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**PART 1 GENERAL**

1.1 DEFINITIONS

The following words and terms, unless the context otherwise requires, in all Contract Documents, shall have the meanings set out below. Words importing the male gender include the female gender and either includes the neuter and vice versa and words importing the singular number includes the plural number and vice versa.

"Act of God" means a cataclysmic phenomenon of nature, including earthquake, flood or cyclone. Rain, snow, wind, high water, or any other natural phenomenon which might reasonably have been anticipated from historical records of the general locality of the Work shall be deemed not to be acts of God;

"Addenda" and "Addendum" mean the supplemental written specifications, terms, conditions or drawings issued prior to execution of the Agreement which modify or interpret the Contract Documents by addition, deletion, clarification, or corrections;

"Agreement" means the agreement set out in Section 00400;

"All of the Work done" as defined in Section 00500 Clause 6.3.5;

"Business Day" is defined as any day from Monday to Friday, and specifically excludes all Saturdays, Sundays and statutory holidays recognised in British Columbia.

"Consequential Damages" has the meaning set out in Section 00500 Clause 6.1.11;

"Contract" means the agreement formed by the Corporation's acceptance of the Tender for completion of the Work as set out in the Contract Documents;

"Contract Documents" means the following documents (also see Section 00500, 3.2.1 Conflicting Provisions):

(1) The duly executed Agreement Section 00400
(2) The General Conditions Section 00500
(3) The duly executed Tender Form Section 00200
(4) Addenda
(5) Drawings
(6) Specifications
(7) Appendices
(8) The Tender Documents as defined in Section 00500
(9) Other relevant documents such as but not limited to letters of clarification and any reports, standards or the like included by reference
(10) The duly executed Bonds, if any

"Contract Price" has the meaning set out in Section 00400, Clause 3;

"Contractor" means the individual, partnership, corporation or combination thereof, including joint ventures, who or which execute the Agreement;

"Contractor's Plant and Equipment" means the equipment, material, supplies and all other items (except labour) brought onto the site by the Contractor to carry out the Work, but not to be incorporated in the Work;

"Contractor's Representative" means the person appointed under Section 00500 Clause 2.2.1;

"Corporation" has the meaning set out in Section 00100 Clause 1.1 and includes Regional District of Nanaimo;

"Day" means calendar day;

"Defective Work" as outlined in Section 00500 Clause 4.3;

"Defect and Deficiency List" means the list of defective or incomplete items of work set out in Section 00500 Clause 7.1.3(1);

"Drawings" means the drawings included in the Tender Documents together with those prepared by the Corporation and the Contractor pursuant to the terms of the Contract and include:

(1) Modifications of drawings issued by Addenda;

(2) Drawings submitted by the Contractor during the progress of the Work and accepted by the Corporation either as attachments to change orders or as non-modifying supplements to the drawings in the Tender Documents including drawings issued by Addenda;

(3) Drawings submitted by the Corporation to the Contractor during the progress of the Work either as attachments to change orders or as explanatory supplements to the drawings in the Tender Documents including drawings issued by Addenda;

"Engineer" means and includes the Engineer of the Corporation and any person duly authorized to act as Engineer on behalf of the Corporation, or the individual, partnership, corporation or combination thereof, including joint ventures appointed by the Corporation;

"Engineer's Representative" means the person appointed by the Engineer as its representative under Section 00500 Clause 2.1;

"Extra Work" as defined in Section 00500 Clause 7.3.1;

"Indemnified Parties" has the meaning set out in Section 00500 Clause 5.1;

"Notice of Intent to Award" has the meaning set out in Section 00100, Clause 15.5;

"Notice to Proceed" means the written notice to the Contractor to proceed with the Work;

"Notice of Substantial Completion" means the written notice from the Corporation to the Contractor that the Work is substantially complete;

"Owner" has the same meaning as Corporation;

"Person" includes an individual, corporation, partnership and joint venture;

"Released Parties" has the meaning set out in Section 00500 Clause 5.1;

"Specifications" means that part of the Contract Documents consisting of general requirements and written descriptions of the technical features of materials, equipment, construction systems, standards and workmanship;

"Substantially Complete" or "Substantial Completion" means that the Work has been sufficiently completed such that it is ready for use or is being used for the purposes intended and the work is capable of completion, including any work set out in the Deficiency List at a cost of not more than:

(1) 3% of the first $500,000 of the Contract Price;

(2) 2% of the next $500,000 of the Contract Price;

(3) 1% of the balance of the Contract Price.

If the Work or a substantial part is ready for use or is being used for the purposes intended and the remainder cannot be completed expeditiously for reasons beyond the control of the Contractor or, where the Corporation or Contractor both agree not to complete the Work expeditiously, the price required to complete the Work shall be deducted from the Contract Price to determine Substantial Completion;

"Substantial Completion Date" means the date the Work is Substantially Complete;

"Tender" means the Tenderer's offer made in the Tender Form set out in Section 00200 and includes the Tender Documents;

"Tender Closing" has the meaning set out in Section 00100 Clause 1.3.2;

"Tender Documents" means the documents and drawings set out in Section 00200 Clause 2.1;

"Tenderer" means the individual, partnership, corporation, or a combination thereof, including joint ventures, who or which sign the Tender Form set out in Section 00200;

"Work" means all the labour, materials, equipment, supplies, services and other items necessary for the execution, completion and fulfilment of everything set out in the Contract Documents;

"Work Site" means the project-specific site where the Work is being done including the physical construction area; areas to be used for lay-down; field fabrication, lining and coating areas; works and storage yard; material stockpiles; temporary pumping facilities; field offices/trailers; job-related parking and waiting areas; and other areas directly affected by the Work;

1.2 JOINT VENTURES

If the Contractor is a joint venture of two or more entities, the grants, covenants, provisos and claims, rights, powers, privileges and liabilities of the Contractor shall be joint and several.

1.3 CONTRACT REQUIREMENTS

1.3.1 Successors' Obligations

The Contract shall ensure to the benefit of and be binding upon not only the parties hereto but also their respective successors and permitted assigns.

1.3.2 Assignment of Contract

The Contractor shall not assign the Contract in whole or in part, nor any payments due or to become due under the Contract without the prior written consent of the Corporation. No assignment of the Contract shall relieve the Contractor from any obligation under the Contract or impose any liability on the Corporation. Involuntary assignment of the Contract as a result of, inter alia, bankruptcy, assignment of the Contract for the benefit of creditors or appointment of a receiver, or insolvency shall be deemed default under the Contract entitling the Corporation to terminate the Contract as hereinafter provided.

1.3.3 Waiver of Rights

Except as herein provided, no act or failure to act by the Contractor, the Corporation, or the Engineer at any time with respect to the exercise of any right or remedies conferred upon them under this Contract shall be deemed to be a waiver on the part of the Contractor, the Corporation or the Engineer, as the case may be, of any of their rights or remedies. No waiver shall be effective except in writing. No waiver of one right or remedy shall act as a waiver of any other right or remedy or as a subsequent waiver of the same right or remedy.

1.3.4 Amendment of Contract Documents

The Contract Documents shall not be amended except as specifically agreed in writing signed by both the Corporation and the Contractor.

1.4 HOURS OF WORK

1.4.1 No work shall be performed under the Contract before 7:00 a.m. or after 6:00 p.m., Monday to Saturday or before 9:00 a.m. or after 6:00 p.m., on Sundays and statutory holidays except as authorized in writing by the Regional District at the Regional District's sole discretion. In no event should the hours of work exceed those permitted by the governing municipal noise (or similar) bylaw.

1.5 LAWS, REGULATIONS AND PERMITS

1.5.1 The Contract shall be construed under and according to the laws of the Province of British Columbia and, subject to an agreement to refer a dispute to arbitration under Section 00500, Clause 2.5, the parties agree to irrevocably attorn to the jurisdiction of the Courts of the Province of British Columbia.

1.5.2 The Contractor shall give all notices required by law and shall comply with all laws, acts, ordinances, rules and regulations relating to or affecting the Work. If the Contractor is of the opinion that any portion of the Contract Documents is at variance with any laws, acts, ordinances, rules or regulations, the Contractor shall promptly provide written notice of its opinion to the Engineer. The Engineer shall promptly review the matter and shall make a recommendation to the Corporation which may issue a change order or take any other action necessary or desirable to comply with the law, act, ordinance, rule or regulation in question.

1.5.3 Permits and Licences

Except as otherwise specifically provided in the Contract, if any permits, authorizations, approvals or licences from any government, governmental agencies or regulatory body are necessary or desirable for the execution of the Work, they shall be obtained by the Contractor at its expense provided

that the Contractor shall not make application for any such permit, authorization, approval or licence without first obtaining the written consent of the Corporation.

1.5.4 Patents, Royalties and Copyright

(1) The Contractor shall pay all fees, royalties or claims for any patented invention, article, process or method that may be used upon or in a manner connected with the Work or with the use of the Work by the Corporation. Before final payment is made on the account of this Contract, the Contractor shall, if requested by the Corporation, furnish acceptable proof of a proper release from all such fees or claims.

(2) If the Contractor, its agent, employee or any of them is prevented from furnishing or using any invention, appliance, article, material or Drawing supplied or required to be supplied or used under this Contract, the Contractor either shall promptly pay such royalties and secure the requisite licences or, subject to written approval by the Corporation, substitute other invention, article, appliance, materials or drawing in lieu thereof which are of equal efficiency, quality, finish, suitability and market value to those planned or required under the Contract. The Contractor shall submit to the Engineer descriptive information of these proposed substitutions. Approval by the Corporation of any substitutions shall not relieve the Contractor of its responsibility if the substitutions do not function as well as the original specified in the Contract, and shall not be deemed an assumption of risk or responsibility by the Corporation. Approval shall only mean the Corporation has no objection to the substitution being utilized at the Contractor's risk. If the Corporation refuses to approve the substitution, the Contractor shall pay such royalties and secure such valid licences as may be requisite for the Corporation, its directors, officers, agents and employees or any of them, to use such invention, article, appliance, materials or drawing without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof.

1.5.5 All references to money in the Contract Document shall be interpreted as meaning lawful currency of Canada.

1.6 HEADINGS

Headings to parts, divisions, sections, articles, paragraphs, clauses and forms are inserted for convenience of reference only and shall not affect the interpretation of the Contract Documents.

## PART 2 CORPORATION-CONTRACTOR RELATIONS

### 2.1 AUTHORITY OF CORPORATION

#### 2.1.1 Acceptability of Work

The Corporation shall make the final determination of the acceptability of the Work.

#### 2.1.2 Appointment and Authority of Engineer

(1) The Corporation may appoint an Engineer for the Work at any time before or after award of the Contract. If the Corporation appoints an Engineer the Engineer shall represent the Corporation at the Work Site. The Engineer shall have the authority set out in the Contract Documents and such other authority as may be delegated in writing by the Corporation including but not limited to the following:

(a) to make decisions regarding the quality or acceptability of materials furnished and Work performed and as to the manner of performance and rate of progress of the Work under the Contract;

(b) to make decisions regarding clarifications and interpretation of the Contract Documents;

(c) to certify the value of the Work performed by the Contractor.

### 2.2 AUTHORITY OF CONTRACTOR

#### 2.2.1 Contractor's Representative

(1) The Contractor shall appoint a Contractor's Representative. The Contractor shall notify the Engineer in writing of the name of the Contractor's Representative, an alternate and the extent of the Contractor's Representative's delegated authority.

(2) The Contractor shall ensure that the Contractor's Representative is competent, conducts himself properly at all times and is capable of speaking, reading and writing in the English language.

(3) The Contractor shall ensure that the Contractor's representative or the alternate is at the Work Site and has the authority to act on behalf of the Contractor and to make decisions on behalf of the Contractor.

(4) The Engineer may require the Contractor in writing to replace either or both of the Contractor's Representative or the alternate with another person or persons approved by the Engineer.

2.3 RESPONSIBILITIES OF CONTRACTOR

2.3.1 Subcontractors, Manufacturers and Suppliers

The Contractor shall be responsible for the adequacy, efficiency and sufficiency of subcontractors, manufacturers, suppliers and their employees.

2.3.2 The Contractor shall use its best efforts to perform the Work and to cause its subcontractors and suppliers to perform the subcontract work in a manner which avoids labour disputes between the Contractor, subcontractors, any other contractor and any of their respective employees.

2.3.3 In the event of a labour dispute involving employees of the Contractor, or of its subcontractors or suppliers, whether at the site or elsewhere which might delay the performance of the Work, the Contractor shall provide a full report on the labour dispute to the Corporation within 3 Days after its commencement, and such report must include to the extent known by the Contractor, the cause of the dispute, the employer and employees affected and involved, the action being taken to end the dispute, and the known or probable effect on the Work schedule.

2.3.4 The Contractor shall immediately notify the Corporation of any current or pending labour negotiations or any actual or threatened labour dispute(s) which might interfere with progress of the Work.

2.3.5 Contractor's Employees

The Contractor shall be responsible for the adequacy, efficiency and sufficiency of its and its subcontractors' employees, agents, plant and equipment. The Contractor's and its subcontractors' employees and agents utilized in the Work shall have sufficient knowledge, skill and experience to perform properly the work assigned to them.

2.3.6 Payment for Labour and Materials

The Contractor shall pay and shall cause its subcontractors to pay any and all accounts for labour, including payments and wage and salary deductions required by law and Workers' Compensation assessments. The Contractor also shall pay and cause its subcontractors to pay any and all accounts for services, equipment and materials used by it and its subcontractors during the performance of work under this Contract. Such accounts shall be paid as they

become due and payable. If requested by the Corporation, the Contractor shall furnish proof satisfactory to the Corporation of payment of such accounts. If such payments or assessments are not made when due, the Corporation may make such payment or assessment and set off the same against monies payable to the Contractor under the Contract.

2.3.7 Attention to Work

The Contractor shall diligently manage the Work so that it is prosecuted faithfully, expeditiously and in accordance with the Contract Documents. The Contractor shall ensure that the Contractor's Representative or the alternate is at the Work Site and has the authority to act on behalf of the Contractor and to make decisions for the Contractor.

2.3.8 Preservation of Materials and Equipment

The Contractor shall store and maintain all equipment and materials to be incorporated into the Work so as to ensure their quality and fitness for the Work and to permit prompt inspection by the Engineer at all times.

2.3.9 Employee Safety

The Contractor alone shall at all times be responsible for the safety of its employees, its subcontractors' employees and other persons and equipment lawfully on the Work Site. The Contractor shall maintain the Work Site as a safe place to work and perform the Work in a manner which meets all applicable requirements and standards for the Work Site, as set out in any applicable safety manual, the Workers Compensation Act and regulations thereto and under statutory and common law.

2.3.10 The Contractor shall be deemed to be the Prime Contractor within the meaning of Part3, Division 3, Section 118(1) of the Workers Compensation Act.

2.3.11 Construction Procedures

Subject to the rights of the Corporation and the Engineer pursuant to the Contract Documents the Contractor shall be solely responsible for and shall supervise and direct the Work. The Contractor shall determine the means, methods, techniques, sequences and procedures of construction, except where the Contract Documents, in order to define the quality of an item of Work, specify a means, method, technique, sequence or procedure for construction of that item of Work.

2.3.12 Subcontractors

Subcontractors, suppliers and other persons engaged in the Work, including employees of subcontractors and suppliers, will be considered subcontractors, employees or agents of the Contractor and not of the Corporation. The Contractor shall ensure that all subcontracts between the Contractor and its subcontractors provide that its subcontractors are bound by the provisions of the Contract and that its subcontractors and their work are subject to the provisions of the Contract Documents. References in the Contract Documents to actions required of subcontractors, manufacturers, suppliers, or any person other than the Contractor, the Corporation or the Engineer shall be deemed to mean that the Contractor shall require such subcontractor, manufacturer, supplier or person to perform the specified action. In the event that a subcontractor of the Contractor breaches either the Contract or the Contract Documents, the Contractor may, and on the instructions of the Corporation shall, terminate the subcontract of such a subcontractor.

2.3.13 The Contractor shall give the Corporation prior written notice of all proposed subcontracts other than those set out in Section 00200, Schedule 4 - Tenderer's Proposed Subcontractors. If required by the Corporation, the Contractor shall submit any subcontracts to the Corporation for approval prior to entering into the same. The Contractor shall also obtain the approval of the Corporation prior to changing any Subcontractor. No subcontract shall relieve the Contractor of any of its liabilities or obligations under the Contract, and the Contractor agrees that it is and remains fully responsible to the Corporation for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them in the performance of the Contract. The Contractor shall at its expense, upon request, furnish the Corporation with one copy of all of its subcontracts.

2.4 CONTRACTOR CO-ORDINATION

2.4.1 Notice

(1) Any notice, order, directive, request or other communication (the "notice") given by the Corporation or the Engineer to the Contractor shall be deemed to be given to the Contractor if e-mailed or faxed to the Contractor to the fax numbers and/or e-mail address given in the Contract documents or if left at any office used by the Contractor or delivered to any of its officers or employees or posted at the Work Site or mailed by mail addressed to the Contractor at the address given in the Contract Documents or mailed to the Contractor's last known place of business. Any notice given to a Contractor that is a joint venture or partnership shall be deemed to be given if delivered or mailed to any one of the joint ventures or partners or any of their officers or employees. Any notice to be given by the Contractor to the Corporation shall be deemed to have been given if sent by mail

or delivered to the Corporation at the address of the Corporation set out in Section 00100 Clause 3.1. Any notice sent by mail shall be deemed to have been given two (2) Business Days after the day of mailing.

(2) Notices from the Corporation may be made on Regional District of Nanaimo letterhead, but if so made shall be deemed to have been made on behalf of the Corporation.

2.4.2 Co-operation and Entry on Work Site

The Contractor shall not have the exclusive right to occupy the Work Site and shall permit entry to the Work Site by the Corporation or other contractors that may be performing work on behalf of the Corporation. The Contractor shall afford to the Corporation, any other contractors and their employees, reasonable facilities and co-operation and shall arrange its work and dispose of its materials in such a manner as to not interfere with the activities of the Corporation or of other contractors upon the Work Site. The Contractor shall promptly make good and indemnify the Corporation from any injury or damage to the Corporation or other contractors, employees and their agents caused by the Contractor or its employees, subcontractors, suppliers or agents.

2.4.3 The Engineer, if requested by the Corporation or the Contractor or any other contractor, shall consider any differences, conflicts or disputes between the Contractor and any other contractor with regard to the Work on or near the Work Site. The Engineer shall give such directions as it considers desirable to resolve such difference, conflict or dispute and its directions shall be binding on the Contractor and insofar as it may have the authority, on any other contractor.

2.4.4 Open Work Site Designation

The Work Site is open to both union and non-union contractors, and the Corporation’s own unionized work force. The Contractor and any subcontractors are required to perform the Work at the Work Site regardless of their labour or union affiliation.

2.4.5 Site Conditions

(1) The Contractor shall be deemed to have conducted an examination of the Work Site and to have informed himself as to the risks and contingencies and all other data, information, reports, matters and things, local or otherwise, respecting the Work Site and any other aspects of the Work necessary to satisfactorily perform the Contract in all respects.

(2) The Contractor's failure:

(a) to examine the Work Site, or

(b) to properly interpret the conditions at or respecting the Work Site or any information respecting the Work Site or any other aspects of the Work,

shall not relieve the Contractor of the responsibility of satisfactorily performing the Work under the Contract.

(3) If, during performance of the Work, the Contractor claims that the actual Work Site conditions are materially and substantially different from the Work Site conditions:

(a) described in the Tender Documents,

(b) evident from the Work Site examination pursuant to Section 00500, Clause 2.4.5(1), or

(c) which could have been reasonably anticipated based upon the information in the Tender Documents or the Work Site examination,

then the Contractor shall promptly, and in any event within seven (7) Days of discovery of such conditions, notify the Corporation in writing to give the Corporation a reasonable opportunity to examine the Work Site conditions before any substantial evidence of the alleged material and substantial difference is destroyed, removed or obscured.

2.4.6 The Engineer shall promptly investigate the conditions of which it has been notified under Section 00500, Clause 2.4.5(3). If the Engineer concludes that the conditions set out in Section 00500, Clause 2.4.5(3) do exist and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work under this Contract, whether or not changed as a result of such conditions, the Corporation may issue a change order pursuant to Section 00500, Clause 7.2.

2.4.7 The Contractor may not request a change order unless the Contractor has given the required notice, under Section 00500, Clause 2.4.5(3), and has made its request for a change order within 15 Days of giving that notice.

2.4.8 The Contractor may not request a change order if the notice under Section 00500, Clause 2.4.5(3) was given after the final payment is made under the Contract.

2.4.9 Where the actual Work Site conditions are materially and substantially different from the Work Site conditions referred to in Section 00500, Clause 2.4.5(3) the Contractor shall not be relieved of the responsibility of satisfactorily performing the Work under the Contract.

2.5 DISPUTE RESOLUTION

2.5.1 Disputes

A dispute occurs between the Corporation and the Contractor where there is a difference between the parties as to the interpretation, application or administration of the Contract.

2.5.2 Determination by Engineer

Except as otherwise specifically provided, questions regarding interpretation, application or administration of the Contract shall be referred by the Contractor in writing to the Engineer for its decision. The Engineer shall review the matter and respond to the Contractor in writing with the Engineer's decision within twenty one (21) Days after receipt of written notice from the Contractor.

2.5.3 Dispute of Decision

If the Contractor disputes a decision or instruction of the Corporation or the Engineer (the "Disputed Decision") or considers that the Disputed Decision requires extra work, the Contractor shall give a detailed written notice of the dispute to the Corporation within twenty one (21) Days of the date that the Contractor received the Disputed Decision. The written notice must set out the nature of the dispute, the circumstances which gave rise to the dispute, the date on which these circumstances arose and the estimated cost of the work.

The Contractor shall be conclusively deemed to have accepted a decision or instruction of the Corporation or the Engineer if the Contractor does not dispute the Disputed Decision by giving the required written notice within the required time and providing the required information.

2.5.4 No Engineer's Review

Notwithstanding Section 00500, Clause 2.5.3, if the Disputed Decision was made by the Corporation pursuant to Section 00500, Clauses 6.2, 6.3, or 7.5, the Engineer shall not review the decision and the matter shall be dealt with as provided under Section 00500, Clause 2.5.7.

2.5.5 Instructions Pending Resolution

If the Disputed Decision is not resolved promptly in the sole discretion of the Corporation, the Engineer shall give any instructions as may be necessary for proper performance of the Work and to prevent delay of the Work pending resolution of the dispute. The Contractor shall comply immediately with the Engineer's instructions. If it is subsequently determined that the instructions were contrary to the Contract Documents, the Corporation shall pay the costs incurred by the Contractor in carrying out those instructions beyond what the Contract Documents required.

2.5.6 Notice of Claim

No payment shall be made by the Corporation to the Contractor in addition to the Contract Price on account of any extra expense, loss or damage incurred by or sustained by the Contractor for any reason unless the Contractor has given written notice of a claim to the Corporation within thirty (30) Days of the date the Contractor first became aware of the circumstances which gave rise to the claim. The written notice must set out the date on which these circumstances arose and the estimated amount of the claim.

The Contractor shall be conclusively deemed to have waived any right to make a claim for any amount in addition to the Contract Price, if the Contractor does not give the required written notice within the required time and provide the required information.

2.5.7 Dispute/Claim Resolution

(1) All claims, disputes or Disputed Decisions between the Corporation and the Contractor that are not resolved shall be decided by arbitration if the parties agree, or failing agreement, in a Court of competent jurisdiction within the Province of British Columbia.

(2) In the event that the parties agree to arbitration, pursuant to Section 00500, Clause 2.5.7(1), the arbitration shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the parties, and failing agreement by the

parties, shall be appointed by a Court of competent jurisdiction within the Province of British Columbia.

(3) In the event that the parties agree to arbitration, the arbitration shall take place in Vancouver, British Columbia and be governed by the laws of British Columbia.

2.6 PAYMENT CERTIFIER

For the purposes of the Builders Lien Act, the Corporation shall be the payment certifier for the Contract, and the Contractor shall be the payment certifier for all subcontracts. The Contractor shall cooperate with the Corporation and assist the Corporation by providing information or assistance in a timely manner as the Corporation considers necessary to carry out the duties of payment certifier for the Contract.

**PART 3 SPECIFICATIONS AND DRAWINGS**

3.1 INTERPRETATIONS

3.1.1 General

Specifications and Drawings are intended to be complementary and explanatory of each other. Work specified on the Drawings and not in the Specifications, or vice versa, shall be executed as if specified in both.

3.1.2 Request for Clarification

If the Contractor requires any clarification concerning the Work, it shall direct its request in writing for clarification to the Engineer.

3.2 CONFLICTING PROVISIONS

3.2.1 Conflicting Provisions

In case of any inconsistency or conflict between the provisions of the Contract Documents, the provisions of such documents will take precedence and govern in the following order:

(1) the duly executed Agreement Section 00400
(2) the letters of clarification, if any
(3) the General Conditions Section 00500
(4) the duly executed Tender Form Section 00200
(5) the most recent Addendum followed by other Addenda, the more recent taking precedence over earlier Addenda
(6) the Drawings
(7) the Specifications,

(8) the Appendices
(9) the Tender Documents as defined in Section 00500
(10) other relevant documents such as but not limited to letters of clarification, executed bonds and any reports, standards or the like included by reference.

3.2.2 Errors and Omissions

If the Contractor, in the course of the Work, discovers that there are any errors, omissions or misrepresentations in the Contract Documents, it shall immediately notify the Engineer in writing and shall not proceed with any part of the Work that is affected by that notice until directed to do so. The Engineer shall promptly forward the notification to the Corporation. The Corporation will review the matter and if it concludes that there is an error, omission or misrepresentation, it shall determine the corrective actions to be taken and will advise the Contractor accordingly. If the corrective actions increase or decrease the amount of work called for in the Contract, the Corporation may issue, or the Contractor within fifteen (15) Days after receiving the notice may request, a change order. If, after discovering any matters described in this clause, the Contractor proceeds with the Work without the required notice or without waiting for written direction, the Contractor is fully responsible for the consequences.

**PART 4 MATERIAL, EQUIPMENT AND WORKMANSHIP**

4.1 GENERAL

Unless otherwise specifically provided in the Contract Documents, the Contractor shall provide and pay for materials, labour, tools, equipment, water, light, power, transportation, supervision and temporary construction of any nature and other services and facilities of any nature whatsoever necessary, to execute, complete and deliver the Work within the specified time. Material and equipment shall be new and of the quality specified. Unless otherwise specifically provided in the Contract Documents, all work shall be done in the most substantial and workmanlike manner with new materials, articles, equipment and workmanship of the best quality and description and by employment of properly skilled workers and in strict conformity with and as required by the Contract Documents. Materials and equipment shall be the product of suppliers or manufacturers of established good reputation, regularly engaged in the supply or manufacture of such materials or equipment. Where the Specifications describe materials by manufacturer or trade name, no substitutions shall be made unless accepted in writing by the Corporation.

4.2 DEMONSTRATION OF COMPLIANCE

4.2.1 Inspection

(1) The Corporation or the Engineer or any inspector or agent appointed by either of them shall have access to the Work and to the Work Site and to the places where work is being prepared or where materials, equipment and machinery are being obtained for the Work. The Contractor at the Contractor's sole cost shall provide to the Engineer or the Corporation the assistance necessary for obtaining such access, and shall provide all information necessary or desirable in connection with the inspection of the Work.

(2) The Contractor shall at all times give and cause to be given to the Corporation or the Engineer or any inspector or agent appointed by either of them, free access to inspect and test the performance and carrying out of the Work, wherever same is being performed or carried out. Such inspections and testing shall not in any way relieve the Contractor from any of its obligations or responsibilities under the Contract Documents, and shall not in any way prejudice or constitute a waiver of any rights or remedies of the Corporation or any guarantees, warranties or covenants in favour of the Corporation, and the Corporation shall be entitled to rely on the expertise and obligations of the Contractor and its subcontractors and their consultants and engineers to the same extent as if such inspections and testing by the Corporation or the Engineer or any inspector or agent had not taken place.

(3) All or any part of the Work, and all workshops or other places where material and equipment for the Work is being prepared or stored, may be inspected by the Engineer when and as often as the Engineer shall deem it expedient. The Contractor shall afford every facility and access requested by the Engineer and shall give the Engineer any and all information requested by it in connection therewith.

4.2.2 Certification

Where compliance of materials or equipment with the Contract Documents is not readily determinable through inspection and tests, the Engineer may require that the Contractor provide, at the Contractor's expense, properly authenticated documents, certificates or other satisfactory proof of compliance. These documents, certificates or other proof shall include performance characteristics, materials of construction and the physical or chemical characteristics of materials.

4.2.3 Inspection at Point of Manufacturing

If inspection and testing of materials or equipment by the Engineer in the vicinity of the Work is not practicable, such inspection and testing or

witnessing of tests may, at the Engineer's request, take place elsewhere. Unless otherwise specified in the Contract Documents, the Engineer's travel, subsistence and labour expenses for such inspection and testing shall be paid by the Corporation. If the Contractor requests the Engineer to inspect and test material or equipment other than at the Work Site, then the additional costs to the Corporation for travel, subsistence and labour expenses shall be paid by the Contractor and may be deducted by the Corporation from any payment due to the Contractor under the Contract.

4.3 DEFECTIVE OR IMPROPER WORK

4.3.1 Correction of Improper or Defective Work

When and as often as the Engineer is not satisfied that:

(1) any or all of the Work is in compliance with the Contract,

(2) the manner or time in which the Work is being done is in compliance with the Contract, or

(3) the kind or quality of plant used in connection with the Work is in compliance with the Contract,

the Engineer may give notice to the Contractor either verbally or in writing and the Contractor shall immediately upon receipt of such notice do all things that are required to satisfy the Contract Documents. Any such verbal notice may be confirmed in writing by the Engineer if requested by the Contractor within one working day of the verbal notice. If the Contractor refuses or neglects to commence the required activities and to provide a schedule for completion of those activities to the satisfaction of the Engineer within the space of two (2) working days from the receipt of the verbal notice, the Corporation may enter the Work Site and employ some other person to do so or may use or allow the use of the Contractor's plant and equipment, and all actual necessary expenses and costs consequent thereon or incidental thereto shall be charged to the Contractor. The employment of such other person or the doing of said work by the Corporation itself shall not affect the Contractor's duties and liabilities hereunder or relieve the Contractor from the performance and fulfilment of any or all of the Contractor's covenants, undertakings, obligations and duties under the Contract.

4.3.2 Work Causing Nuisance or Hazard

In addition to and without limiting any other provision of the General Conditions if the Corporation is of the opinion that the Work done, being

done or to be done by the Contractor has posed or will or may pose a hazard, danger, inconvenience or nuisance to the public, any road, any public or private utility or service (and any works thereof) or to any other public or private chattels, property or improvements, the Corporation may give notice thereof to the Contractor, either verbally or in writing, and the Contractor shall forthwith upon receipt of such notice (and at its expense if required by the Corporation) do all such work or things that may be required to remove the hazard, danger, inconvenience or nuisance or potential hazard, danger, inconvenience or nuisance, and if the Contractor does not forthwith, in the Corporation's sole discretion, do all such work or things as aforesaid the Corporation may forthwith employ some other person to do or may itself do all such work or things. If the Corporation exercises its right to employ another person or do the work or things itself it may use or allow the use of the Contractor's plant and equipment to do such work or things and all the consequential or incidental costs and expenses shall be charged to the Contractor. The employment of such other person or the doing of the work or things by the Corporation itself shall not affect the Contractor's duties and liabilities hereunder nor relieve him from the performance and fulfilment of any or all of his covenants, undertakings, obligations and duties under this Contract.

4.3.3 Retention of Defective Work

If in the opinion of the Engineer any portion of the Work done under the Contract is defective or not in accordance with the Contract Documents and if the defect or imperfection in the same is not of sufficient magnitude or importance to make the Work dangerous or undesirable, or if the removal of such Work is impracticable, or will create conditions which are dangerous or undesirable, the Corporation shall have the right and authority to retain such work instead of requiring the defective or imperfect work to be removed and reconstructed. The Corporation shall be entitled to deduct the value of the defect or imperfection from the payments due or to become due to the Contractor as the Engineer decide by written notice given to the Contractor.

4.3.4 No Implied Approval

The fact that the Corporation or the Engineer has not disapproved of or rejected any part of the Work or any of the plant used in connection therewith shall not be deemed or be construed to be an acceptance of any such part of the Work or any such materials.

4.4 WARRANTY AND GUARANTEE

4.4.1 The Contractor warrants and guarantees that the Work is free from all defects arising from faulty construction, manufacturing, installation, materials, equipment or workmanship in any part of the Work for a period of 2 years commencing from the issuance of the Notice of Acceptance under Section 00500, Clause 7.1.4. During the warranty period, the Contractor, upon the receipt of notice in writing from the Corporation, shall promptly make all repairs arising out of the defects referred to in Section 00500, Clause 4.4.1. The Corporation shall be entitled to make such repairs, if ten (10) Days after the giving of such notice to the Contractor, the Contractor has failed to make or undertake with due diligence the repairs. In case of an emergency, where, in the opinion of the Corporation or the Engineer, delay could cause serious loss or damage, or inconvenience to the public, repairs may be made without notice being sent to the Contractor. The actual necessary costs of any repair made by the Corporation in connection with this paragraph shall be charged to the Contractor and the Contractor shall reimburse the Corporation for such costs. Receipt of a Notice of Acceptance under Section 00500, Clause 7.1.4 or the taking of early possession under Section 00500, Clause 7.5 shall not extinguish any covenant or agreement on the part of the Contractor to be performed or fulfilled under this Contract which has not, in fact, been performed or fulfilled at the time of such acceptance or taking of possession. All covenants and agreements shall continue to be binding on the Contractor until they have been fulfilled. The warranty and guarantee on any equipment possessed and used by the Corporation upon taking early possession of Work under Section 00500, Clause 7.5 shall commence on the date that the Corporation takes possession of the equipment.

4.4.2 The Contractor warrants and guarantees that the Work is free from all defects arising at any time from faulty design in any part of the Work that has been designed by it or on its behalf.

4.5 TITLE TO THE WORK

4.5.1 Title to and property in all and any materials, and any goods incorporated in or intended to become a part of the Work, whether wrought or inwrought and wherever situate, shall pass to and vest in the Corporation upon the earlier of:

(1) the time at which the Corporation makes any payment in respect thereof; or

(2) the time at which the materials are delivered to the Work Site.

4.5.2 Notwithstanding the foregoing, all risk of loss or damage to the Work shall remain with the Contractor until acceptance by the Corporation by issuance of the Notice of Acceptance pursuant to Clause 7.1.4.

**PART 5 INDEMNIFICATION AND INSURANCE**

5.1 INDEMNIFICATION AND RELEASE

5.1.1 The Contractor shall save harmless and indemnify the Corporation, Island Corridor Foundation, and its directors, officers, servants, employees and agents (the "Indemnified Parties") from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) arising in any way out of or connected with the Work by the Contractor or its subcontractors, or their servants or employees under this Contract, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Indemnified Parties or any on them.

5.1.2 Unless otherwise specified in the Contract, the Contractor shall save harmless and indemnify the Indemnified Parties from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature arising in any way from liability of any nature or kind for or on account of any copyrighted or un-copyrighted composition, secret or other process, patented or unpatented invention, articles or appliances manufactured, supplied or used in the Work, and/or to be used by the Corporation before or after completion of the Work as a result of the Work performed by the Contractor, and if the Contractor shall fail to save harmless and indemnify in manner aforesaid, any money collected from the Indemnified Parties shall be charged to the Contractor.

5.1.3 The Contractor shall release and discharge the Corporation and its directors, officers, servants, employees and agents (the "Released Parties") from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) which the Contractor or its subcontractors or their servants or employees might have in any manner arising in any way out of or connected with the Work by the Contractor or its subcontractors, or their servants or employees under this Contract, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Released Parties or any on them.

5.1.4 The indemnity provided in the Clause 5.1.1 by the Contractor to the Indemnified Parties shall not in any way be limited or restricted by any insurance or by limitations on the amount or type of damages, compensation or benefits payable under the Workers Compensation Act or any other similar statutes.

5.2 INSURANCE OBTAINED BY CONTRACTOR

5.2.1 General

The Contractor shall itself and cause each subcontractor to obtain and maintain, at its own expense, the insurance set out below until all conditions of the Contract have been fully complied with.

5.2.2 Commercial General Liability Insurance

Commercial General Liability Insurance providing third party bodily injury, death and property damage coverage in an amount of not less than $5,000,000 per occurrence, indicating the Regional District of Nanaimo is added as Additional Insured. The policy shall include Premises and Operations Liability; Contractor's Protective Liability with respect to the Operations of sub-contractors; Completed Operations Liability; Contractual Liability; Non-Owned Automobile Liability; and a Cross Liability and/or Severability of Interest clause protecting each insured to the same extent as if they separately insured.

The policy shall also contain a clause providing that the Corporation will receive thirty (30) Days' notice of cancellation or of any material change in coverage which will reduce the extent of coverage provided to the Corporation and Regional District of Nanaimo.

The Contractor shall file with the Corporation, prior to the commencement of work, a certificate of insurance in a form acceptable to the Corporation evidencing this policy. The Contractor shall also file with the Corporation evidence of the renewal on this policy.

5.2.3 Automobile Liability Insurance

A Standard Owner's Form Automobile Policy for each vehicle used in the performance of the Contract and regulated by the Insurance (Motor Vehicle) Act or similar legislation. The Third Party Legal Liability Limits are to be in an amount not less than $2,000,000.

5.2.4 Contractor's Equipment Insurance

The Contractor shall maintain an All Risk insurance policy covering all construction equipment, mobile equipment, miscellaneous equipment, tools, office contents and other miscellaneous property whether owned, leased or rented or for which the Contractor may be responsible, that is used in any way in connection with this Contract.

5.2.5 Course of Construction Insurance

5.2.5.1 The course of construction insurance shall state that the insured parties include the Regional District of Nanaimo, the Contractor and all subcontractors engaged in or connected with the construction, site preparation and related operations to this project.

5.2.5.2 This policy shall insure against all risks of direct physical loss or damage to the insured property while the project is in the course of construction, site preparation, reconstruction, repair, erection, fabrication, testing and include all materials, equipment, machines, structures, property, fittings, fixtures, betterments and supplies of any nature whatsoever to be entered into or form part of the finished project while at the Work Site or elsewhere in Canada or the Continental United States of America, all the property of the Insured or property of others for which the insured has assumed responsibility, or for which the insured is required to carry insurance, including while on a ferry, railway car or transfer barge all in connection with land transportation.

Coverage shall also apply to all temporary facilities consisting principally of, but not limited to: hoarding, barricades, ramps, utility connections, job site structures, construction hoists and elevators, scaffolding, framework, fences, shoring, false work, temporary buildings and temporary protection for winter work, not destined to form part of the completed Work but which are used incidental to the completion thereof.

5.2.5.3 The term of this insurance shall be from the inception date of the construction to the date that all Work is completed.

5.2.5.4 The policy limit shall be the estimated fully completed value of the Work including but not limited to the value of architects, engineers and consultant fees, Corporation supplied labour, materials and equipment, reasonable profit, insurance costs, overhead, taxes, labour, administrative fees and all other expenses which are incurred as additional costs as a result of a partial or total loss.

5.2.6 Contractor’s Pollution Liability Insurance

The Contractor shall obtain Contractor’s Pollution/Environmental Impairment Liability insurance in the amount of not less than $2 million per occurrence and $5 million aggregate.

5.2.7 Other Insurance

The Contractor and subcontractors shall provide at their own cost any additional insurance which they are required by law to provide or which they consider necessary.

5.2.8 Waiver of Subrogation

Each insurance policy obtained by the Contractor or any subcontractor in accordance with clause 5.2.4 shall include the following clause:
*"Waiver of Subrogation*

*It is understood and agreed that in the event of a loss and upon payment of any claim hereunder, the insurer will waive its right of subrogation against the Corporation and any of their servants, agents, employees, parent, subsidiary, affiliated or related firms."*

5.2.9 Indemnity Not Restricted By Insurance

The provisions for insurance shown above shall not in any way limit the indemnity granted by the Contractor to the Indemnified Parties elsewhere in this section.

5.2.10 Maintenance of Insurance

All required insurance shall be maintained until final completion of the work, including the making good of faulty work and materials, except that coverage of Completed Operations Liability shall in any event be maintain for 12 months from date of final acceptance by the Corporation.

5.3 DAMAGE TO THE WORK

5.3.1 The Contractor shall be responsible for safeguarding the Work, materials and equipment during the Contract. The Contractor shall bear all loss and damage to the Work, materials and equipment during the term of the Contract, except that caused solely by an act of the Corporation.

5.3.2 If loss or damage to the Work, materials or equipment occurs for which the Contractor is responsible, the Contractor shall immediately effect repairs or replace any property as necessary in order to make good any such loss or damage. If the Contractor refuses or neglects to do so, the Corporation may make good any such loss or damage, either by itself or by employing some other person, and the actual necessary expense of doing so shall be charged to the Contractor.

**PART 6 PROGRESS AND COMPLETION**

## 6.1 CONTRACT TIME

### 6.1.1 Prosecution of the Work

Time shall be strictly of the essence. The Contractor shall prosecute the Work so that the Work and all portions thereof shall be completed in accordance with the Contract Documents. The Contractor acknowledges that the construction schedule for the Work is reasonable taking into consideration the average climatic conditions prevailing in the locality of the Work Site.

### 6.1.2 Construction Schedule

The Contractor shall provide a construction schedule for scheduling and co-ordinating the Work within the prescribed time. Contract time extensions, if any, under Section 00500, Clause 6.1.8 shall be incorporated into updated schedules. The failure of the Contractor to comply with this requirement shall entitle the Corporation to terminate the Contractor's right to continue with the Work or to delay progress payments.

### 6.1.3 Construction Progress

The Contractor shall furnish such labour, materials, facilities and Contractor's Plant and Equipment as may be necessary to ensure the execution and completion of the Work within the prescribed time and in accordance with the Contract Documents. If, in the opinion of the Engineer, the Work falls behind the construction schedule, the Contractor shall take the necessary action to return the Work to schedule including:

(1) increase labour in quantities and crafts;

(2) increase the number of working hours per shift, shifts per working day, working days per week, of the amount of Contractor's Plant and Equipment, or any combination of the foregoing; and

(3) reschedule activities.

6.1.4 The Contractor shall, upon request of the Engineer, prepare a proposed construction schedule revision demonstrating a plan to make up the delay in progress and ensure completion of the Work in accordance with the Contract Documents. All costs and expenses of getting the Work back on schedule shall be for the Contractor's account.

6.1.5 The Contractor shall pay all costs and expenses incurred by the Corporation which result from delay of the Work and getting the Work back on schedule. The Corporation may deduct such costs and expenses from payments due the

Contractor. None of the services performed by the Corporation or the Engineer in monitoring, reviewing and reporting on the status and progress of the Work shall relieve the Contractor of responsibility for planning and managing the Work in conformance with the Contract Documents.

6.1.6 If the Corporation or the Engineer makes any suggestion to the Contractor relating to the Work which is not set out or provided for in the Contract Documents and which the Contractor adopts and uses, in whole or in part, such adoption or use shall be at the risk of the Contractor. The Corporation and the Engineer shall bear no risk or responsibility for the adoption and use of such suggestion and without limitation will not be responsible for any defects, non-compliance with the Contract Documents or delay in the Work which may result from the adoption and use of such suggestion.

6.1.7 Notice of Delay

If the Contractor is aware of an event or any circumstances which are delaying or are expected to delay the performance of the Work, the Contractor shall give the Engineer a written notice of:

(1) the particulars of the cause of any expected delay,

(2) the expected length of the delay, and

(3) steps that the Contractor intends to take to mitigate or overcome any delay caused by that event or circumstances.

This written notice must be given as soon as possible and in any event not more than seven (7) Days after the Contractor becomes aware or ought reasonably to have become aware of the commencement of the event or circumstances expected to cause the delay.

6.1.8 Extension of Time

If the Contractor wishes to request an extension of the time allowed for the completion of all or any portion of the Work by reason of being ordered to perform extra work or furnish extra material, or consequent upon any delay occasioned by strikes, labour disputes, lockouts (other than by the Contractor alone), fire, Act of God or any other cause beyond the control of the Contractor, whether or not of similar kind or nature, the Contractor must give notice in writing to the Corporation within seven (7) Days of giving notice of delay under Section 00500, Clause 6.1.7, stating the reason for such delay and requesting an extension of time. Acting reasonably, the Corporation shall determine what extension of time, if any, shall be allowed the Contractor for

the completion of the Work and shall advise the Contractor in writing within seven (7) Days of receiving the Contractor's request for an extension of time. If the Contractor's request is reasonable but the Corporation's scheduling requirements cannot permit an extension of time, the Corporation may, in lieu of an extension of time and after consultation with the Contractor, pay the Contractor all or any part of his actual necessary costs to meet the specified schedule for the Work, except for any losses, expenses, damages, or costs to the Contractor consequent upon any delay to the Contractor by strikes, labour disputes, lockouts, fire, Act of God or unavoidable casualty.

6.1.9 No request by the Contractor for an extension of the time allowed for the completion of all or part of the Work shall be considered or allowed by the Corporation unless:

(1) it is for and results from one or more of the events or causes set out in Section 00500, Clause 6.1.8,

(2) the notice required in Section 00500, Clause 6.1.7 has been given, and

(3) the request has been made within the required time in Section 00500, Clause 6.1.8.

6.1.10 The Corporation's determination under Section 00500, Clause 6.1.8 shall not in any way affect the adequacy of the Contract Price or derogate from the rights of the Corporation under any provision of the Contract Documents. Any extension of time or payment in lieu of an extension of time granted pursuant to Section 00500, Clause 6.1.8 shall be deemed to be in full and final compensation and satisfaction for any actual or probable losses, claims, damages, costs, expenses, causes of action or injuries sustained or sustainable by the Contractor in respect of any matter or things for which an extension of time is granted.

6.1.11 Consequential Damages

(1) The Corporation and the Engineer shall not be liable to the Contractor for, and the Contractor hereby waives recovery from them of, loss of profits or anticipated profits, loss of production, impact costs, overhead, claims of the Contractor's customers, suppliers or subcontractors, or other indirect or consequential damages arising at any time from any cause whatsoever, whether arising under tort, implied or statutory warranties, strict liability or breach of contract ("Consequential Damages") notwithstanding any right or remedy available to the Contractor at law or in equity to Consequential Damages.

(2) The Contractor shall not be liable to the Corporation or the Engineer for, and the Corporation and the Engineer hereby waive recovery from the Contractor, of all Consequential Damages, notwithstanding any right or remedy available to the Corporation or the Engineer at law or in equity to Consequential Damages.

6.1.12 Delay By Contractor

Without limiting in any way any remedy, the Corporation may have for damages or otherwise for a breach or breaches of the Contract, the Contractor shall pay the Corporation the amount of actual damages representing actual necessary costs and expenses suffered by the Corporation as a result of the failure of the Contractor to complete the Work in accordance with the Contract Documents. Such actual necessary costs and expenses may include sums paid to other contractors and the Engineer because of the late completion by the Contractor.

6.1.13 No Representations or Warranties

This Contract is made and entered into by the Contractor and the Corporation on the distinct understanding that the Contractor has, before execution, investigated and satisfied itself of everything and of every condition affecting the Work to be executed and the labour and material to be provided, and that the execution of this Contract by the Contractor is founded and based upon its own examination, knowledge, information, and judgement, and not upon any statement, representation, or information made or given by, or upon any information derived from any quantities, dimensions, tests, Specifications, plans, maps or profiles made, given or furnished by the Corporation, its officers, employees or agents or the Engineer or any of its officers, employees or agents, and that any such statement, representation, or information, if so made, given or furnished, was given, or furnished merely for the general information of tenderers and is not in anywise warranted or guaranteed by or on behalf of the Corporation or the Engineer. Except to the extent specifically provided in Section 00500, Clause 3.2.2, no extra allowance will be made to the Contractor by the Corporation for any loss or damage sustained in consequence of or by reason of any statement, representation or information being incorrect or inaccurate or on account of unforeseen difficulties of any kind.

6.1.14 Every amount charged to the Contractor or owed to the Corporation by the Contractor shall be paid by the Contractor to the Corporation on demand or, in the Corporation’s discretion, may be set off by the Corporation from monies due to the Contractor under this Contract or recovered by the Corporation from the Contractor or its Surety.

6.2 SUSPENSION PROCEDURES

6.2.1 The Corporation may, at its convenience and at any time and without cause, by notice in writing to the Contractor, suspend, delay, or interrupt all or any part of the Work for a period of not more than ninety (90) Days. The Corporation shall fix the date on which the Work shall be resumed. The Work shall be resumed by the Contractor within ten (10) Days after receiving written notice from the Corporation to do so. The Contractor may make a written request within seven (7) Days of resuming the Work for an increase in the Contract Price or an extension of time to complete the Work, or both, directly attributable to the suspension. Acting reasonably, the Corporation shall make a decision on the Contractor's request for an increase in the Contract Price.

6.2.2 If the suspension, delay or interruption of all the Work under Section 00500, Clause 6.2.1 extends for a period in excess of ninety (90) Days, the Contractor upon giving ten (10) Days written notice shall be entitled to terminate the Contract and shall be entitled to receive payment as provided in Section 00500, Clauses 6.3.1 and 6.3.4.

6.2.3 Varying Progress

The Contractor shall, upon the direction in writing of the Corporation, suspend any work which, in the judgement of the Corporation, may be subject to damage; or increase and improve the facilities and methods of the carrying on of the Work or any portion thereof; or commence or complete any portion of the Work in priority to any other portion of the Work. If the Contractor refuses or neglects to comply with the direction in writing of the Corporation within seven (7) Days from the Corporation giving the Contractor such direction, such refusal or neglect by the Contractor shall be deemed to be a default under the Contract and will entitle the Corporation to terminate the Contract under Section 00500, Clause 6.3.

6.3 TERMINATION

6.3.1 The Corporation may at any time terminate the Contract by notice in writing to the Contractor. On receipt of such notice, the Contractor shall immediately discontinue the Work but shall do such extra work as is ordered therein to safeguard the Work then completed and the materials and equipment then delivered to the Work Site, and do such other extra work as may be ordered by the Corporation for the purpose of leaving the Work in a safe and useful condition. Payment for this extra work shall be made in an amount as the Corporation determines, acting reasonably, equal to the Contractor's actual necessary expense (as defined in Clause 7.3.7) therefor plus an allowance of

fifteen (15) percent of those actual necessary expenses to cover overhead, superintendence, profit and use of Contractor's Plant and Equipment. The Contractor upon the request of the Corporation shall furnish all vouchers, receipted bills and other documents relating to the actual necessary expenses.

6.3.2 The Corporation may terminate the Agreement, without any cost or penalty or consequence whatsoever, if it concludes, acting reasonably on the information available to it, that the Contractor is in material non-compliance with, or has been convicted of a material offence or violation of, health, safety, labour or environmental laws.

6.3.3 The Corporation may terminate the Contractor's right to continue with the Work if the Contractor at any time becomes bankrupt, makes an assignment of his property for the benefit of his creditors, or if a receiver or liquidator should be appointed. Such termination shall be effective upon the Corporation giving notice thereof.

(1) If at any time the Corporation is of the opinion that the Contractor is in default under this Contract because the Contractor:

(a) has breached a fundamental term of the Contract or is in substantial breach of the terms of the Contract;

(b) has failed to commence work, or to recommence work after a suspension, within the time specified in the Contract Documents;

(c) has failed or is failing to furnish or to maintain a detailed construction schedule;

(d) has failed or is failing to use diligence or has failed to comply with the instructions of the Corporation or the Engineer to expedite its work or is otherwise failing to make such progress with the Work as is necessary to ensure the completion of the Work or any part thereof in the time specified in the Contract Documents;

(e) has failed or is failing to supply enough competent workers, management, materials, or suitable Contractor's Plant and Equipment; or

(f) has become in any way unable to carry on the Work or any part thereof;

(g) has abandoned the Work;

(h) has repeatedly failed to make prompt payments to subcontractors or others for labour, materials or equipment; or

(i) has disregarded or is disregarding laws, ordinances, rules, regulations, or orders of any public body having jurisdiction;

then the Corporation may give notice in writing to the Contractor of such opinion and require that such default or defaults be remedied forthwith. If, within five (5) Days of such notice, such default or defaults are not remedied to the satisfaction of the Corporation, the Corporation may terminate the Contractor's right to perform further the Work under the Contract. Such termination shall be effective immediately.

(2) Upon termination pursuant to Section 00500, Clause 6.3.3(1), the Corporation may take all work out of the Contractor's hands and employ such means as the Corporation may see fit to complete the Work. In such case:

(a) The Contractor shall have no claim for any further payment in respect of work performed, but shall be liable for all damages and expenses which may be suffered by the Corporation by reason of the Contractor's default or delay, or the no completion by the Contractor of the Work;

(b) No objection or claim shall be raised or made by the Contractor by reason of or on account of the ultimate cost of the Work so taken over for any reason proving greater than, in the opinion of the Contractor, it should have been;

(c) All materials and all rights, proprietary or otherwise, licences, powers and privileges, whether relating to or affecting real or personal property, acquired, possessed, or provided by the Contractor for the purposes of the Work will become or remain and be the property of the Corporation for all purposes incidental to the completion of the Work and may be used, exercised, and enjoyed by the Corporation as fully to all intents and purposes connected with the Work as they might theretofore have been used, exercised, and enjoyed by the Contractor;

(d) The Corporation may forthwith enter into possession of all the Contractor's Plant and Equipment on the Work Site and may use the same in any way it sees fit in order to complete the Work without the Corporation being in any way liable for damages or any other costs in connection with such use by the Corporation. Upon completion of the Work, such Contractor's Plant and Equipment may be returned to the Contractor or may be sold by the Corporation and the net proceeds of such sale credited to the Contractor's account; and

(e) The Corporation may assign all rights and privileges granted to the Corporation in this paragraph to another contractor retained by the Corporation to continue the Work.

If the Contractor's right to perform the Work is terminated in accordance with the provisions of this clause, the Contractor shall not be entitled to receive any further payment until the work is completed.

(3) Upon completion of the Work, the Corporation shall determine:

(a) the amount which would have been due to the Contractor under the Contract if all of the Work had been performed by it;

(b) the actual necessary costs and expenses borne by the Corporation in completing the Work and damages for delay in completion, if any.

The Contractor shall be entitled to receive the balance of the Contract Price less the costs and expenses referred to in (b) above, or if such costs and expenses exceed the Contract Price, the Contractor shall pay such excess to the Corporation on demand.

(4) The Corporation shall have the option, under the provisions of Section 00500, Clause 6.3.3, to be exercised in its absolute discretion, to terminate the right of the Contractor to perform any part or parts of the Work and permit the Contractor to continue to perform the rest of the Work. The Contractor shall receive payment for that part or parts of the Work which he is permitted to perform in accordance with the Contract Documents except for the progress payments following partial or final acceptance and the release of builders' lien holdback funds. These payments will not be made until the Corporation has made his determination of costs as required by Section 00500, Clause 6.3.3(3).

6.3.4 If the Contract is terminated by the Corporation through no fault of the Contractor, the Corporation will pay to the Contractor in addition to the payments for "Extra Work" and "All of the Work done" as set out in Section 00500, Clauses 6.3.1 and 6.3.5, in full and complete satisfaction and settlement, an amount equal to:

(1) the actual cost of any overhead up to the termination date unrecovered and the actual necessary costs of demobilization plus an amount equal to five (5) percent of the foregoing two items,

(2) a reasonable amount for loss of anticipated profit on the Contract, and

(3) unrecovered actual necessary expenses incurred by the Contractor for the Work.

The Contractor shall be entitled to no further payment whatsoever in respect of the Work. On completion of the Work to the satisfaction of the Corporation, the Contract shall be deemed to be at an end and of no further force or effect, except for the provisions of Section 00500, Clauses 4.4.1, 4.4.2 and 5.1 and any other section providing for monies due to the Corporation, or financial obligations of the Contractor to the Corporation which shall survive the termination. Except as hereinbefore provided, the Contractor shall have no claim against the Corporation for any reason whatsoever by reason of the termination of the Contract.

6.3.5 For the purposes of Section 00500, Clause 6.3.4, "All of the Work done" includes all materials ordered by the Contractor prior to the date of receipt of such notice of termination, whether or not they have been delivered to the Work Site. The amount of the payment for all such materials shall be their actual necessary cost to the Contractor up to the date of the receipt of such notice of termination. Upon receipt of such notice of termination, all the Contractor's rights, title, and interest in and to the said materials mentioned in this clause shall be vested in the Corporation, and the Contractor shall upon demand of the Corporation execute and deliver to the Corporation all requisite bills of sale, assignments or other documents of transfer that may be necessary to give effect to the intention of this section.

6.4 CLEANUP

6.4.1 The Contractor shall remove all waste materials and rubbish that originates from the Work and shall dispose of such materials in a manner acceptable to the Engineer and in accordance with all Municipal, Provincial or Federal laws and regulations.

6.4.2 After completion of the Work, the Contractor shall remove from and about the Work Site all Contractor's Plant and Equipment, articles, loose materials, waste materials, rubbish and every other thing brought to the Work Site by the Contractor, which is not part of the Work, and shall leave the Work Site in a clean and presentable condition, free from all obstruction and ready for use by the Corporation.

6.4.3 If the Contractor fails to perform its obligations set out in the Contract Documents to the satisfaction of the Engineer, the Corporation may, either by itself, or by employing another person, perform those obligations and charge all such actual necessary expenses to the Contractor.

6.5 PROTECTION OF ENVIRONMENT

6.5.1 The Contractor shall take all reasonable and necessary measures to ensure that any activities undertaken in the performance of the Work are conducted in such a way as to minimize any disturbance or damage to the environment, including all governing federal, provincial and local laws, regulations and bylaws.

6.5.2 The Contractor shall not destroy, remove or clear trees, timber or shrubs or disturb watercourses to any extent greater than is necessary for the performance of the Work.

6.5.3 The Contractor shall comply with any directions given by the Corporation or the Engineer to protect and preserve the environment.

6.5.4 If a direction under Section 00500, Clause 6.5.3 imposes a requirement greater than that imposed elsewhere under the Contract, the Contractor may, within fifteen (15) Days of complying with the direction, request a change order.

6.5.5 The Contractor shall be fully responsible for and shall indemnify and save harmless the Indemnified Parties from all penalties, costs, loss and damages resulting from the failure of the Contractor to comply with all environmental laws or regulations during performance of the Work, including but not limited to payment of all legal and expert costs arising out of legal proceedings in respect of such failure and all remediation costs to remedy such failure to the standards required by environmental authorities.

**PART 7 PAYMENT**

7.1 PAYMENTS TO CONTRACTOR

7.1.1 Breakdown of Contract Prices

Except on items where the basis for payment is unit prices, the Contractor shall, within seven (7) Days of receipt of notice from the Corporation, submit to the Corporation a full and complete breakdown of the Contract Price showing the value assigned to each part of the Work including an allowance for profit and overhead. In submitting the breakdown, the Contractor shall certify that the value assigned to each part of the Work represents the estimate of the actual cost, including profit and overhead, of performing that part of the Work. The breakdown shall be sufficiently detailed to permit its use by the Engineer as one of the bases for evaluating progress payments.

7.1.2 Progress Payments

(1) The Engineer, acting reasonably, shall determine the applicable progress payment period and advise the Contractor in writing.

(2) The Contractor shall submit to the Engineer no later than the fifth day of each progress payment period an invoice request for a progress payment signed by the Contractor covering Work performed during the applicable progress payment period. For the purpose of this section the "applicable progress payment period" shall be determined by the Corporation. If requested by the Engineer, the Contractor shall provide such additional information as may be reasonably required to support the request for a progress payment. Such information may include satisfactory evidence of payment for equipment, materials and labour including payments to subcontractors and suppliers. Request for a progress payment for delivered equipment and material shall be accompanied by certified invoices from the suppliers

(3) The Engineer will review the progress payment request and recommend to the Corporation the amount of the progress payment to be made to the Contractor. Subject to Section 00500, Clause 7.1.2(4), holdbacks and receipt of documents as provided in Clauses 7.1.2(5) and 7.1.2(6) the Corporation will within thirty (30) Days after receipt of the Contractor's request, make payment to the Contractor.

(4) In addition to any other remedy the Corporation may have in the Contract or law, the Engineer may refuse to recommend any payment or, because of subsequently discovered evidence or test results, may nullify any payment previously recommended to such extent as may be necessary in the Engineer's opinion to protect the Corporation from loss as a result of:

(a) Contractor's default under any provision of the Contract Documents;

(b) Defective or damaged Work;

(c) A deductive change order;

(d) Persistent failure of the Contractor to perform the Work in accordance with the Contract Documents, including failure to maintain the progress of the Work in accordance with the construction schedule;

(e) Disregard by the Contractor of the authority of the Corporation or the Engineer or the laws of any public body having jurisdiction;

(f) Claims made against the Corporation on account of the Contractor's performance of the Work.

(5) Notwithstanding Section 00500, Clause 7.1.2(4), the Corporation may withhold from any progress payment request:

(a) The appropriate builders lien holdback;

(b) Any set-off the Corporation may be entitled to under the Contract;

(c) The amount of any bona fide builders lien claim asserted against the Corporation or which the Corporation acting reasonably anticipates will be made against the Corporation; and

(d) Such reasonable amount as the Corporation determines appropriate arising out of the Work not being completed in accordance with the construction schedule or otherwise not in compliance with the Contract Documents.

(6) Notwithstanding progress measurements or payments to the Contractor, the Contractor is responsible for performing the Work in accordance with the Contract Documents. The Contractor acknowledges that any progress measurements and progress payments are estimates only, and do not represent a final measurement or an acceptance of the Work by the Corporation or the Engineer.

7.1.3 Deficiencies, Certificate of Completion and Payment Upon Substantial Completion

(1) When the Contractor considers that the Work is Substantially Complete it shall request the Engineer in writing to inspect the Work. If the Engineer considers the Work to be Substantially Complete, the Engineer shall:

(a) inspect the Work and prepare a list (the "Deficiency List") of the Work which is not in accordance with the Contract Documents or is otherwise incomplete, defective, or deficient (the "Deficient Work") and shall fix a date in the Deficiency List by which the Deficient Work shall be completed. The Engineer shall deliver the Deficiency List to the Contractor;

(b) notify the Contractor in writing of the Substantial Completion Date;

(c) issue a Certificate of Completion;

(d) issue a Notice of Certificate of Completion.

(2) The Engineer shall establish a value in his absolute discretion appropriate for the Deficient Work and the Corporation shall be entitled to hold back twice that value (the "Deficiency Holdback") until the Deficient Work is completed to the satisfaction of the Engineer.

(3) If in the Engineer's opinion the Contractor has not completed the Deficient Work to the satisfaction of the Engineer within a reasonable period of time, such reasonable period of time to be determined by the Engineer, the Engineer may stipulate in writing to the Contractor a date or dates by which the Deficient Work must be completed by the Contractor. If the Contractor does not complete the Deficient Work to the Engineer's satisfaction by the stipulated date or dates, the Corporation may retain another contractor to perform the Deficient Work. In the event the Corporation does retain another contractor to complete the Deficient Work, the Contractor shall be responsible for all cost and expense of whatsoever kind or nature incurred by the Corporation as a consequence of the Contractor's failure to complete the Deficient Work within the time stipulated by the Engineer, including but not limited to the cost and expense to retain another contractor and additional costs to the Engineer.

(4) If the Corporation incurs any cost or expense as a consequence of the Contractor's failure to complete the Deficient Work within the time stipulated by the Engineer, the Corporation may apply the Deficiency Holdback to pay for such cost or expense. If there is any shortfall between the amount of the Deficiency Holdback and the cost and expense incurred by the Corporation, the Contractor shall be liable for the shortfall.

(5) Notwithstanding the provisions of Section 00500, Clause 7.1.3(1) and notwithstanding the wording of the Deficiency List, the Contractor shall be responsible for the correction of all Deficient Work regardless of whether it was apparent or expressly identified on the Deficiency List when it was first issued.

(6) Provided the Contractor is otherwise in compliance with the Contract Documents on the Substantial Completion Date, the Corporation shall pay the balance of the Contract Price less:

(a) The appropriate builders lien holdback;

(b) Any set-off the Corporation may be entitled to under the Contract;

(c) The amount of any bona fide builders lien claim asserted against the Corporation; and

(d) The Deficiency Holdback.

7.1.4 Notice of Acceptance and Final Progress Payment

(1) When the Contractor is of the opinion that it has completely performed the Deficient Work, it shall request the Engineer in writing to make a final inspection. The Engineer will make an inspection and if the Deficient Work has been completed and corrected and the Contractor has submitted to the Engineer a statement in writing that all claims and demands of the Contractor for extra work or otherwise, arising out of or related to the Contract, have been submitted to the Engineer, the Engineer will recommend to the Corporation that a Notice of Acceptance be delivered to the Contractor.

(2) Prior to the issuance of the Notice of Acceptance by the Corporation, the Engineer may review with the Contractor any outstanding requests for change orders, or claims for extra work or otherwise arising out of or related to the Contract. The Corporation may in its

sole discretion issue the Notice of Acceptance and make the final progress payment pending the resolution of any outstanding requests for change orders or claims for extra work or otherwise, or the Corporation may decline to issue the Notice of Acceptance and withhold payment until all the requests for change orders, or claims for extra work or otherwise have been resolved between the Corporation and the Contractor.

(3) When the Corporation is prepared to issue the Notice of Acceptance, the Engineer will prepare a final progress payment certificate which will show the total amount due to the Contractor less:

(a) the aggregate value of all previous progress payments;

(b) and may show the builders lien holdback if the Deficient Work is completed before the expiry of the holdback period of the Builders Lien Act.

(4) Prior to payment of any monies under Clause 7.1 the Contractor, if requested by the Corporation, shall deliver to the Corporation a statutory declaration in a form satisfactory to the Corporation declaring that:

(a) all subcontractors, labour and accounts for material and Contractor's Plant and Equipment have been paid;

(b) no persons, firms or corporations have a lien against the lands comprising the Work Site or the Work;

(c) the Contractor is in good standing with Work Safe BC;

(5) In addition to a statutory declaration, the Contractor shall provide such other documentation as the Corporation or Engineer determines is necessary or desirable.

7.1.5 Payment of Builders Lien Holdback

(1) Subject to the registration or existence of any builders lien or claim of builders lien or other liens for labour, services, Contractor's Plant and Equipment or materials relating to the Work Site or the Work, or the existence of an action related to the builders lien holdback, the Corporation shall pay the builders lien holdback as soon as practicable after the expiry of the holdback period of the Builders Lien Act.

(2) Notwithstanding the foregoing, the Contractor shall be entitled to receive from the holdback retained by the Corporation, an amount equal to the amount applicable to a subcontract if,

(a) a certificate of completion has been issued in respect of the subcontract to which the Contractor was a party, and a copy has been provided to the Engineer; and

(b) the applicable builders lien holdback period has expired without any claims of lien being filed that arose under the subcontract.

(3) The payment of holdback pursuant to Section 00500, Clause 7.1.5, or the issuance of a Certificate of Completion with respect to the Contract or subcontracts, shall be for the purposes of the Builders Lien Act only and shall not alter or affect the terms and conditions of the Contract, and without limiting the generality of the foregoing, the Contractor's obligation to complete the Work without deficiency.

(4) The payment of monies under Section 00500, Clause 7.1 shall not of itself be deemed to be acceptance of the Work for the purpose of the extinguishment of any covenant or agreement on the part of the Contractor to be performed or fulfilled under the Contract, which has not been performed or fulfilled under the Contract, all of which covenants and agreements shall continue to be binding on the Contractor.

7.1.6 Builders Liens

Without limiting the generality of Section 00500, Clause 5.1 the Contractor shall, at its own cost and expense, cause any and all builders liens and other liens for labour, services, Contractor's Plant and Equipment or materials alleged to have been furnished with respect to the lands comprising the Work Site or the Work which may be registered against or otherwise affect the said lands or the Work, except liens properly filed by the Contractor on its own behalf, to be paid, satisfied, released or vacated forthwith after the Corporation has sent to the Contractor written notice of any claim for any such lien. In the event of a bona fide dispute of the validity or correctness of any claim for any such lien, the Contractor shall be entitled to defend against the claim for such lien in any proceedings brought in respect thereof after first paying into court the amount claimed or sufficient security therefor and such costs as the court may direct and registering all such documents as may be necessary to cancel such lien, or providing such other reasonable security in respect of such claim as the Corporation may be in writing approve. Upon

receiving satisfactory security for its costs and an indemnity in writing, the Corporation will authorize the Contractor to apply to the court in the name of the Corporation to have any lien removed upon payment into court or deposit in court of satisfactory security therefor.

7.2 CHANGE ORDERS

7.2.1 The Corporation may at any time make any change in the Work within the general scope of the Work including an acceleration of the Work or any portion thereof by issuing a change order to the Contractor.

7.2.2 No changes in the Work shall proceed without a change order issued by the Corporation and no request for a change in the Contract Price or change in the Contract time may be made unless such an order has been made.

7.2.3 A change order may or may not result in a change in the amount of the Work or in the cost of the Work. If a change order does result in an increase in the cost of the Work or a decrease in the cost of the Work, unless the parties agree otherwise, that increase or decrease in cost shall be calculated as set out in Section 00500 Clause 7.3 or Clause 7.4.

7.2.4 When a change in the Work is proposed by the Contractor, it shall present to the Engineer for review the Contractor's request, if any, for a change in the Contract Price or change in Contract time with appropriate documentation in a form acceptable to the Engineer.

Within fifteen (15) Days of receipt of the Contractor's request, the Engineer will in writing advise the Contractor of its decision to reject the request, or make a recommendation to the Corporation.

7.2.5 When a change in the Work is requested of the Contractor, the Contractor will be advised of the change by the Engineer. In response to a request for pricing, the Contractor shall present to the Engineer for review the Contractor's proposal, if any, for a change in the Contract Price or change in the Contract time with appropriate documentation in a form acceptable to the Engineer.

The Engineer will make a recommendation to the Corporation within fifteen (15) Days of receipt of the Contractor's proposal. The Corporation will make a written decision within seven (7) Days of receipt of the recommendation and the Engineer will give the decision to the Contractor.

7.2.6 The value of the Work performed in the change order shall be included for payment with the regular progress payments.

7.2.7 The change in the Contract Price stated in the change order shall be conclusively deemed to be the total cost of all work required by and consequent upon the change order. No other request or claim by the Contractor for additional costs may be made by the Contractor or will be considered by the Corporation.

A change in the Contract time stated in the change order is the only change to be made to the Contract time consequent upon the change order. No other request or claim by the Contractor for additional time may be made by the Contractor or will be considered by the Corporation.

7.2.8 The Contractor shall be conclusively deemed to have waived any right it may have for an adjustment of the amount to be paid for the Work under Section 00500, Clauses 7.2.4, 7.2.5, 7.3 or elsewhere under the Contract if the Contractor does not make the request within any required time.

7.2.9 The Contractor shall keep accurate records, as agreed upon, of quantities or costs and present an account of the cost of the change in the Work, together with vouchers where applicable.

7.3 EXTRA WORK

7.3.1 Definition

Extra work means the furnishing of materials and equipment or the doing of Work not directly or by implication called for in the Contract. If the Corporation requires extra work it may do it itself or by the employment of others or it may direct the Contractor to do the extra work by the issuance of a change order on the following basis:

(1) Unit prices as defined in the Tender if applicable, or if not defined as agreed between the Corporation and the Contractor;

(2) Mutually agreed upon lump sum, or

(3) Time and materials.

7.3.2 Unit Prices

For extra work carried out under tendered unit prices, the tendered unit price shall be all inclusive and no other payment whatsoever shall be made on this account.

7.3.3 Mutually Agreed Upon Lump Sum

For extra work carried out on a mutually agreed lump sum basis, the allowance for overhead, profit, general superintendence, use of plant and equipment, subcontractor's costs for work performed by a subcontractor, and any other cost or expense associated with the extra work shall be fifteen (15) percent. No other payment whatsoever shall be made on this account.

7.3.4 Time and Materials

For extra work carried out on a time and materials basis, the Contractor shall keep an accurate record in a manner approved by the Engineer of all the actual necessary expenses pertaining thereto and make such records available to the Engineer for inspection and verification within 24 hours of the work taking place. The extra work shall be paid for on the basis of the actual necessary expense to the Contractor of doing the extra work plus an allowance of fifteen (15) percent of the actual necessary expense to the Contractor to cover overhead, profit, general superintendence, use of plant and equipment, subcontractor's costs for work performed by a subcontractor, and any other cost or expense associated with the extra work. No other payment whatsoever shall be made on this account.

7.3.5 No Extra Work Without Written Authority

No work regarding changes in the specifications or other Contract Documents or work extra to that originally contracted for shall be undertaken or commenced without prior written authority from the Engineer or the Corporation.

7.3.6 Request For Change

If the Contractor intends to make a request for a change in the Contract Price or a change in the Contract time under this section, it must, within fifteen (15) Days after receipt of a written change order or the furnishing of a written notice, submit to the Engineer a written statement setting forth the general nature and monetary extent of such request. Nevertheless, the giving of such a written statement to the Engineer shall not relieve the Contractor of its obligations to carry out and obey such orders and instructions.

7.3.7 Actual Necessary Expense

In this clause, "actual necessary expense" means the sum of the following items:

(1) Materials and Equipment: Actual costs for materials and equipment provided by the Contractor and necessarily used in the Work and shall include applicable taxes;

(2) Labour: The cost of labour shall be the sum of actual wages, labour surcharge, and subsistence and travel allowances. Actual wages paid shall include employer payments to or on behalf of the worker for health and welfare, pension, vacation and similar purposes. The labour surcharge includes applicable labour related taxes, and Workers' Compensation assessments, and other legally required costs directly related to labour. Where subsistence and travel allowance are required for performance of extra work, the charges shall consist of the actual amount paid to each worker for these items.

(3) Supervision: If, in the Engineer's judgement, full-time supervision of the extra work is required, it will be authorized in writing by the Engineer and charges for such supervision will be included as an actual necessary expense. Charges for supervision of the extra work by the Contractor's representative are not regarded as part of actual necessary expense.

(4) Construction Equipment: Charges for the use of construction equipment required in the performance of extra work shall be based on rental rates set forth in the Contract Documents, and if not set out will be according to the latest edition of the B.C. Roadbuilder's Rental Rates. For equipment not listed, the rental rate will be mutually agreed upon in writing between the Contractor and the Engineer. The reasonable cost of moving equipment onto and off the Work Site shall be included. If equipment is transported to the Work Site, the rental cost of the transporting of the equipment only shall be charged. Equipment rental shall not be paid when the equipment is inoperative due to breakdowns. Individual pieces of equipment or small tools having a replacement value of $1000 or less shall be considered expendable and no payment therefor shall be made. When equipment is used on the extra work for less than five Days, hourly rates shall be used. Less than 30 minutes of operation shall be considered one-half hour of operations. When equipment is used on the extra work for more than five Days, daily rates shall apply. In this case, less than four hours of operation shall be considered to be one-half day of operation.

(5) Professional Services: Professional services shall be included in "actual necessary expense" only if the Engineer has determined that such

services are necessary and has authorized in writing the provision of such services.

(6) Other Costs: Charges for items not included in the foregoing may be included as "actual necessary expense" if such additional items are authorized in advance and in writing by the Engineer.

7.4 WORK AND MATERIALS OMITTED

The Contractor shall, when ordered by change order omit Work or material to be done or furnished under the Contract Documents and the value of the omitted work or material will be deducted from the total Contract Price. The value of omitted work or material will be determined by the Engineer acting reasonably.

7.5 EARLY POSSESSION OF PORTIONS OF WORK

7.5.1 The Corporation upon giving to the Contractor fifteen (15) Days written notice shall be entitled to take early possession of and use any portion or portions of the Work provided that such taking of early possession does not impede the Contractor's progress on the balance of the Work. Such early possession shall not unless otherwise specified affect the balance of the Work nor be deemed an acceptance of any portion of the Work.

7.5.2 The taking of early possession under Section 00500, Clause 7.5.1 shall not be deemed to be Substantial Completion or acceptance of any portion or of the whole of the Work and the Contractor shall not be entitled to be paid any builders lien holdback in respect of such Work until all of the Work has been Substantially Completed as defined in Clause 1.1.

**END OF SECTION**