engineering will reside in the *Engineer*, acting as the prime engineer on behalf of the *Client*.
- GC 7.2 The *Sub-Consultant* will promptly comply with all *Notices* or instructions given by the *Engineer* in connection with the *Project*.

- GC 7.3 If so authorized under the *Construction Contract*, the *Engineer* will make decisions on all matters relating to the interpretation of the *Construction Contract Documents*. The *Sub-Consultant* will provide advice to the *Engineer* regarding interpretation of drawings and specifications prepared by the *Sub-Consultant*, as required.
- GC 7.4 Where Schedule A - SCOPE OF SUB-CONSULTANT SERVICES requires the *Sub-Consultant* to review *Shop Drawings*, such review shall only be for the limited purpose of checking for general conformance with the information given and the design concept expressed in the *Construction Contract Documents*. The *Sub-Consultant's* review of *Shop Drawings* is not for the purpose of determining the feasibility or constructability of the *Work* detailed within the *Shop Drawings* or for any other purpose other than that stated above.
- GC 7.5 No acceptance or approval by the *Engineer* of either the *Contractor's Work* or of the *Sub-Consultant Services*, whether express or implied, will relieve the *Sub-Consultant* of its legal, professional and technical responsibility to the *Engineer* with respect to the *Sub-Consultant Services* required by this *Sub-Consultant Agreement*.
- GC 7.6 Should the *Engineer* request that the *Sub-Consultant* provide additional *Sub-Consultant Field Services* other than as defined in this *Sub-Consultant Agreement*, then the *Sub-Consultant* may, in its discretion, agree to provide such *Sub-Consultant Field Services* upon receipt of the *Engineer's* written request thereof. In such event, the *Contractor* will remain solely responsible for any deficiencies in the *Work*, and the *Sub-Consultant's* responsibilities will only be those set forth in the *Sub-Consultant's* written response to the *Engineer's* request, in the form of a qualified report, letter or certificate

## **PART 8 CERTIFICATIONS BY THE ENGINEER**

- GC 8.1 Provided they have been identified in Schedule A – SCOPE OF SUB-CONSULTANT SERVICES as being part of the *Sub-Consultant Services*, the *Sub-Consultant* will provide advice to the *Engineer* regarding certifications required of the *Engineer* under the *Engineering Agreement*, claims of the *Client* and the *Contractor* under the *Construction Contract*, and the interpretation of the *Construction Contract Documents*.
- GC 8.2 In the event that the *Sub-Consultant* performs *Sub-Consultant Field Services* on the *Project* at the *Engineer's* written request which are other than as described in this *Sub-Consultant Agreement*, then the *Sub-Consultant* will not provide any advice to the *Engineer* on the *Project* in respect of such *Sub-Consultant Field Services* other than qualified written advice.
- GC 8.3 The *Sub-Consultant's* advice to the *Engineer* relating to certifications required of the *Engineer* in respect of the advancement of the *Project* constitutes a representation by the *Sub-Consultant* to the *Engineer*, based on the *Sub-Consultant's* knowledge, information and belief gained through the performance of *Sub-Consultant Field Services* described in Schedule A - SCOPE OF SUB-CONSULTANT SERVICES, that the *Work* has advanced to the point indicated in such advice, and is in general conformity with the *Construction Contract Documents* for those aspects of the *Project* which fall within the *Sub-Consultant Services* except for deficiencies noted by the *Sub-Consultant* or the *Engineer*.
- GC 8.4 The *Sub-Consultant* will issue those certifications which the *Sub-Consultant* is required to give as part of the *Sub-Consultant Services* and will provide advice to the *Engineer* which the *Sub-*



*Consultant* is required to give as part of the *Sub-Consultant Services* regarding certifications required of the *Engineer* under the *Engineering Agreement* with the degree of care, skill and diligence normally provided by engineers issuing comparable certifications in respect of projects of a similar nature to that contemplated by the *Sub-Consultant Agreement*, based upon data reasonably available to the *Sub-Consultant*. The *Sub-Consultant's* issuance of any such certificate or advice is subject to:

- (a) review and evaluation of the *Work*, to the extent specified in the *Sub-Consultant Services*, as it progresses for general conformity with the *Construction Contract Documents*;
- (b) the results of any subsequent tests required by the *Construction Contract Documents*;
- (c) correction of deviations from the *Construction Contract Documents* detected prior to completion or after completion, as the case may be; and
- (d) any specific qualifications stated in the certificate for payment.

## **PART 9 CONSTRUCTION COST AND CONTRACT TIME ESTIMATES**

GC 9.1 The parties acknowledge that any *Construction Cost* and *Construction Contract Time* estimates provided by the *Sub-Consultant* to the *Engineer* under this *Sub-Consultant Agreement* are subject to change and are contingent upon factors, including market forces, over which the *Sub-Consultant* has no control. The *Sub-Consultant* does not guarantee the accuracy of such estimates nor does the *Sub-Consultant* represent that bids, negotiated prices or the time for performance will not vary from such estimates. More definitive estimates regarding costs and time for performance may be assessed only when bids and negotiated prices are received for the *Work*.

## **PART 10 TERMINATION AND SUSPENSION**

GC 10.1 This *Sub-Consultant Agreement* is terminated on the earliest of:

- (a) the date when the *Sub-Consultant* has performed all of the *Sub-Consultant Services*; or
- (b) the date of termination if termination occurs in accordance with this GC 10 TERMINATION AND SUSPENSION.

GC 10.2 If the *Sub-Consultant* is a natural person practicing alone (and not part of a company or a partnership) and should the *Sub-Consultant* die or become seriously incapacitated before having supplied all of the *Sub-Consultant Services*, either the *Engineer* or the estate or legal representative of the *Sub-Consultant* may terminate this *Sub-Consultant Agreement* upon *Notice* to the other, with effect from the date of decease or, in the case of serious incapacity, from the date of the *Notice* of termination.

GC 10.3 If the *Sub-Consultant* is in material default in the performance of any of the *Sub-Consultant's* obligations under this *Sub-Consultant Agreement*, the *Engineer* will give *Notice* to the *Sub-Consultant* that the default must be corrected. If the *Sub-Consultant* does not correct the default within 30 days after receipt of such *Notice* or within such other time as may be

- imposed by the *Engineering Agreement* (provided the *Engineer* has made the *Sub-Consultant* aware of the time imposed by the *Engineering Agreement* for the correction of defaults) or if the *Sub-Consultant* does not take reasonable steps to correct the default if the default is not susceptible of immediate correction, the *Engineer* may terminate this *Sub-Consultant Agreement* upon further *Notice* to the *Sub-Consultant*, without prejudice to any other rights or recourses of the *Engineer*. Such termination will not release the *Engineer* from its obligation to pay all *Fees* and *Reimbursable Expenses* incurred by the *Sub-Consultant* up to the date of termination in the manner provided in this *Sub-Consultant Agreement*.
- GC 10.4 If the *Engineer* is in material default in the performance of any of the *Engineer's* obligations set forth in this *Sub-Consultant Agreement*, including but not limited to the payment of *Fees* and *Reimbursable Expenses* of the *Sub-Consultant* in the manner specified in this *Sub-Consultant Agreement*, the *Sub-Consultant* will give *Notice* to the *Engineer* that the default must be corrected. If the *Engineer* does not correct the default within 30 days after receipt of such *Notice*, the *Sub-Consultant* may terminate this *Sub-Consultant Agreement* upon further *Notice* to the *Engineer*. In such event, the *Engineer* will promptly pay the *Fees* and *Reimbursable Expenses* of the *Sub-Consultant* that are incurred and unpaid as of the date of such termination, plus the *Termination Expenses*, without prejudice to any other rights or recourses of the *Sub-Consultant*.
- GC 10.5 If the *Client* is unwilling or unable to proceed with the *Project* or the *Construction Contract* is suspended or terminated by the *Client* for any reason, the *Engineer* may suspend or terminate this *Sub-Consultant Agreement* by *Notice* of 30 days to the *Sub-Consultant*. Upon receipt of such *Notice*, the *Sub-Consultant* will perform no further *Sub-Consultant Services* other than those reasonably necessary to suspend or terminate that portion of the *Project* for which the *Sub-Consultant* is responsible. In such event, the *Engineer* will pay all of the *Fees* and *Reimbursable Expenses* incurred by the *Sub-Consultant* up to the date of suspension or termination, plus the *Suspension Expenses* or *Termination Expenses*, as the case may be, in the manner provided for in this *Sub-Consultant Agreement*.
- GC 10.6 If the *Engineer* suspends performance of the *Sub-Consultant Agreement* at any time for more than 30 consecutive or non-consecutive days through no fault of the *Sub-Consultant*, then the *Sub-Consultant* may choose to terminate this *Sub-Consultant Agreement* upon *Notice* to the *Engineer*. In this event, the *Engineer* will promptly pay the *Fees* and *Reimbursable Expenses* of the *Sub-Consultant* that are incurred and unpaid as of the date of such termination, plus the *Termination Expenses*, without prejudice to any other rights or recourses of the *Sub-Consultant*.
- PART 11 OWNERSHIP AND USE OF DOCUMENTS, PATENTS AND TRADEMARKS**
- GC 11.1 Unless the *Engineer* has advised the *Sub-Consultant* prior to the execution of this *Sub-Consultant Agreement* of other arrangements contained in the *Engineering Agreement*, the *Sub-Consultant Documents* are the property of the *Sub-Consultant*, whether the *Work* is executed or not. The *Sub-Consultant* reserves the copyright therein and in the *Work* executed therefrom. The *Engineer*, as well as the *Client* if required under the *Engineering Agreement*, is entitled to keep a copy of the *Sub-Consultant Documents* for its records.
- GC 11.2 Unless the *Engineer* has advised the *Sub-Consultant* prior to execution of this *Sub-Consultant Agreement* of other arrangements contained in the *Engineering Agreement*, the *Sub-*

*Consultant* retains ownership of all patents, trademarks, copyrights, industrial or other intellectual property rights resulting from the *Sub-Consultant Services* or from concepts, products, or processes which are developed or first reduced to practice by the *Sub-Consultant* in performing the *Sub-Consultant Services*. The *Engineer* will not use, infringe or appropriate such proprietary rights without the prior consent and compensation of the *Sub-Consultant* and the *Engineer* will so advise the *Client* as necessary.

- GC 11.3 Unless the *Engineer* has advised the *Sub-Consultant* prior to execution of this *Sub-Consultant Agreement* of other arrangements contained in the *Engineering Agreement* and provided the *Fees* and *Reimbursable Expenses* of the *Sub-Consultant* are paid, the *Engineer* will have a non-exclusive licence to use any proprietary concept, product or process of the *Sub-Consultant* which relates to or results from the *Sub-Consultant Services* for the life of the *Project* and solely for purposes of its maintenance and repair.
- GC 11.4 The *Sub-Consultant* warrants that the designs, drawings, and calculations developed by the *Sub-Consultant* under this *Sub-Consultant Agreement* will not infringe the patent, copyright, trade mark or other intellectual property rights of another person.
- GC 11.5 The *Sub-Consultant* will retain the original of the *Sub-Consultant Documents* and of those parts of the *Construction Contract Documents* which are generated by the *Sub-Consultant*, including computer-generated designs relating thereto, but excluding any models or graphic presentations specifically commissioned and paid for by the *Engineer*.
- GC 11.6 Should the *Engineer* use the *Sub-Consultant Documents* or provide them to third parties for purposes other than in connection with the *Project* without giving *Notice* to the *Sub-Consultant* and without the *Sub-Consultant's* prior written consent, the *Sub-Consultant* will be entitled either to compensation for such improper use or to prevent such improper use, or to both. The *Engineer* will indemnify the *Sub-Consultant* against claims and costs, including legal costs, associated with such improper use. In no event will the *Sub-Consultant* be responsible for the consequences of any such improper use.
- GC 11.7 Should the *Engineer* alter the *Sub-Consultant Documents* without giving *Notice* to the *Sub-Consultant* and without the *Sub-Consultant's* prior written consent, the *Engineer* will indemnify the *Sub-Consultant* against claims and costs, including legal costs, associated with such improper alteration. In no event will the *Sub-Consultant* be responsible for any such improper alteration.
- GC 11.8 The *Sub-Consultant Documents* are not to be used on any other project without the prior written consent and compensation of the *Sub-Consultant*. Should the *Client*, *Engineer* or *Consultant* obtain the written consent of the *Sub-Consultant* and compensate the *Sub-Consultant* for the use of the *Sub-Consultant Documents* on any other project, the *Sub-Consultant* will nevertheless not be responsible for any costs, damages or expenses due to an unauthorized alteration of the *Sub-Consultant Documents*.

## **PART 12 BUILDING CODES AND BY-LAWS**

- GC 12.1 The *Sub-Consultant* will interpret building codes and by-laws as they apply to the *Project* at the time of design to the best of the *Sub-Consultant's* ability. As the *Work* progresses, building codes and by-laws may change or the interpretation by an authority having

jurisdiction may differ from the interpretation of the *Sub-Consultant*. In this event, the *Engineer* will compensate the *Sub-Consultant* for any additional *Sub-Consultant Services* that are required in order to have the *Work* conform to such changes or interpretations.

### **PART 13 PROJECT OWNERSHIP, IDENTIFICATION AND CONFIDENTIALITY**

- GC 13.1 The *Client* has represented to the *Engineer* that the *Client* is the owner of the *Place of the Work*. As of the date of execution of this *Sub-Consultant Agreement*, the *Client* has not notified the *Engineer* of any change in ownership.
- GC 13.2 The *Engineer* may identify the *Sub-Consultant* on *Project* signage and promotional material whenever other *Project* design professionals are mentioned. The *Engineer* will advise the *Sub-Consultant* if the *Sub-Consultant* may refer to the *Project* in the *Sub-Consultant's* promotional material.
- GC 13.3 Information regarding the design, functionality, equipment, management, costs, or progress of the *Project* is confidential where the *Engineer* has notified the *Sub-Consultant* of the confidential or proprietary nature of such information and where such information is not public knowledge. The *Sub-Consultant* will not disclose confidential information to third parties, except to the extent required for performance of the *Sub-Consultant Services* or where required by law or by consent of the *Client* or the *Engineer* as applicable.

### **PART 14 INSURANCE AND LIABILITY**

- GC 14.1 The *Sub-Consultant* will carry professional liability insurance to the extent required under the *Engineering Agreement*, provided the *Engineer* has advised the *Sub-Consultant* of such insurance requirements prior to the execution of this *Sub-Consultant Agreement*. Coverage will be maintained continuously from the commencement of the *Sub-Consultant Services* until completion or termination of the *Sub-Consultant Services* and, subject to availability at reasonable cost, for 2 years after completion or termination of the *Sub-Consultant Services*.
- GC 14.2 The *Engineer* may choose to increase the amount or the coverage of the *Sub-Consultant's* professional liability insurance above that provided in GC 14.1 so as to obtain additional insurance that is specific to the *Project*. The *Sub-Consultant* will cooperate with the *Engineer* to obtain such additional insurance, at the *Engineer's* expense.
- GC 14.3 If the *Sub-Consultant* carries professional liability insurance for amounts greater than those specified in GC 14.1, such insurance will be available under this *Sub-Consultant Agreement* only up to the amount specified in GC 14.1 plus, if applicable, the amount of additional insurance obtained under GC 14.2.
- GC 14.4 Where the *Project* involves construction and the *Client* is obliged to do so under the *Engineering Agreement*, the *Client* will provide or arrange for *Project* specific liability (wrap-up) insurance and property ("broad form"/builder's risk) insurance in respect of the *Work* in which case the *Engineer* will ensure that the *Client* includes the *Engineer* and the *Sub-Consultant* thereunder as an additional insured.
- GC 14.5 The *Sub-Consultant's* liability for claims which the *Engineer* or *Client* has or may have against the *Sub-Consultant* or the *Sub-Consultant's* employees, agents, representatives and

*Sub-Consultants* under this *Sub-Consultant Agreement*, whether these claims arise in contract, tort, negligence or under any other theory of liability, will be limited, notwithstanding any other provision of this *Sub-Consultant Agreement*:

- (a) to claims brought within the limitation period prescribed by law in the jurisdiction in which the *Project* is located or, where permitted by law, within 2 years of completion or termination of the *Sub-Consultant Services*, whichever occurs first; and
  - (b) to re-performance of defective *Sub-Consultant Services* by the *Sub-Consultant*, plus:
    - (i) where claims are covered by insurance under section GC 14.1, and, if applicable, by any additional insurance under section GC 14.2 - to the amount of such insurance; or
    - (ii) where claims are not covered by insurance under section GC 14.1, and, if applicable, by any additional insurance under section GC 14.2 - to the amount of \$250,000.
- GC 14.6 The *Sub-Consultant* will not be liable for the failure of any manufactured product or any manufactured or factory assembled system of components to perform in accordance with the manufacturer's specifications, product literature or written documentation.
- GC 14.7 Where the *Sub-Consultant* is a corporation or partnership, the *Engineer* will limit any claim it may have to the corporation or partnership, without liability on the part of any officer, director, member, employee, or agent of such corporation or partnership.
- GC 14.8 The liability of each party with respect to a claim against each other is limited to direct damages only and neither party will have any liability whatsoever for consequential or indirect loss or damage (such as, but not limited to, claims for loss of profit, revenue, production, business, contracts or opportunity and increased cost of capital, financing or overhead) incurred by the other party.
- GC 14.9 The *Sub-Consultant* is not responsible for the identification, reporting, analysis, evaluation, presence, handling, removal or disposal of *Hazardous Substances* at or adjacent to the *Place of the Work*, unless specified in Schedule A – SCOPE OF SUB-CONSULTANT SERVICES, or for the exposure of persons, property or the environment to *Hazardous Substances* at or adjacent to the *Place of the Work*.
- GC 14.10 Subject to the limitations of liability set out in this *Sub-Consultant Agreement*, each party will indemnify the other party, to the extent of the fault or negligence of the indemnifying party, for damages and costs (including reasonable legal fees) resulting from:
- (a) claims of third parties; or
  - (b) a breach of contractual obligations under this *Sub-Consultant Agreement* by the indemnifying party or anyone for whom that party is responsible; or
  - (c) negligent or faulty acts or omissions of the indemnifying party or anyone for whom that party is responsible.

**PART 15 DISPUTE RESOLUTION**

- GC 15.1 The parties will make reasonable efforts to resolve disputes arising under this *Sub-Consultant Agreement* in good faith and by amicable negotiations between senior representatives each with decision-making authority. The parties agree to provide frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations, without prejudice to their rights and recourses.
- GC 15.2 If a dispute has not been resolved by negotiations, either party may *notify* the other party that it wishes the dispute to be resolved by mediation. If the parties are unable to agree upon the choice of a mediator, either party may apply to a superior court in the jurisdiction where the *Project* is located to appoint a mediator.
- GC 15.3 Should mediation not resolve the dispute, a party may refer the unresolved dispute to the courts or, upon mutual agreement, to any other form of dispute resolution, including binding arbitration.
- GC 15.4 Unless the parties otherwise agree, any mediation or arbitration under this *Sub-Consultant Agreement* will be conducted in accordance with the latest edition of CCDC 40 - Rules for Mediation and Arbitration of Construction Disputes, as applied to and compatible with this *Sub-Consultant Agreement*, save that arbitration will be limited to a single arbitrator.
- GC 15.5 Any endeavour to resolve disputes arising out of this *Sub-Consultant Agreement* by negotiation, mediation or other means of dispute resolution, including arbitration, will be conducted on a confidential basis.
- GC 15.6 The parties agree to submit to the exclusive jurisdiction of the courts in the *Place of the Work* if a dispute is to be resolved by the courts, or to mediation or arbitration at the *Place of the Work* if a dispute is to be resolved by mediation or arbitration.
- GC 15.7 If the *Engineer* and the *Client* have agreed to the mediation or arbitration of a dispute under the *Engineering Agreement* and provided the *Engineer* has advised the *Sub-Consultant* of such dispute resolution process prior to execution of the *Sub-Consultant Agreement*, then, in the event that the dispute directly or indirectly involves a claim against the *Sub-Consultant*, the *Sub-Consultant* agrees to participate as a party to such mediation or arbitration and to be bound by the results of such mediation or arbitration.

**PART 16 PAYMENT**

- GC 16.1 The *Engineer* will pay to the *Sub-Consultant* the amount of the *Fees* and *Reimbursable Expenses* of the *Sub-Consultant* together with applicable *Value Added Taxes*, when invoiced by the *Sub-Consultant* for *Sub-Consultant Services* which have been provided, in accordance with Article A5 – PAYMENT and Schedule B – SUB-CONSULTANT’S FEES AND REIMBURSABLE EXPENSES.
- GC 16.2 In the event the *Engineer* disputes in good faith a portion of the *Fees* and *Reimbursable Expenses* invoiced by the *Sub-Consultant*, the *Engineer* will pay the uncontested portion within the prescribed time.

- GC 16.3 Disputes regarding *Fees* and *Reimbursable Expenses* of the *Sub-Consultant* will be resolved in the manner specified in PART 15 - DISPUTE RESOLUTION.
- GC 16.4 Where the *Sub-Consultant* provides *Construction Administration Services* which extend beyond the period contemplated at the time this *Sub-Consultant Agreement* was signed, the *Sub-Consultant* will *notify* the *Engineer* and, upon mutual agreement of the parties, the *Fees* of the *Sub-Consultant* will be increased in order to take into account the extended time required for providing the *Construction Administration Services*.
- GC 16.5 Should the *Client* or the *Engineer* request a change to the *Work* or the *Project* which requires the *Sub-Consultant* to provide additional *Sub-Consultant Services* beyond those contemplated at the time the *Sub-Consultant Agreement* is signed, before undertaking such additional *Sub-Consultant Services* the *Sub-Consultant* and the *Engineer* will agree in writing upon the *Sub-Consultant's* remuneration and time for providing the additional *Sub-Consultant Services*. Failing an agreement with the *Engineer*, the *Engineer* will pay the *Sub-Consultant* for the additional *Sub-Consultant Services* at the hourly rates set out in Schedule B – SUB-CONSULTANT'S FEES AND REIMBURSABLE EXPENSES and any additional *Reimbursable Expenses* incurred, and grant a reasonable extension of time to the *Sub-Consultant* for the performance of the additional *Sub-Consultant Services*.
- GC 16.6 Should the *Client* request a change to the *Work* or the *Project* which renders useless a part of the *Sub-Consultant Services* already provided, the *Engineer* will pay the *Sub-Consultant* in accordance with this *Sub-Consultant Agreement* for *Sub-Consultant Services* already provided which the change has rendered useless.
- GC 16.7 Should it prove necessary for the *Sub-Consultant* to rework or revise the plans and specifications forming part of the *Sub-Consultant Services* for reasons which the *Sub-Consultant* could not reasonably foresee when the *Sub-Consultant Agreement* was signed, or owing to the default or the insolvency of the *Client* or the *Contractor* or a subcontractor or the *Engineer*, or as a result of the *Client's* suspension of the *Engineer's Services* or *Work* on the *Project*, or as a result of the *Engineer's* suspension of the *Sub-Consultant Services*, or because of damage to the *Project* by fire or some other cause, the *Engineer* will pay the *Sub-Consultant* for any reworked or revised plans and specifications at the hourly rates set out in Schedule B – SUB-CONSULTANT'S FEES AND REIMBURSABLE EXPENSES.

## **PART 17 SEVERABILITY**

- GC 17.1 If any provision of this *Sub-Consultant Agreement* is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision will be severed from this *Sub-Consultant Agreement* and the other provisions of this *Sub-Consultant Agreement* will remain in full force and effect.

*(End of the General Conditions. Schedules A and B next follow.)*

**SCHEDULES TO ACEC DOCUMENT 32**

**AGREEMENT BETWEEN ENGINEER AND SUB-CONSULTANT**



### SCHEDULE A –SCOPE OF SUB-CONSULTANT SERVICES

The *Sub-Consultant* WILL PROVIDE the *Sub-Consultant Services* next described that are marked (X) in the column entitled “YES” and WILL NOT PROVIDE the Services which are marked (X) in the column entitled “NO”.

#### A-1 Sub-Consultant Consulting and Advisory Services

	Description of Sub-Consultant Services	Yes	No
If all Consulting and Advisory Services are EXCLUDED, check this box:			
If Consulting and Advisory Services are INCLUDED, identify them by completing the following:			
1.1	Confer with the <i>Engineer</i> to ascertain the <i>Engineer's</i> total requirements relating to the <i>Sub-Consultant Services</i> , and confirm such requirements in writing in a final <i>Project</i> program with the <i>Engineer</i> ;		
1.2	Recommend basic systems, attend necessary site conferences, prepare necessary analyses and be available to the <i>Engineer</i> for general consultation with regard to the <i>Sub-Consultant Services</i> ;		
1.3	Assist the <i>Engineer's</i> efforts to obtain required approvals, licences and permits from municipal, governmental and other authorities having jurisdiction over the <i>Project</i> for those aspects of the <i>Work</i> which relate to the <i>Sub-Consultant Services</i> .		
	<i>Enter here any additional Consulting and Advisory Sub-Consultant Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Client</i>	<i>Engineer</i>

**A-2 Sub-Consultant Conceptual Design Services**

	Description of Sub-Consultant Services	Yes	No
If all Conceptual Design Services are EXCLUDED, check this box:			
If Conceptual Design Services are INCLUDED, identify them by completing the following:			
2.1	Review and analyze the information and statement of requirements provided by the <i>Client</i> ;		
2.2	Establish the sizes, capacity, locations, method of operation and other principle features which form the basis for the design of the proposed <i>Project</i> ;		
2.3	Analyze expert and specialist studies prepared in support of the Conceptual Design Service;		
2.4	Evaluate alternatives;		
2.5	Prepare concept sketches and develop specification notes for review and approval by <i>Client</i> .		
	<i>Enter here any additional Conceptual Design Sub-Consultant Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Client</i>	<i>Engineer</i>

**A-3 Sub-Consultant Preliminary Design Services**

	Description of Sub-Consultant Services	Yes	No
If all Preliminary Design Services are EXCLUDED, check this box:			
If Preliminary Design Services are INCLUDED, identify them by completing the following:			
3.1	Prepare preliminary design drawings;		
3.2	Prepare outline specifications;		
3.3	Prepare preliminary estimates of the probable <i>Construction Cost</i> and <i>Construction Contract Time</i> for the <i>Engineer</i> , for those aspects of the <i>Work</i> which relate to the <i>Sub-Consultant Services</i> .		
	<i>Enter here any additional Preliminary Design Sub-Consultant Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Client</i>	<i>Engineer</i>

**A-4 Sub-Consultant Detailed Design Services**

	Description of Sub-Consultant Services	Yes	No
If all Detailed Design Services are EXCLUDED, check this box:			
If Detailed Design Services are INCLUDED, identify them by completing the following:			
4.1	Obtain advice and information from any <i>Consultants of the Client</i> to carry out duties and responsibilities;		
4.2	Prepare preliminary designs including drawings or sketches illustrating and defining the design concept;		
4.3	Prepare preliminary design report covering alternatives, preliminary sketches and outline specifications;		
4.4	Prepare documents in support of application for approval from authorities having jurisdiction regarding the <i>Project</i> or designated specific aspects of the <i>Project</i> ;		
4.5	Prepare working drawings for approval by the <i>Client</i> ;		
4.6	Prepare <i>Project</i> specifications;		
4.7	Prepare bills of materials, measure quantities of <i>Work</i> performed and prepare additional drawings, as required.		
	<i>Enter here any additional Detailed Design Sub-Consultant Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Client</i>	<i>Engineer</i>

**A-5 Sub-Consultant Construction Procurement Services**

	Description of Sub-Consultant Services	Yes	No
If all Construction Procurement Services are EXCLUDED, check this box:			
If Construction Procurement Services are INCLUDED, identify them by completing the following:			
5.1	Advice during procurement or tender calls;		
5.2	When requested by the <i>Engineer</i> , confer with and advise the <i>Engineer</i> as to the preparation of pre-qualification documents for bidding contractors for those aspects of the <i>Work</i> which relate to the <i>Sub-Consultant Services</i> ;		
5.3	When requested by the <i>Engineer</i> , confer with and advise the <i>Engineer</i> as to the preparation of tender documents and bidding proposal documents for those aspects of the <i>Work</i> which relate to the <i>Sub-Consultant Services</i> ;		
5.4	When requested by the <i>Engineer</i> , confer with and advise the <i>Engineer</i> with respect to bids received for those aspects of the <i>Work</i> which relate to the <i>Sub-Consultant Services</i> ;		
	<i>Enter here any additional Construction and Contract Administration Sub-Consultant Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Client</i>	<i>Engineer</i>

**A-6 Sub-Consultant Construction Administration Services**

	Description of Sub-Consultant Services	Yes	No
If all Construction Administration Services are EXCLUDED, check this box:			
If Construction Administration Services are INCLUDED, identify them by completing the following:			
6.1	Review of <i>Shop Drawings</i> in accordance with GC 7.4 of PART 7 CONSTRUCTION ADMINISTRATION;		
6.2	When requested by the <i>Engineer</i> , confer with and advise the <i>Engineer</i> as to interpretation of the <i>Construction Contract Documents</i> for those aspects of the <i>Work</i> which relate to the <i>Sub-Consultant Services</i> ;		
6.3	Provide <i>Sub-Consultant Field Services</i> for those aspects of the <i>Work</i> which relate to the <i>Sub-Consultant Services</i> ;		
6.4	When requested by the <i>Engineer</i> , advise the <i>Engineer</i> with regard to the <i>Construction Contract</i> deficiencies and required corrections, for those aspects of the <i>Work</i> which relate to the <i>Sub-Consultant Services</i> , and attend with the <i>Engineer</i> to inspect such deficiencies and corrections when completed;		
6.5	When requested by the <i>Engineer</i> , advise the <i>Engineer</i> concerning certifications (e.g. regarding the <i>Construction Cost</i> , the <i>Contractor's Substantial Performance</i> of the <i>Work</i> , the <i>Contractor's</i> applications for payment, etc.) for those aspects of the <i>Work</i> which relate to the <i>Sub-Consultant Services</i> ;		
6.6	When requested by the <i>Engineer</i> , attend meetings which relate to the <i>Sub-Consultant Services</i> .		
	<i>Enter here any additional Sub-Consultant Field Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Client</i>	<i>Engineer</i>

**A-7 Sub-Consultant Post-Construction Services**

	Description of Sub-Consultant Services	Yes	No
If all Post-Construction Services are EXCLUDED, check this box:			
If Post-Construction Services are INCLUDED, identify them by completing the following:			
7.1	When requested by the <i>Engineer</i> , attend with the <i>Engineer</i> at the <i>Project</i> site for the <i>Engineer's</i> final inspection under the <i>Construction Contract</i> , and advise the <i>Engineer</i> in writing as to continuing or newly observed deficiencies in those aspects of the <i>Work</i> which relate to the <i>Sub-Consultant Services</i> .		
7.2	Provide assistance to the <i>Engineer</i> for commissioning and start-up.		
7.3	Provide assistance to the <i>Engineer</i> for the collection and organization of operating and maintenance manuals.		
7.4	Provide assistance to the <i>Engineer</i> for the identification of deficiencies during the warranty period.		
7.5	Provide assistance to the <i>Engineer</i> in facility management or operations after commissioning and start-up.		
	<i>Enter here any additional Sub-Consultant Post Construction Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Client</i>	<i>Engineer</i>

**A-8 ADDITIONAL SUB-CONSULTANT SERVICES**

The following additional *Sub-Consultant Services* are not typical or customary. They are additional to the *Sub-Consultant Services* set forth in A-1 through A-7 inclusive of Schedule A.

The *Sub-Consultant* WILL ONLY PROVIDE the additional *Sub-Consultant Services* marked YES below at the written request of the *Engineer* and for which the *Sub-Consultant* will be paid according to Schedule B. The *Sub-Consultant* will NOT PROVIDE any of the additional *Sub-Consultant Services* marked NO below unless the *Sub-Consultant* and the *Engineer* reach a separate agreement in writing with regard to any of the additional *Sub-Consultant Services* marked NO.

	Description of Sub-Consultant Services	Yes	No
If all Additional <i>Sub-Consultant Services</i> are EXCLUDED, check this box:			
Additional <i>Sub-Consultant Services</i> are comprised of those items marked YES , subject to receipt by the <i>Sub-Consultant</i> of a written request from the <i>Engineer</i> :			
8.1	Confer with and assist the <i>Engineer</i> in preparing reports relating to the <i>Client's</i> long-range or other planning;		
8.2	Prepare specified alternative systems designs for those aspects of the <i>Work</i> relating to the <i>Sub-Consultant Services</i> ;		
8.3	Assist the <i>Engineer</i> in the preparation of detailed pre-construction <i>Project</i> operating cost budgets, or whole-life cost estimates;		
8.4	Assist the <i>Engineer</i> in the preparation of <i>Contract Documents</i> for alternative prices requested by the <i>Client</i> ;		
8.5	Provide special analysis of the <i>Client's</i> needs, such as operational analysis, and preparing operating or maintenance manuals, operating drawings and/or charts;		
8.6	Prepare for special inspections and testing of the <i>Work</i> ;		
8.7	Provide additional <i>Sub-Consultant Services</i> arising out of separate contracts, cost plus contracts and pre-tendered contracts;		
8.8	Prepare furnishing drawings and/or record drawings;		
8.9	Assist and/or appear in litigation, arbitration, negotiation or other legal or administrative proceedings on behalf of the <i>Engineer</i> and/or the <i>Client</i> , and all necessary preparation in respect thereof;		
8.10	Confer with and assist the <i>Engineer</i> in preparing applications and supporting documents which otherwise would not be required, for governmental grants, loans or advances in connection with the <i>Project</i> ;		

Initials	
<i>Client</i>	<i>Engineer</i>



	Description of Sub-Consultant Services	Yes	No
8.11	Confer with and assist the <i>Engineer</i> in preparing or reviewing environmental assessments and impact studies, and assisting in obtaining approvals of authorities having jurisdiction over the environmental aspects of the <i>Project</i> ;		
8.12	Provide renderings or models for use by the <i>Client</i> and the <i>Engineer</i> ;		
8.13	Prepare for and attendance at hearings and presentations to appropriate authorities having jurisdiction over the <i>Project</i> ;		
8.14	Obtain on the <i>Engineer's</i> behalf, required approvals, licences and permits from municipal and governmental authorities having jurisdiction over the <i>Project</i> ;		
	<i>Enter here any additional Sub-Consultant Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Client</i>	<i>Engineer</i>

## SCHEDULE B – SUB-CONSULTANT’S FEES AND REIMBURSABLE EXPENSES

### B-1 Fees for Sub-Consultant Services

The following table identifies the method for determining the *Fees* due to the *Sub-Consultant* under this *Sub-Consultant Agreement* for the *Sub-Consultant Services* described in Schedule A - SCOPE OF SUB-CONSULTANT SERVICES.

Sub-Consultant Services (Refer to Schedule A)		Select Fee Basis Applicable to this Agreement		
		Hourly Rate Fees (B-1.1)	Fixed Fees (B-1.2)	Fees as % of Construction Cost (B-1.3)
A-1	Sub-Consultant Consulting and Advisory Services			N/A
A-2	Sub-Consultant Conceptual Design Services			
A-3	Sub-Consultant Preliminary Design Services			
A-4	Sub-Consultant Detailed Design Services			
A-5	Sub-Consultant Construction Procurement Services			
A-6	Sub-Consultant Construction Administration Services			
A-7	Sub-Consultant Post Construction Services			N/A
A-8	Additional Sub-Consultant Services			N/A

Refer to Section B-1.1, B-1.2, and B-1.3 for a detailed description of the method for calculating the *Fees* due to the *Sub-Consultant*.

*Reimbursable Expenses* (Section B-2) are additional to the *Fees* due to the *Sub-Consultant*.

*Value Added Taxes* are not included in the *Fees* and *Reimbursable Expenses*.

Initials	
<i>Client</i>	<i>Engineer</i>

**B-1.1 Hourly Rate Fees**

Hourly Rate *Fees* will be calculated on an hourly basis as the *Project* progresses at the following rates:

a)	Principals	\$	per hour
b)	Senior staff	\$	per hour
c)	Intermediate staff	\$	per hour
d)	Junior staff	\$	per hour
e)	Clerical	\$	per hour
f)		\$	per hour
g)		\$	per hour
h)		\$	per hour

The rates in this table will be applicable for (*select one*):

the duration of the *Sub-Consultant Agreement*

twelve months from the effective date of this *Sub-Consultant Agreement* at which time the rates will be increased by                   %, unless otherwise agreed in writing by the parties

other (*specify*)

(Enter additional provisions below. Append extra pages if required.)

Initials	
<i>Client</i>	<i>Engineer</i>

**B-1.2 Fixed Fees**

*Fees* for the *Project* will be calculated as a fixed fee of \$ , appportioned as follows:

	Percentage	Milestone/Task
•	% of fee for	
•	% of fee for	
•	% of fee for	
•	% of fee for	
•	% of fee for	

The fixed fees will be applicable for (*select one*):

the duration of the *Sub-Consultant Agreement*

twelve months from the effective date of this *Sub-Consultant Agreement* at which time the rates will be increased by %, unless otherwise agreed in writing by the parties

other (specify)

(Enter additional provisions below. Append extra pages if required.)

Initials	
<i>Client</i>	<i>Engineer</i>

**B-1.3 Fees Based on Percentage of the Construction Cost**

*Sub-Consultant Fees* will be calculated as \_\_\_\_\_ % of the *Construction Cost*, apportioned to *Sub-Consultant Services* as follows (*where not applicable, insert Nil or N/A*):

- A-2 - Sub-Consultant Conceptual Design Services \_\_\_\_\_ %
- A-3 - Sub-Consultant Preliminary Design Services \_\_\_\_\_ %
- A-4 - Sub-Consultant Detailed Design Services \_\_\_\_\_ %
- A-5 - Sub-Consultant Construction Procurement Services \_\_\_\_\_ %
- A-6 - Sub-Consultant Construction Administration Services \_\_\_\_\_ %
- TOTAL FEE \_\_\_\_\_ %

*Fees* based on a percentage of the *Construction Cost* are NOT applicable to the following *Sub-Consultant Services* which should be calculated either on an Hourly Rate Basis (Section B-1.1) or a Fixed Fee Basis (Section B-1.2):

- A-1 - Sub-Consultant Consulting and Advisory Services
- A-7 - Sub-Consultant Post Construction Services
- A-8 - Additional Sub-Consultant Services

For purposes of Section B-1.3 (*Fees Based on Percentage of the Construction Cost*) and notwithstanding the definition for *Construction Cost*, when determining *Fees* based on a percentage, the *Construction Cost* is calculated in the following manner in regard to those phases of the *Sub-Consultant Agreement* which are applicable to the *Sub-Consultant Services*:

PHASE	BASIS FOR CALCULATION
A-2 – Sub-Consultant Conceptual Design Services	The budget at the commencement of the conceptual design services as agreed by the <i>Engineer</i> and the <i>Sub-Consultant</i> .
A-3 - Sub-Consultant Preliminary Design Services	The estimate of probable <i>Construction Cost</i> at the commencement of the preliminary design services as agreed by the <i>Engineer</i> and the <i>Sub-Consultant</i> .
A-4 – Sub-Consultant Detailed Design Services	The estimate of probable <i>Construction Cost</i> at the commencement of the detailed design services as agreed by the <i>Engineer</i> and the <i>Sub-Consultant</i> .
A-5 –Sub-Consultant Construction Procurement Services	The estimate of probable <i>Construction Cost</i> at the commencement of the Construction Procurement services as agreed by the <i>Engineer</i> and the <i>Sub-Consultant</i>
A-6 - Sub-Consultant Construction Administration Services	The actual final <i>Construction Cost</i>

Initials	
<i>Client</i>	<i>Engineer</i>

*(Enter additional provisions below. Append extra pages if required.)*

## **B-2 Reimbursable Expenses**

*Reimbursable Expenses* incurred by the *Sub-Consultant* in carrying out the *Sub-Consultant Services* are subject to a mark-up of \_\_\_\_\_ % to cover office and administrative costs of the *Sub-Consultant* - unless otherwise agreed as follows:

*(if applicable, indicate alternate methods for determining Reimbursable Expenses)*

*Reimbursable Expenses* include the following expenses where incurred in relation to the performance of the *Sub-Consultant Services*:

- Transport, subsistence, and lodging in connection with the *Project* beyond \_\_\_\_\_ kilometres of the *Sub-Consultant's* office. Use of vehicles will be charged at \$ \_\_\_\_\_ per kilometer.
- Long distance telephone and facsimile communications.
- Reproduction of information, drawings, specifications, and other documents necessary to the *Project*.
- Testing services.
- Courier and messenger services.
- Fees paid for securing approvals, permits, or licences from regulatory agencies having jurisdiction over the *Project*.
- Providing and maintaining *Project* site offices, telephones, facsimile as required for use by the *Sub-Consultant*.
- Advertising incidental to the *Project*.

Initials	
<i>Client</i>	<i>Engineer</i>

- Advertising incidental to the *Project*.
- Obtaining necessary legal, accounting, insurance, bonding, and other counselling services pertaining to the *Project*.
- Specialized *Project* specific computer hardware and software charges and related expenses as agreed to between the *Engineer* and the *Sub-Consultant*.
- Customs, excise, or any other taxes incurred by the *Sub-Consultant* with respect to the *Sub-Consultant Services*, but excluding *Value Added Taxes*.
- Special or increased insurance coverage required by the *Engineer* according to paragraph GC 14.2.
- Fees and disbursements of *Sub-consultant* required in the performance of the *Sub-Consultant Services* where not included in the *Fees* in connection with the *Project*.
- Costs incurred by the *Sub-Consultant* in the performance of *Sub-Consultant Services* in connection with the *Project* where the *Sub-Consultant* has obtained the prior written approval of the *Engineer*. Any other expenses will be subject to the *Engineer's* prior written approval.

*Enter additional descriptions to be used. Append additional sheets if required*

Initials	
<i>Client</i>	<i>Engineer</i>