

CCDC 5B – 2010 – Construction Management Contract – for Services and Construction

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Summary

CCDC 5B, 2010 - *Construction Management Contract – for Services and Construction* became available in late 2010, after a number of years of development by the Canadian Construction Documents Committee (CCDC). The document replaces the older Canadian Construction Association Document - CCA 5, 1988. Whereas the old CCA-5 did not make a clear separation between the construction manager's (CM) consulting services and the construction services, the new CCDC 5B and CCDC 5A cover distinct types of service.

This Practice Tip (PT) provides an overview of CCDC 5B and identifies recommended amendments, supplementary conditions and procedural cautions.

Background

In November, 2010, CCDC published a new suite of three standard contract forms for construction management:

- CCDC 5A Construction Management Contract – for Services” (replaces the old CCA 5-1988, also referred to as CM as Agent)
- CCDC 17 Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects” (replaces the old CCA 17-1996)
- CCDC 5B Construction Management Contract – for Services and Construction” (is brand new, also referred to as CM at Risk)

The CM's fee consists of two components:

- (1) Fee for the *Price of the Services* which can be a fixed amount, percentage amount of the *Construction Cost Estimate*, or an amount based on time-based rates.
- (2) Fee for the *Work* which can be a percentage fee of the *Price of the Work* or a fixed fee.

In addition, the *Contract* contains two options related to the CM's fees which may be executed at the time of signing of the *Contract* or later on by way of a *Change Order*. These options are:

- (1) *Guaranteed Maximum Price (GMP)*
- (2) *Guaranteed Maximum Price plus % cost savings*

A third option is to change the *Contract* to a *Stipulated Price Contract* in accordance with the amendment provided in the *Contract Appendix*.

In CCDC 5B the CM's fee consists of two components: 1) a fee for *Services* and 2) a fee for carrying out the construction. The *Cost of the Work* is separate. The *Contract* contains options for fee types: fixed or percentage or combination, for a *GMP*, a *GMP plus % cost savings* and also an option to convert the *Contract* into a *Stipulated Price Contract* via amendments provided in an Appendix . These options can be implemented at the time of signing of the *Contract* or later on by way of a *Change Order*.

This PT does not make an exhaustive analysis of the *Contract*, but highlights content significant to architects and identifies recommended amendments, supplementary conditions and procedural cautions.

The Ontario Association of Architects (OAA) supports and endorses the concept of industry standard contracts as produced by the CCDC.

The OAA established a review process for the CCDC 5B, 2010 version and the Council endorsed its use subject to recommended supplementary conditions issued by the OAA. The “Amendments and Supplementary Conditions” recommended for CCDC 5B are similar to those recommended by the OAA for CCDC 2 – 2008, as they are both construction contracts with virtually identical wording.

It is unusual for either architects and/or clients to utilize CCDC contracts without any supplementary conditions. The publishing of these recommendations does not preclude the incorporation of additional items by clients and/or architects in order to address specific project conditions. The wording suggested in PTs is not a substitute for involvement of legal counsel. Clients should be advised to discuss specific wording and the inclusion of amendments and supplementary conditions with their own legal counsel.

Overview of the OAA Recommended Amendments and Supplementary Conditions (not including Appendix for Stipulated Price Option)

The explanation for the concerns are listed below and referenced as individual items or in groups where the concern relates to more than one location in the text of the *Contract*. The actual wording of the amendments and supplementary conditions is in the attachment to this PT.

Negotiation, Mediation and Arbitration (GC 8.2)

The Alternative Dispute Resolution (ADR) (negotiation-mediation-arbitration) amendments relate to the procedure for resolution of construction disputes. The OAA continues to have serious concerns that where the architect is excluded from the arbitration process, he/she may be unable to defend his/her position and in effect is tried in absentia.

The recommended amendments and supplementary conditions provide that, in the event of arbitration between the *Owner* and *CM*, the *Consultant* will receive notification, including any issues that may involve the *Consultant*. At that time, the *Consultant*, after consultation with his/her insurer and legal counsel may elect to become a full party to the arbitration.

Indemnification of the *Consultant* (GC 1.1.2.2 / 9.2.7.4 / 9.5.3.4 and 12.1.1.3)

The requirement for the *CM* and/or *Owner* to indemnify the *Consultant* in situations which were caused by the actions of either of the two parties to the *Contract* has been deleted and may be detrimental to the interests of the *Consultant*. The indemnification provisions for the *Consultant* existed in previous versions of the CCDC contract and the OAA recommends that it continue to be included by means of supplementary conditions.

Construction Manager’s Standard of Care (GC 3.4.1 / 3.4.2 / 3.14 / 6.4.5 / 9.1.1.1 / 9.1.2 / 10.2.5 / 12.3.2)

In order to clarify the responsibilities of the *CM*, a supplementary condition GC 3.14 Performance by Construction Manager has been added and cross-referenced in the other paragraphs and sub-paragraphs noted above. The standard of care is the test currently utilized by the courts and the addition of this supplementary condition highlights its importance.

Other Concerns (listed in same order as *Contract*)

- Article A-10: Article revised to delete “electronic communication” as an acceptable form of communication for *Notices in Writing* and to change the deemed date of receipt of such notices.
- Definitions: Added definition for *Submittals* which are not included under the new definition for *Shop Drawings*.
- Sub-paragraph 1.3.2: Amended wording to include the *Consultant*, thereby being consistent with the wording in CCDC 2, 2008.
- Paragraph 2.2.2: Amended wording to include the *Owner*, thereby being consistent with the wording in CCDC 2, 2008.

- Paragraph 2.3.9: Added waiver by *Owner* and *CM* to protect *Consultant* against claims arising out of interpretations and findings which are consistent with intent of the *Contract Documents* and do not show partiality to either party to the *Contract*.
- Paragraph 2.3.10: Caution – *Consultant* should be aware that interpretations and findings are to be made in writing within a reasonable time.
- Paragraph 2.3.11: The *Consultant* is required to make findings with regard to claims for a change in *Contract Price* regardless of the size, quantity or number of claims. Caution - Negotiate the client/architect contract with the necessary provision to be able to obtain fees for making findings on claims where the size, quantity or number are extensive. (See *Instructions for Completing The Ontario Association of Architects Standard Form of Contract for Architect's Services, Document 600, 2008.*)
- Sub-Paragraphs 2.5.1.1 / 2.5.1.2: Added sub-paragraphs to emphasize that the *CM* is responsible for all defective *Work* and cannot rely only on the *Consultant* to identify such items. Also, the *CM* must schedule the corrective action so as not to affect the *Owner's* day-to-day operations.

Paragraph 3.1.3: Added paragraphs to reinforce the *CM's* responsibility to properly co-ordinate the *Work*.

- Paragraph 3.6.2: Caution: The paragraph now clarifies that information and instructions provided by the *Consultant* to the *CM* appointed representative are deemed to have been received by the *CM*. The converse of this is that if instructions are provided to a person other than the appointed representative, the *CM* may argue that the instructions were never received. The *Consultant* must be careful that instructions given to others are followed up with written confirmation to the appointed representative to avoid any risks to the *Owner*. Such instructions should be confirmed by means of supplemental instructions, site visit reports, minutes of meeting, contemplated change order, or other written format and copied to the appointed representative.
- Paragraph 3.8.3: Added new paragraph clarifying the *CM's* responsibility for safe on-site storage and protection of *Products*.
- Article 3.10: Added "*Submittals*" to the title and throughout the article as the process for handling *Submittals* is similar to *Shop Drawings*.
- Paragraph 3.10.3: Amended to state that the *CM* and *Consultant* shall prepare a schedule related to *Shop Drawing* review. The *Consultant* should review the schedule for completeness of all required *Shop Drawings* and *Submittals* and allotted review times for the *Consultant's* review.
- Paragraph 3.10.12: Deleted the reference to causing a delay and added a time period for the *Consultant's* review.
- Article 4.1: Amended paragraphs 4.1.4 to clarify that unexpended funds from one cash allowance can be reallocated to avoid shortfalls in other cash allowances. This avoids mark-ups for overhead and profit on a shortfall while no credit for same is being offered where there are unexpended funds in some cash allowances.

Caution: It is necessary to specifically define the scope of work or costs included in such cash allowance in the *Contract Documents*. If, as an example, it is not defined that freight, installation and construction equipment, etc. are included, the cost of such items will be treated as a change to the *Contract Price* with overhead and profit mark-ups.

- Paragraph 4.1.7: Amended to clarify the procedure for establishing the schedule of procurement of cash allowance items.
- Paragraph 4.1.8: Added paragraph to confirm the *Owner's* right to obtain competitive bids for cash allowance items.

- Paragraph 5.5.1: Caution: It should be recognized that the requirement for the *CM* to deliver to the *Consultant* and *Owner* within one working day, a comprehensive list of if items to be completed or corrected after considering the *Work* as being substantially performed may be unrealistic due to the scope and status of the *Project*.
- Paragraph 6.5.1: Amended to exclude the payment by the *Owner* to the *CM* of any consequential, indirect or special damages in the case of delays caused by the *Owner* or anyone employed or engaged by them.
- Paragraph 6.5.6: Added to clarify that *Owner* shall be reimbursed by the *CM* for all reasonable costs incurred, including *Consultant's* fees for additional services that arise out of a delay caused by the *CM*. Caution: If the *Consultant's* fees for additional services become a matter of dispute between the *CM* and *Owner*, the *Consultant* must refrain from making a finding due to a conflict of interest.
- GC 9.2 – Paragraphs 9.2.6 and 9.2.8: Amended to address the situation where toxic and hazardous substances already exist on the site and have been dealt with in accordance with legal and regulatory requirements, but subsequently threaten health and safety or the environment due to the actions of the *CM*.
- CG 12.3: Caution: Practices should clearly specify the scope of work to be covered by an extended warranty, as the warranty may relate only to materials or also include labour for installation of the replacement material plus the making good of the parts of the *Work* affected by the replacement. In addition, the warranty may require more than one warrantor as the material supplier and installer may be two different entities.

Overview of the OAA Recommended Supplementary Conditions for Stipulated Price Option - Appendix

If the *Owner* and *CM* agree to convert the CCDC 5B contract to a *Stipulated Price Contract* as per Article A-8, paragraph 8.4, then the following amendments and supplementary conditions are recommended for use in conjunction with the amendments and supplementary conditions for the base contract CCDC 5B, as noted above.

Unless a definite decision is made at the time of signing CCDC 5B that the Stipulated Price Option will not be exercised, then these amendments and supplementary conditions should be included as part of the recommended changes to the CCDC 5B contract.

The wording of these amendments and supplementary conditions are similar to those developed and endorsed for CCDC 2, 2008, as explained in PT.23.1 with the exception that those paragraphs, sub-paragraphs and clauses which have already been amended for the main part of the CCDC 5B contract, do not need to be repeated again.

Suggested Procedure

1. Familiarize yourself in detail with CCDC 5B and other documents listed under “References” below, as well as those which will be issued in the future as more experience develops in the use of the new contract.
2. Carefully review and identify all of the consultant's various defined responsibilities in the new CCDC 5B version and co-ordinate with the client/architect contract so that fair and reasonable fees are established for the CCDC 5B defined services and provisions are made for additional services which arise during construction and which could not be previously determined. The defined role of the consultant in the new CCDC 5B version may have increased the level of your services in some areas due to the construction delivery process being construction management.

In addition, determine if CCDC 5B with the Stipulated Price Option is going to be converted to a CCDC 2, *Stipulated Price Contract*, and the effect which it may have on the level of the architect's services.

3. It is a good practice to review the more significant changes in the contract and any proposed amendments with your client prior to using CCDC 5B on their project. While you can appropriately share with your client your understanding and experience with construction management projects, remember to avoid giving legal advice.

4. *OAA Standard Form of Contract for Architect's Services – Document 600, 2008* is co-ordinated with CCDC 5B, 2010. For example, procedures for the use of ADR between client and CM are included in OAA Document 600. Use the latest version of Document 600, especially when your client intends to employ the CCDC 5B ADR process. If using other standard RAIC forms, include the procedures outlined in Document 600 for the use of ADR procedures by the client in the owner/CM contract.
5. The OAA supports and endorses the concept of standard industry documents as are produced by CCDC. Care is taken to attempt to co-ordinate CCDC and OAA/RAIC documents. For example, the role of the consultant in CCDC 5B as amended parallels the description of the architect's services during construction in the standard architect/consultant contract except as noted herein and in the recommended *Amendments and Supplementary Conditions*. Recommend to your clients the use of industry recognized documents. It is good practice to keep supplementary conditions to a minimum.

References

1. [CCDC website](#) – contracts and guides.
2. PTs 23.3 & 23.5 re: CCDC 5A & 17.
3. PT.26 – Conflict of Interest Guideline.
4. RAIC CHOP Chapter 2.3.2 *Types of Construction Project Delivery*, 2.3.7 & 2.3.8.
5. The [AIA Website](#) (Search for “construction management”)

Attachments:

1. Recommended Amendments and Supplementary Conditions for Construction Management Contract – for Services and Construction, CCDC 5B, 2010
2. Recommended Supplementary Conditions for Construction Management Contract - for Services and Construction, CCDC 5B, 2010, Attachment for Stipulated Price Option (Appendix)

The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.

Recommended Amendments and Supplementary Conditions for Construction Management Contract – for Services and Construction, CCDC 5B –2010

CCDC 5B – 2010 - Construction Management Contract – for Services and Construction

The following pages are the recommended amendments and supplementary conditions for the CCDC 5B, 2010 Base Contract. To incorporate their use you can copy/paste from the following Word document into the front end of the project manual specifications with appropriate headings and footers with the project name, practice name, specification section, page numbers etc. utilizing the standard specifications section/page format. Coordinate the sequence and numbering with other amendments or supplementary conditions.

Note that the CCDC 5B also contains an Appendix that convert the contract into a Stipulated Price Option which can be implemented by the parties at the time of the signing of the contract or later on via a change order. The OAA recommended supplementary conditions that apply to the utilization of the Appendix are contained in a separate attachment to Practice Tip PT.23.4.

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Recommended AMENDMENTS and SUPPLEMENTARY CONDITIONS for: Construction Management Contract – for Services and Construction, CCDC 5B – 2010

Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, General Conditions, these amendments, additions and modifications shall govern.

Amendments to Articles

ARTICLE A-10 – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- Delete the words ‘or other form of electronic communication’ after the words ‘or by facsimile’ in paragraphs 10.2 and 10.4.

AMENDMENTS TO DEFINITIONS

DEFINITIONS

Add the following definition:

Submittals

Submittals are documents or items required by the *Contract Documents* to be provided by the *Construction Manager*, such as:

- *Shop Drawings*, samples, models, mock-ups to indicate details or characteristics, before the portion of the *Work* that they represent can be incorporated into the *Work*; and
- As-built drawings and manuals to provide instructions to the operation and maintenance of the *Work*.

SUPPLEMENTARY CONDITIONS

GC 1.1 CONTRACT DOCUMENTS

- Add to the end of sub-paragraph 1.1.2.2
‘... , except where the *Consultant* shall be indemnified as a third party beneficiary as provided in subparagraphs 9.2.7.4, 9.5.3.4 and in 12.1.1.3.’

GC 1.3 RIGHTS AND REMEDIES

- Delete the words ‘either of the parties to this Contract’ in the second line of paragraph 1.3.2 and add the words ‘any of them under this Contract’ after the words ‘or duty afforded.’

GC 2.2 AUTHORITY OF THE CONSULTANT

- In paragraph 2.2.2 after the words ‘of the Construction Manager’, delete the words ‘following consultation with the Consultant’ and add the words ‘Owner and Consultant.’

GC 2.3 CONSULTANT’S RESPONSIBILITIES

- Add at the end of paragraph 2.3.9 ‘The Owner and the Construction Manager waive any claims against the Consultant arising out of the making of such interpretations and findings made in accordance with paragraphs 2.3.7, 2.3.8 and 2.3.9.’

GC 2.5 DEFECTIVE WORK

- Add new subparagraphs 2.5.1.1 and 2.5.1.2:
 - .1 The *Construction Manager* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.
 - .2 The *Construction Manager* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner*.

GC 3.1 CONTROL OF THE WORK

- Add new paragraph 3.1.3:
 - 3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Construction Manager* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or contradictions exist, or exact locations are not apparent, the *Construction Manager* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected work.

GC 3.4 REVIEW OF DRAWINGS, SPECIFICATIONS AND MATERIAL AND FINISH SCHEDULES

- Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:
 - 3.4.1 The *Construction Manager* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Construction Manager* may discover. If the *Construction Manager* does discover any error, inconsistency or omission in the *Contract Documents*, the *Construction Manager* shall not proceed with the work affected until the *Construction Manager* has received corrected or missing information from the *Consultant*.
- Delete paragraph 3.4.2 in its entirety and substitute new paragraph 3.4.2:
 - 3.4.2 Such review by the *Construction Manager* shall comply with the standard of care described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Construction Manager* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Construction Manager* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Construction Manager* could not reasonably have discovered.

GC 3.8 LABOUR AND PRODUCTS

- Add new paragraph 3.8.3:
 - 3.8.3 The *Construction Manager* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and other contractors to be installed under the *Contract*) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner*.

GC 3.10 SHOP DRAWINGS

- Add the words 'AND OTHER SUBMITTALS' to the Title after SHOP DRAWINGS.
- Add 'and Submittals' after the words 'Shop Drawings' in paragraphs 3.10.1, 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, 3.10.11 and 3.10.12.
- Delete 3.10.3 in its entirety and substitute new paragraph 3.10.3
3.10.3 Prior to the first application for payment, the Construction Manager and the Consultant shall jointly prepare a schedule of the dates for submission and return of Shop Drawings and any Submittals.
- Delete the words 'with reasonable promptness so as to cause no delay in the performance of the Work' and replace with 'within 10 working days or such longer period as may be reasonably required' in paragraph 3.10.12.

GC 3.14 PERFORMANCE BY THE CONSTRUCTION MANAGER

- Add new General Condition 3.14.1
3.14.1 In performing its services and obligations under the Contract, the Construction Manager shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent Construction Manager supplying similar services for similar projects. The Construction Manager acknowledges and agrees that throughout the Contract, the Construction Manager's obligations, duties and responsibilities shall be interpreted in accordance with this standard. The Construction Manager shall exercise the same standard of due care and diligence in respect of any Products, personnel, or procedures which it may recommend to the Owner.
- Add new General Condition 3.14.2
3.14.2 The Construction Manager further represents, covenants and warrants to the Owner that:
 - .1 The personnel it assigns to the *Project* are appropriately experienced;
 - .2 It has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation.

GC 4.1 CASH ALLOWANCES

- Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:
4.1.4 Where costs under a cash allowance exceed the amount of the allowance, unexpended amounts from other cash allowances shall be reallocated at the Consultant's direction to cover the shortfall. The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the Contract Price by Change Order.
- Delete paragraph 4.1.7 in its entirety and substitute new paragraph 4.1.7
4.1.7 At the commencement of the Work, the Construction Manager shall prepare for the review and acceptance of the Owner and the Consultant, a schedule indicating the times, within the construction schedule referred to in GC 3.5, that items called for under cash allowances and items that are specified to be Owner purchased and Construction Manager installed or hooked up are required at the site to avoid delaying the progress of the Work.
- Add new paragraph 4.1.8:
4.1.8 The Owner reserves the right to call, or to have the Construction Manager call for competitive bids for portions of the Work, to be paid for from cash allowances.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- Add new paragraph 6.4.5

6.4.5 The Construction Manager confirms that, prior to bidding the Project, it carefully investigated the Place of the Work and applied to that investigation the degree of care and skill described in paragraph 3.14.1. The Construction Manager is not entitled to compensation or to an extension of the Contract Time for conditions which could reasonably have been ascertained by the Construction Manager by such careful investigation undertaken prior to the submission of the bid.

GC 6.5 DELAYS

- Delete the period at the end of paragraph 6.5.1, and substitute the following words:

'..., but excluding any consequential, indirect or special damages.'

- Add new paragraph 6.5.6.

6.5.6 If the Construction Manager is delayed in the performance of the Work by an act or omission of the Construction Manager or anyone employed or engaged by the Construction Manager directly or indirectly, or by any cause within the Construction Manager's control, then the Contract Time shall be extended for such reasonable time as the Consultant may decide in consultation with the Construction Manager. The Owner shall be reimbursed by the Construction Manager for all reasonable costs incurred by the Owner as the result of such delay, including all services required by the Owner from the Consultant as a result of such delay by the Construction Manager and, in particular, the cost of the Consultant's services during the period between the date of Substantial Performance of the Work stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of Substantial Performance of the Work achieved by the Construction Manager.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- Add the following new paragraphs 8.2.9, 8.2.10, 8.2.11, 8.2.12., 8.2.13., and 8.2.14.

8.2.9 Within five days of receipt of the notice of arbitration by the responding party under paragraph 8.2.6, the Owner and the Construction Manager shall give the Consultant a written notice containing:

- a) a copy of the notice of arbitration
- b) a copy of supplementary conditions 8.2.9 to 8.2.14 of this *Contract*, and;
- c) any claims or issues which the *Construction Manager* or the *Owner*, as the case may be, wishes to raise in relation to the *Consultant* arising out of the issues in dispute in the arbitration.

8.2.10 The Owner and the Construction Manager agree that the Consultant may elect, within ten days of receipt of the notice under paragraph 8.2.9, to become a full party to the arbitration under paragraph 8.2.6 if the Consultant:

- a) has a vested or contingent financial interest in the outcome of the arbitration
- b) gives the notice of election to the *Owner* and the *Construction Manager* before the arbitrator is appointed
- c) agrees to be a party to the arbitration within the meaning of the rules referred to in paragraph 8.2.6, and;
- d) agrees to be bound by the arbitral award made in the arbitration.

- 8.2.11 If an election is made under paragraph 8.2.10, the Consultant may participate in the appointment of the arbitrator and, notwithstanding the rules referred to in paragraph 8.2.6, the time period for reaching agreement on the appointment of the arbitrator shall begin to run from the date the respondent receives a copy of the notice of arbitration.
- 8.2.12 The arbitrator in the arbitration in which the Consultant has elected under paragraph 8.2.10 to become a full party may:
- a) on application of the *Owner* or the *Construction Manager*, determine whether the *Consultant* has satisfied the requirements of paragraph 8.2.10, and;
 - b) make any procedural order considered necessary to facilitate the addition of the *Consultant* as a party to the arbitration.
- 8.2.13 The provisions of paragraph 8.2.9 shall apply mutatis mutandis to written notice to be given by the Consultant to any sub-consultant;
- 8.2.14 In the event of notice of arbitration given by the Consultant to a sub consultant, the sub-consultant is not entitled to any election with respect to the proceeding as outlined in 8.2.10, and is deemed to be bound by the arbitration proceeding.

GC 9.1 PROTECTION OF WORK AND PROPERTY

- Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:
 .1 Errors in the Contract Documents which the Construction Manager could not have discovered applying the standard of care described in paragraph 3.14.1;
- Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2:
 9.1.2 Before commencing any Work, the Construction Manager shall determine the locations of all underground utilities and structures indicated in the Contract Documents, or that are discoverable by applying to an inspection of the Place of the Work the degree of care and skill described in paragraph 3.14.1.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- Add to paragraph 9.2.6 after the word 'responsible', the following new words:
 'or whether any toxic or hazardous substances or materials already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Construction Manager or anyone for whom the Construction Manager is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others,'
- Add 'and the Consultant' after the word 'Construction Manager' in sub-paragraph 9.2.7.4
- Add to paragraph 9.2.8 after the word 'responsible', the following new words:
 'or that any toxic or hazardous substances or materials already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Construction Manager or anyone for whom the Construction Manager is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others,'

GC 9.5 MOULD

- Add 'and the Consultant' after 'Construction Manager' in sub-paragraph 9.5.3.4

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- Delete from the first line of paragraph 10.2.5 the word, 'The' and substitute the words:
'Subject to paragraph 3.14.1, the...'

GC 12.1 INDEMNIFICATION

- Add new clause 12.1.1.3
12.1.1.3. The Construction Manager shall indemnify and hold harmless the Consultant, its agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings by third parties that arise out of, or are attributable to, the Construction Manager's performance of the Contract, provided such claims are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and caused by negligent acts or omissions of the Construction Manager or anyone for whose acts the Construction Manager may be liable, and made in writing within a period of 6 years from the date of Substantial Performance of the Work as set out in the certificate of Substantial Performance of the Work, or within such shorter period as may be prescribed by any limitation statute or the province or territory of the Place of Work.

GC 12.3 WARRANTY

- Delete from the first line of paragraph 12.3.2 the word, 'The' and substitute the words:
'Subject to paragraph 3.14.1, the...'

~ END ~

The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.

Recommended Supplementary Conditions for Construction Management Contract – for Services and Construction, CCDC 5B –2010 – Stipulated Price Option (Appendix)

CCDC 5B – 2010 - Construction Management Contract – for Services and Construction - Stipulated Price Option (Appendix)

The following are recommended supplementary conditions for the Appendix to CCDC 5B, 2010 contract, for use when the parties convert the 5B into a Stipulated Price option. To incorporate their use you can copy/paste from the Word document into the front end of the project manual specifications with appropriate headings and footers with the project name, practice name, specification section, page numbers etc. utilizing the standard specifications section/page format. Coordinate the sequence and numbering with other amendments or supplementary conditions.

Note that the OAA recommended amendments and supplementary conditions that apply to the Base Contract are contained in a separate attachment to Practice Tip PT.23.4.

Do Not Include This Cover Page In Your Specifications

Recommended SUPPLEMENTARY CONDITIONS for Construction Management Contract – for Services and Construction, CCDC 5B, 2010 - Attachment for Stipulated Price Option (Appendix)

Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, General Conditions, these amendments, additions and modifications shall govern.

GC 2.3 CONSULTANT'S RESPONSIBILITIES

- Add at the end of paragraph 2.3.9. 'The *Owner* and the *Construction Manager* shall waive any claims against the *Consultant* arising out of the making of such interpretations and findings made in accordance with paragraphs 2.3.7., 2.3.8. and 2.3.9'.

GC 2.5 DEFECTIVE WORK

- Add new subparagraphs 2.5.1.1 and 2.5.1.2:
 - .1 The *Construction Manager* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.
 - .2 The *Construction Manager* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner*.

GC 3.8 LABOUR AND PRODUCTS

- Add new paragraph 3.8.4:

3.8.4 The *Construction Manager* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and other contractors to be installed under the *Contract*) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner*.

GC 3.15 SERVICES

- Renumber 'New GC 3.14 – Services' as 'GC 3.15 – Services'

GC 4.1 CASH ALLOWANCES

- Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:

4.1.4 Where costs under a cash allowance exceed the amount of the allowance, unexpended amounts from other cash allowances shall be reallocated at the *Consultant's* direction to cover the shortfall. The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the Contract Price by Change Order.
- Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5:

4.1.5 The net amount of any unexpected cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the Contract Price by Change Order.

- Delete paragraph 4.1.7 in its entirety and substitute new paragraph 4.1.7.
 4.1.7 At the commencement of the Work, the Construction Manager shall prepare for the review and acceptance of the Owner and the Consultant, a schedule indicating the times, within the construction schedule referred to in GC 3.5, that items called for under cash allowances and items that are specified to be Owner purchased and Construction Manager installed or hooked up are required at the site to avoid delaying the progress of the Work.
- Add new paragraph 4.1.8:
 4.1.8 The Owner reserves the right to call, or to have the Construction Manager call for competitive bids for portions of the Work, to be paid for from cash allowances.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- Add new paragraph 6.4.5
 6.4.5 The Construction Manager confirms that, prior to bidding the Project, it carefully investigated the Place of the Work and applied to that investigation the degree of care and skill described in paragraph 3.14.1. The Construction Manager is not entitled to compensation or to an extension of the Contract Time for conditions which could reasonably have been ascertained by the Construction Manager by such careful investigation undertaken prior to the submission of the bid.

GC 6.5 DELAYS

- Delete the period at the end of paragraph 6.5.1, and substitute the following words:
 ‘..., but excluding any consequential, indirect or special damages.’
- Add new subparagraph 6.5.6.
 6.5.6 If the Construction Manager is delayed in the performance of the Work by an act or omission of the Construction Manager or anyone employed or engaged by the Construction Manager directly or indirectly, or by any cause within the Construction Manager’s control, then the Contract Time shall be extended for such reasonable time as the Consultant may decide in consultation with the Construction Manager.

 The Owner shall be reimbursed by the Construction Manager for all reasonable costs incurred by the Owner as the result of such delay, including all services required by the Owner from the Consultant as a result of such delay by the Construction Manager and, in particular, the cost of the Consultant’s services during the period between the date of Substantial Performance of the Work stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of Substantial Performance of the Work achieved by the Construction Manager.

GC 9.1 PROTECTION OF WORK AND PROPERTY

- Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:
 .1 Errors in the Contract Documents which the Construction Manager could not have discovered applying the standard of care described in paragraph 3.14.1;
- Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2:
 9.1.2 Before commencing any Work, the Construction Manager shall determine the locations of all underground utilities and structures indicated in the Contract Documents, or that are discoverable by applying to an inspection of the Place of the Work the degree of care and skill described in paragraph 3.14.1.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- Add to paragraph 9.2.6 after the word 'responsible', the following new words:
or whether any toxic or hazardous substances or materials already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Construction Manager or anyone for whom the Construction Manager is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others,
- Add 'and the Consultant' after the word 'Construction Manager' in subparagraph 9.2.7.4.
- Add to paragraph 9.2.8 after the word 'responsible', the following new words:
or that any toxic or hazardous substances or materials already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Construction Manager or anyone for whom the Construction Manager is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others,

GC 9.5 MOULD

- Add 'and the Consultant' after 'Construction Manager' in subparagraph 9.5.3.4.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- Delete from the first line of paragraph 10.2.5 the word, 'The' and substitute the words:
'Subject to paragraph 3.14.1, the...'

GC 12.1 INDEMNIFICATION

- Add new clause 12.1.1.3.
12.1.1.3. The Construction Manager shall indemnify and hold harmless the Consultant, its agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings by third parties that arise out of, or are attributable to, the Construction Manager's performance of the Contract, provided such claims are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and caused by negligent acts or omissions of the Construction Manager or anyone for whose acts the Construction Manager may be liable, and made in writing within a period of 6 years from the date of Substantial Performance of the Work as set out in the certificate of Substantial Performance of the Work, or within such shorter such period as may be prescribed by any limitation statute or the province or territory of the Place of Work.

GC 12.3 WARRANTY

- Delete from the first line of paragraph 12.3.2 the word, 'The' and substitute the words:
'Subject to paragraph 3.14.1, the...'

~ END ~

The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.
