

CONSTRUCTION CONTRACT

- .1 Prime contract between the *Owner* and the *Trade Contractor* shall be the Canadian Standard Construction Document CCA-17-1996, Stipulated Price Contract for *Trade Contractors*.
- .2 Standard Construction Document CCA-17-1996 forms a part of the Contract Documents and is referred to in the following text.

THE GENERAL CONDITIONS AND AMENDMENTS AND SUPPLEMENTS

- .1 The Supplementary and General Conditions delete, amend, replace or add to the General Conditions and are a part of the *Contract* between the *Owner* and the *Trade Contractor* executed under the Standard Construction Document – CCA-17-1996.
- .2 Where any article of the Definitions or the General Conditions is supplemented or amended hereinafter, the unaffected provisions of such article shall remain in affect. All supplemental provisions to any article shall be considered as added thereto. Amendments to any article shall be considered as superseding the affected provision thereof.

DEFINITIONS

3. Owner

Add the following:

The term “Owner” means **Camosun College**, 3100 Foul Bay Rd., Victoria B.C. V8P 5J2

7. Construction Manager

Add the following:

The term “Construction Manager” means **Kinetic Construction Ltd.**, #201 – 862 Cloverdale Avenue, Victoria BC V8X 2S8

8. Consultant

Add the following:

The term “Consultant” means **Chow Low Hammond Architects Inc.**, 1551 Broadmead Avenue, Victoria, BC V8P 2P1

22. Value Added Taxes

Delete and substitute the following:

The term “Value Added Taxes” where used in the Contract Documents means the Federal Goods and Services Tax (GST).

Add the following definitions:

23. Builders Lien Act

Builders Lien Act means the Builders Lien Act, S.B.C. 1997 c.45 as amended from time to time.

24. Payment Certifier

For the purposes of the Builders Lien Act the Payment Certifier shall be the *Consultant*

GC 2.3 REVIEW AND INSPECTION OF THE WORK

Add the following new paragraph:

2.3.6 The *Trade Contractor* shall cooperate with the *Construction Manager* in establishing a deficiency list before *Substantial Performance* and shall complete the work noted on this deficiency list within thirty (30) days from the date of *Substantial Performance* or at the discretion and convenience of the Owner.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

Add the following new paragraphs:

3.2.6 The Place of the Work is an "open site" where both unionized and non-unionized labour may be employed at the same time. The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform work with other contractors or own forces or both which are, or may become, unionized or non-unionized.

3.2.7 If the *Trade Contractor* is delayed in performance of the *Work* due to a labour dispute, strike, or lock-out (including a lock-out decreed or recommended for its members by a recognized contractors' association, of which the *Trade Contractor* is a member, or to which the *Trade Contractor* is otherwise bound), no extension of time shall be granted. Should any labour dispute, strike, or lock-out delay performance of the *Work*, the *Trade Contractor* shall be consider in default of the *Trade Contractor's* contractual obligations and the *Owner* shall have the right to exercise his options in accordance with Clause GC 7.1

GC 3.5 CONSTRUCTION SCHEDULE

Add the following new paragraphs:

3.5.4 Time is of the essence in the performance of this *Contract*.

3.5.5 The *Trade Contractor* shall take whatever action is necessary, including without limitation extra shift work, to ensure the completion of the *Work* within the *Contract Time* and at no additional cost to the *Owner*.

3.5.6 The *Construction Manager* may revise the attached schedule from time to time. A revised schedule shall form part of this contract, the latest revision superseding any previous revision, unless the *Trade Contractor* has forwarded to the *Construction Manager* a written objection of any such revised schedule within three (3) working days after receiving a revised schedule.

GC 3.6 CONSTRUCTION SAFETY

Add the following new paragraph:

3.6.2 If, in the opinion of the *Construction Manager*, the *Trade Contractor*, or his employees, or his *Trade Subcontractors* fail to work under safe conditions and/or comply with all safety procedures in accordance with all applicable safety legislation, the *Construction Manager* may take the following actions:

STEP 1) Give a verbal warning to any worker failing to work under safe conditions. The worker shall be required to remedy the unsafe condition immediately.

STEP 2) If the worker fails to immediately remedy the unsafe condition the *Construction Manager* shall issue a written warning to the worker requiring the worker to remedy the unsafe condition immediately. This written instruction may require the worker to be permanently removed from the construction site if the unsafe condition is not remedied immediately. A copy of this warning shall be forwarded to the *Trade Contractor*.

STEP 3) If the worker fails to remedy the unsafe condition immediately after receiving the written warning, the *Trade Contractor* shall, upon written notice from the *Construction Manager* shall immediately *Trade Contractor* fails to remove the worker, as detailed in STEP 3, the *Construction Manager* shall notify the appropriate safety authorities having jurisdiction over safety legislation. The *Construction manager* shall also recommend to the Owner to holdback any monies due and payable to the *Trade Contractor* until the *Trade Contractor* removes the worker from the project site.

STEP 5) The *Construction Manager*, at his discretion, may allow the worker to return to the project site by giving written notice to the *Trade Contractor*.

The above does not limit the responsibility or liability of the *Trade Contractor* to ensure, his employees, or his *Trade Subcontractors* work under safe conditions.

GC 3.7 SUPERVISOR

Add to paragraph 3.7.1:

The supervisor shall be satisfactory to the *Construction Manager*, the *Consultant* and the *Owner* and shall not be changed while work is in progress without the written permission of the *Owner*, unless said supervisor leaves the employ of the *Trade Contractor*.

GC 3.8 TRADE SUBCONTRACTORS AND SUPPLIERS

Add to paragraph 3.8.2:

No change of *Trade Subcontractors* shall be made without cause or written consent of the *Owner*.

GC 4.1 CASH ALLOWANCES

Add the following new paragraph:

4.1.8 The *Trade Contractor* shall keep accurate records, as required by the *Construction Manager*, of costs expended under the cash allowances and present them together with appropriate evidence of the costs where applicable.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

Add to paragraph 5.2.3:

The Trade Contractor shall submit evidence of insurance as required under GC 11.1, A letter from the Workers' Compensation Board confirming that the Trade Contractor is in good standing and Bonds as required under GC 11.2, if applicable, no later than fourteen (14) days before the first application for payment.

Add the following new paragraph:

- 5.2.7 The *Trade Contractor* shall submit with its second application for payment a sworn statutory declaration, in the form of a CCDC 9A-2001 as amended from time to time, stating that all accounts and any other indebtedness which may have been incurred by the *Trade Contractor* in the performance of the *Work* and for which the *Owner* might in any way be held responsible have been paid in full up to the date of the *Trade Contractor's* first application for payment. Each successive application for payment must be accompanied with a similarly worded statutory declaration stating that all accounts have been paid up to the date of the preceding application for payment. The *Trade Contractor* shall provide with its applications for payment any further documentation required by the *Consultant* to ensure such accounts and indebtedness have been paid.

GC 5.3 PROGRESS PAYMENTS

Delete GC 5.3.1 and replace with the following:

- 5.3.1 The *Construction Manager* will issue to the *Owner*, no later than fifteen (15) days after the receipt of an application for payment from the *Trade Contractor*, approval for payment in the amount applied for, or other amounts as the *Construction Manager* and the *Consultant* determine to be properly due. If the *Consultant* or *Construction Manager* amends the application, the *Construction Manager* will promptly notify the *Trade Contractor* in writing giving reasons for the amendment.

Delete GC 5.3.2 and replace with the following:

- 5.3.2 The *Construction Manager (on behalf of the Owner)* shall make payment to the *Trade Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than the last Working Day of the month following the month the *Trade Contractor* applies for payment pursuant to GC 5.2.

Add paragraph GC 5.3.3:

- 5.3.3 Without restricting any right of setoff given or implied by law, the *Owner* may setoff against any amount payable under the *Contract Documents* to the *Trade Contractor* any amount payable to the *Owner* by the *Trade Contractor*.

Add paragraph GC5.3.4

- 5.3.4 Where applicable, the *Owner* will pay the lien holdback amount, to be retained from each Progress Payment under Article A-5, into a holdback trust account jointly administered by the *Owner* and the *Construction Manager*, on behalf of the *Trade Contractor*. Payment to this trust account shall be made with each Progress Payment.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

Add to paragraph 5.5.1

- .2 The Statutory Declaration is to be in the form of CCDC 9A-2001
- .3 A letter from the Workers' Compensation Board confirming that the Trade Contractor is in good standing.

Add to paragraph 5.5.4

If the lien is filed as a result of the actions of the *Trade Contractor*, or the lien is deemed to be frivolous, any legal and administrative costs associated with discharging the lien would be borne by the *Trade Contractor*. If the lien is filed as a result of the actions of the Owner or its agents, any legal and administrative costs associated with discharging the lien would be borne by the Owner.

GC 5.7 FINAL PAYMENT

Refer to paragraph 5.7.4 and revise "5 days" to 21 days".

GC 6.3 CHANGE DIRECTIVE

Add the following new paragraph:

6.3.8 The percentage mark-ups to be used in valuation of changes to the *Work* as defined in GC 6.2 – CHANGE ORDER, paragraph 6.2.3.3 are as follows:

- .1 to work done by a Trade Contractor or a Trade Subcontractor (this is the firm actually performing the Work) an allowance may be added of ten (10) percent for overhead (inclusive of supervision and general conditions) and five (5) percent for risk/profit;
- .2 to the cost of work done by a Trade Subcontractor, the Trade Contractor may add an allowance of ten (10) percent for processing and supervision of the Trade Subcontractor's Work.

GC 6.5 DELAYS

Add the following new paragraphs:

6.5.6 The *Trade Contractor* shall be responsible for the care, maintenance and protection of the *Work* in the event of any shut down or interruption in the performance of the *Work*.

6.5.7 The *Trade Contractor* acknowledges it is familiar with the normal weather conditions at the site and will modify his operation as required to meet the exigencies of weather. The *Trade Contractor* agrees that normal weather conditions are not grounds for claim to delay of the *Work*.

6.5.8 Notwithstanding the generality of GC 6.5.3 the *Trade Contractor* acknowledges that labour disputes, strikes or lockouts involving suppliers which are not directed specifically

at the *Work* and which do not involve picketing the site of the *Work* shall not constitute grounds for delay where other suppliers are available.

- 6.5.9 Notwithstanding the generality of GC 6.5.3 the *Trade Contractor* agrees that delays by common carriers, where other carriers are available, will not constitute grounds for claim for delay of the Work.
- 6.5.10 The *Trade Contractor* shall take all reasonable steps to avoid or minimize the length of any delay and the related costs to the *Trade Contractor*, the owner and others involved in the *Work*.
- 6.5.11 The *Trade Contractor* shall have the burden of establishing the cause of delay at the time the delay occurs and where applicable the cost resulting therefrom by the submission of substantive documents or evidence.

GC 9.1 PROTECTION OF WORK AND PROPERTY

Add the following new paragraph:

- 9.1.4 The *Trade Contractor* is responsible for protection of the *Work* during shutdown, including shutdowns caused by strikes or lockouts.

GC 10.1 TAXES AND DUTIES

Add the following to 10.1.2:

“The *Trade Contractor* shall not be entitled to any overhead and profit as a result of any increase in the *Contract Price* due to changes in such taxes and duties aforesaid.”

GC 11.1 INSURANCE

- 11.1.2 and 11.1.3.1
delete the words “... with a deductible not exceeding \$2,500.”
and replace with “... with a deductible not exceeding \$5,000.”

GC11.1 – INSURANCE, replace entirely with the following:

- 11.1.1 Without restricting the generality of GC12.1 – INDEMNIFICATION, insurance coverages will be arranged and paid for as under-noted:

A. GENERAL LIABILITY INSURANCE

1. The Owner shall provide, maintain and pay for Commercial General Liability Insurance with a limit of Ten Million Dollars (\$10,000,000.00), inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof.
2. The insurance shall cover the Contractor, Owner and architect, and shall also cover all Subcontractors and anyone employed directly or indirectly by the Contractor or his Subcontractors to perform a part or parts of the Work but excluding suppliers whose only function is to supply and/or transport products to the project site. The insurance does not extend to any activities, works, jobs or undertakings of the Insureds other than those directly related to the Work of this Contract.
3. The insurance shall also include the Owner’s architectural and engineering consultants and their subconsultants.
4. The insurance shall preclude subrogation claims by the insurer against anyone insured hereunder.
5. The insurance shall include coverage for:

- .01 Premises and Operations Liability;
 - .02 Products or Completed Operations Liability;
 - .03 Blanket Contractual Liability;
 - .04 Cross Liability;
 - .05 Elevator and Hoist Liability
 - .06 Contingent Employer's Liability;
 - .07 Personal Injury Liability;
 - .08 Shoring, Blasting, Excavating, Underpinning, Demolition, Piledriving and Caisson Work, Work Below Ground Surface, Tunneling and Grading, as applicable;
 - .09 Liability with respect to Non-Owned Licensed Vehicles;
 - .10 Broad Form Property Damage;
 - .11 Broad Form Completed Operations
 - .12 Employees as additional Insureds; and
 - .13 Operation fo Attached Machinery.
6. Any deductible applicable shall not exceed Ten Thousand Dollars (\$10,000.00) except with respect to hot roofing activities which will carry a deductible of Two Million Dollars (\$2,000,000.00). If the project requires hot roofing work the Contractor will provide, maintain and pay for a Commercial General Liability Policy in the amount of \$2,000,000.00 and will require the roofing sub-contractor to maintain a similar insurance policy. The Owner shall be added as an additional Insured. Such insurance shall include, but not be limited to:
- .01 Products and Completed Operations;
 - .02 Owner's and Contractor's Protective Liability;
 - .03 Blanket Written Contractual Liability;
 - .04 Contingent Employer's Liability;
 - .05 Personal Injury;
 - .06 Non-Owned Automobile Liability;
 - .07 Cross Liability;
 - .08 Employees as Additional Insureds; and
 - .09 Broad Form Property Damage.
7. This insurance shall be maintained continuously from commencement of the work until the final certificate for payment is issued, plus with respect to completed operations, cover a further period of twenty-four (24) months from the date of final certificate for payment.

B. PROPERTY INSURANCE

1. The Owner shall provide, maintain and pay for Course of Construction insurance, against "All Risks" of physical loss or damage, and will cover all materials, property, structures and equipment purchased for, entering into, or forming part of the Work whilst located anywhere within Canada or the USA, including coastal and inland waters thereof, while in transit or storage and during construction, erection, installation and testing until completed and handed over and accepted by the Owner. Such insurance shall not include coverage for Contractor's equipment of any description. There will be a deductible of Five Thousand Dollars (\$5,000.00) for each and every occurrence except for the perils of flood which shall have a deductible of Ten Thousand Dollars (\$10,000.00) and Earthquake which shall have a five percent (5%) (Subject to minimum One Hundred Thousand Dollars (\$100,000.00)) deductible based upon completed values at time of loss.
2. The insurance shall include as a protected entity, each contractor, subcontractor, architect or engineer who is engaged in the Project.
3. The insurance will contain a waiver of the Protection Program's rights of subrogation against all protected entities except where a loss is deemed to have been caused by or resulting from any error in design or any other professional error or omission.
4. The Contractor shall, at his own expense, take special precaution to prevent fires occurring in or about the Work and shall observe, and comply with, all laws and regulations in force respecting fires.
5. The Owner shall not be responsible for any injury to the Contractor's employees or for loss or damage to the Contractors, or to the Contractor's employees', machinery, equipment, tools or supplies which may be temporarily used or stored in, on or about the premises during construction and which may, from time-to-time, or at the termination of the contract, be removed from the premises. The Contractor hereby waives all rights of recourse against the Owner or any Other Contractor with regard to damage to the Contractor's property.

C. AUTOMOBILE LIABILITY INSURANCE

The Contractor shall provide, maintain and pay for and require all Subcontractors to provide, maintain and pay for Automobile Liability Insurance in respect of all owned or leased vehicles, subject to limits of not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence.

D. AIRCRAFT AND/OR WATERCRAFT LIABILITY INSURANCE

The Contractor shall provide, maintain and pay for liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the Work, subject to limits of not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof an including Aircraft Passenger Hazard where applicable.

11.1.2 Unless specified otherwise, the duration of each insurance policy shall be from the date of commencement of the Work until the date of final certificate for payment.

11.1.3 The Owner shall, upon request, provide the Contractor with proof of insurance for those insurances required to be provided by the Owner prior to commencement of the Work.

- 11.1.4 The Contractor and/or his Subcontractors, as may be applicable, shall be responsible for any deductible amounts under the policies of insurance except for perils of flood and earthquake.
- 11.1.5 The Contractor shall provide, maintain and pay for any additional insurance which he is required to provide by law or which he considers necessary to cover risks not otherwise covered by coverage/insurance specified in this section.
- 11.1.6 The Contractor shall provide the Owner with proof of insurance for those insurances required to be provided by the Contractor prior to the commencement of the Work in the form of a completed Certificate of Insurance.
- 11.1.7 Unless specified otherwise, the duration of each coverage and insurance policy shall be from the date of commencement of the Work until the date of the final certificate for payment.

GC12.1 – INDEMNIFICATION, replace entirely with the following:

- 12.1.1 Notwithstanding the provision of coverage and insurance by the Owner, the Contractor will indemnify and save harmless the Owner, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Owner may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Contract, where the same or any of them are based upon, arise out of or occur, directly or in directly, by reason of any act or omission of the Contractor or of any agent, employee, officer, director or Subcontractor of the Contractor pursuant to this Contract, excepting always liability arising out of the independent negligent acts of the Owner.
- 12.1.2 GC12.1 – INDEMNIFICATION shall govern over the provisions of paragraph 1.3.1 of GC1.3 – RIGHTS AND REMEDIES or GC9.2 – DAMAGES AND MUTUAL RESPONSIBILITY.

LOSS CONTROL CLAUSES

In addition to the mandatory Modifications to General Conditions outlined above, it is strongly recommended that roofing contracts (particularly torch-applied surfaces) include detailed Loss Prevention requirements. Individual requirements will vary according to the installation methods being used and specifics of the sites.

General Guidelines for Torch Applications

- Smoking should be prohibited on the roof and in the immediate vicinity of propane tanks, glues and solvents.
- Contractor must have adequate fire extinguishing equipment on hand. A minimum of five 20 lb. multipurpose dry chemical extinguishers is suggested. There should be at least one fire extinguisher within 20 ft. horizontal travel distance of any torch applied roofing equipment. For larger roof areas, additional protections such as charged hose lines or additional extinguisher(s) may be required. Contractor should be made aware of the location of fire hoses if they are available as well as the location of outside faucets from domestic water supply.

- Contractor should either have a phone or be aware of the location of the nearest public or school phone which is accessible. Contractor should be made aware of local emergency phone numbers in areas where the 911 system is not in place. For larger roofing jobs, it may be worthwhile to notify the local fire department in advance of the scope and timeframe of the proposed work. ***Any fires, even if extinguished, should be reported to the fire department.***
- A "Fire Watch" should be provided for a minimum of one hour after completion of all hot work.*** All roof areas worked on should be checked for hot spots and signs of smoldering. The inside of the building should also be checked for signs of fire or smoke.
- Institution personnel should make random visits to the job site to ensure safe practices are being followed. The local fire department/fire prevention officer may also be prepared to cooperate in such inspections.
- The Institution will need to ensure that the general checklist for Hot roofing Work, developed in conjunction with the Insurer's Advisory Organization, is completed before contractors leave the construction site at the end of each workday.

Specific Guidelines for Safe Use of Torch Application Equipment

- Caution should be taken when working around roof openings, penetrations or flashing. Extreme caution should be exercised when working around exhaust vents which may have grease or lint accumulations. Such accumulations should be cleaned before roofing work is started.
- Torches should be used according to manufacturer's instructions. Torch stands should be used to direct flame upward when momentarily not in use. Torches should not be used where flame impingement cannot be fully viewed. Open flames should not be left unattended. Torches should not be used near gas lines, electrical wires or flammable liquids. All equipment should be inspected regularly and kept in good working order.
- Where practical, tar kettles and other heating appliances should be operated on grade rather than on roof.

Further guidelines are contained in Bulletin contained in this Section.

General Guidelines for Prevention of Water and Wind Damage

- Unfinished work should be fully covered by tarpaulins or plastic sheeting which is properly secured.
- Roofing material should not be left unsecured at the job site where they may be dislodged by wind.
- Drainage systems should be cleared of construction debris or excess tar when work is complete.
- Particular care should be taken where new roofs join the roof of an existing structure.

General Guidelines for Insurance Certificates

To protect the Institution all contractor(s) and sub-contractor(s) performing hot roofing work must provide a certificate of insurance evidencing their Commercial General Liability coverage in an amount not less than Two Million Dollars (\$2,000,000.00). When assessing the insurance information furnished ensure that:

- The insured on the certificate corresponds with the names on the contract

- Does the commercial general liability insurance include all the extensions specified?
- Are the aggregate limits adequate?
- Are coverage dates and policy numbers shown?
- Is the Institution an additional insured?

The following "At Risk" publication is a useful reference

<http://www.fin.gov.bc.ca/pt/rmb/atrisk/Vol9iss1art3.shtml>