

**AGREEMENT BETWEEN OWNER AND CONTRACTOR
for use when a stipulated price forms the basis of payment**

THIS AGREEMENT made on the ____ day of _____ in the year _____.

BY AND BETWEEN

Name *e-mail address*

Address *Phone No.*

hereinafter called the "Owner"

AND

Name *e-mail address*

Address *Phone No.*

hereinafter called the "Contractor"

The Owner and Contractor undertake and agree as follows:

ARTICLE A-1 THE WORK

- (a) The work to be completed is described in the attached Quotation dated _____, 20__ and Specifications, with added provisions as follows:
- (b) The work shall be commenced on _____, 20__, and be completed on _____, 20__, and time will be of the essence, but either date may be varied if written notice is given to the other party for cause that is acceptable to that party. In any event, the work shall be undertaken and completed within a period of _____ days including all removal of all dirt, debris and unused materials, and generally to maintain the site in a clean and tidy condition.
- (c) location of work _____

The Contractor shall provide the Owner with a "Schedule for Completion" and shall conform to that Schedule, providing progress reporting, including any changes to that Schedule agreed to between the Owner and the Contractor or required by circumstances beyond Contractor's control.

- (d) The Schedule for Completion and provisions in this contract for extension of the Contract Time are considered reasonable by Owner and Contractor. Any neglect, refusal or failure of Contractor to reach Substantial Completion within the Contract Time, plus approved extensions of that time, will result in damage to Owner impossible to estimate accurately in advance, and

difficult to calculate after the occurrence. In lieu of actual damages for delay, Owner shall deduct from money due Contractor, or which may become due Contractor, the sum of \$_____ as liquidated damages for each Calendar Day that Substantial Completion is delayed beyond the Contract Time, plus approved extensions of that time. This daily rate for liquidated damages is reasonable, is our best estimate of actual damages, and is not a penalty.

ARTICLE A-2 CONTRACT PRICE

The contract price is: \$_____ (HST INCLUDED) Canadian funds, subject to adjustments for changes in the work as may be agreed to in writing by the Owner and the Contractor, and as may be required under this Agreement.

ARTICLE A-3 PAYMENT

- (a) Payment of the price shall include a holdback of 10% thereof to 45 days following completion date, with 25% at start of project, a further 45% when the work is two-thirds complete as agreed in writing by both parties, and the remaining 20% upon completion. HST shall be included with each payment made.
- (b) If the Owner fails to make payments to the Contractor as they become due under the terms of this Agreement, interest at the current Bank of Montreal prime lending rate plus 2.0% shall become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

ARTICLE A-4 CHANGES IN WORK

- (a) The work may be subject to changes or additions, deletions or revisions by the Owner. The Contractor will be notified by receipt of written additions and/or revised drawings, specifications, exhibits or written orders.
- (b) Whenever an adjustment in the Contract price or Contract time is required because of Owner's request, differing site conditions, errors in the plans and specifications, or other circumstances beyond the control of Contractor (including lack of worksite access, weather, fires, floods, strikes, acts of God, natural disasters, or acts of third parties), the Contractor shall submit to the Owner within a reasonable time a detailed estimate, with supporting calculations, pricing and adjustments in the schedule of the change to the Contract price and the Contract time. Pricing of the adjustment shall be in general accordance with the pricing structure of this Agreement. However, to the extent that such pricing is inapplicable, cost of the change or the amount of the adjustment shall be determined on the basis of the cost to the Contractor plus reasonable amounts for overhead and profit.
- (c) The Contractor shall not be obligated to perform changes in the work or additional work until the Owner has approved, in writing, the changes to the Contract price and the Contract time.

ARTICLE A-5 PROJECT MANAGER/CONSULTANT

The Owner is entitled to engage services of a project manager or consultant with notice to the Contractor who on the owner's behalf may inspect the work from time to time, provide approvals, arrange progress payments, arrange work changes, seek resolution of disputes and generally administer the Agreement between Owner and Contractor.

ARTICLE A-6 INSPECTION OF THE WORK

The Contractor shall make the work accessible at all reasonable time for inspection by the Owner. The Contractor shall inspect all material and equipment delivered to the job site by others to be used or incorporated in the Contractor's work.

ARTICLE A-7 BONDING/GUARANTEE

The Contractor shall provide a performance bond and a labour and material bond in the amount of 50% of the value of the Contract Price, or an irrevocable and unconditional guarantee from a financial institution covering 50% of the Contract Price. Such guarantee should be valid until the completion and full acceptance of the Work.

ARTICLE A-8 ADDRESSES FOR NOTICES

All communications in writing between the parties shall be deemed to have been received by the addressee if delivered to the individual or to a member of the organization for whom they are intended or if sent by post or by facsimile addressed as follows:

The Owner at: _____

The Contractor at: _____

ARTICLE A-9 TERMINATION

The Owner reserves the right to terminate the work for its convenience upon notice in writing to the Contractor. In such an event, the Contractor shall be paid its actual costs for the portion of the work performed to the date of termination, and for all of Contractor's incurred costs of termination, including demobilizations and any termination charges by vendors and subcontractors, plus 20% of all of Contractor's actual and incurred costs for overhead and profit.

ARTICLE A-10 INDEMNIFICATION

Contractor shall indemnify the owner against claims, demands, lawsuits and liabilities arising out of or connected to property damage or bodily injury, including death, caused or alleged to be caused, by Contractor or its subcontractors, suppliers, employees, agents or representatives. The insurance held by Contractor shall include an all risk installation floater, and/or builder's risk, for the price of this agreement and CGL liability for at least \$5 million, and identifying the owner, for the purposes of insurance, as including the Anglican Bishop of Ottawa, Anglican Diocese of Ottawa, and the Owner. A certificate of insurance coverage for the work site is to be provided to the Owner as well as the usual evidence of contract bonding that Contractor provides. Contractor shall have no obligation to protect Owner except to the extent of the following coverage:

Casualty Insurance

- a. Worker's Compensation and Employer's Liability Insurance;

- b. Commercial General Liability Insurance, including coverage for Contractor's owned, hired and non-owned automobiles.

Property Insurance

Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Owner and Contractor.

Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of Contractor, Owner and other subcontractors from its operations.

Waiver of Subrogation

Owner and Contractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance.

If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

Builder's Risk

"All risk" Builder's Risk insurance (including the hazards of earthquake and flood) is purchased by Owner and such insurance provides property insurance coverage for both Contractor and subcontractors including loss or damage to Contractor's work. Such insurance shall also apply to any of Owner's property in the care, custody or control of Contractor.

Owner waives all rights of recovery against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

Wrap-up Insurance

"Wrap-up" Insurance is required where more than one contractor/architect/other professional are working on the project, the Contractor shall purchase and maintain in full force at all times, from the Execution of the Agreement through to Construction Completion, project specific general liability "Wrap-up" insurance in an amount not less than \$5,000,000 inclusive per occurrence. The named insureds on the policy shall be the Owner and the Contractor. Other insureds on the policy shall include all consultants, subconsultants, and subcontractors, whether named or unnamed in the policy. The Owner as a named insured must have the right to make a claim directly to the insurer.

NOTE: Where the Contractor is the sole contractor, "Wrap-up" insurance is not a requirement.

The word "Owner" for the purpose of Insurance Coverage, as described in Article-A10, shall be taken to include the Anglican Bishop of Ottawa, the Anglican Diocese of Ottawa and the registered owner of the work site.

ARTICLE A-11 DISPUTES

If a dispute arises out of, or in connection with this Agreement and the parties do not resolve some or all of that dispute through negotiation, then either party to the dispute may promptly submit to the other party a notice of intent to mediate. This notice shall be in writing and shall specify the issues in dispute. The parties agree to jointly select a mediator. If the parties cannot agree on the choice of mediator within ___ days from the date of the notice of intent to mediate, then a mediator will be chosen, upon application by the parties, by _____ (name of organization / professional association).

ARTICLE A-12 WARRANTY

The Contractor warrants to the Owner that all materials and equipment furnished under this Contract shall be new unless otherwise specified and that all work under this agreement will be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects, and in conformance with Contract documents.

ARTICLE A-13 LANGUAGE

If documents pertaining to this Agreement are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English / French language shall prevail (*strike out the inapplicable term*).

ARTICLE A-14 SUCCESSION

The General Conditions of this Agreement, and any documents hereto affixed, are all to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties and subject to law and the provisions of the Contract Documents shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their proper officers hereunto duly authorized.

SIGNED, SEALED AND DELIVERED

in the presence of:

OWNER:

CONTRACTOR

signed

signed

name and title

name and title

date

signed / witnessed

name and title

date

N.B. Where any legal jurisdiction, local practice or client requirement calls for proof of authority to execute this document, proof of such authority in the form of a certified copy of a resolution naming the person or persons in question as authorized to sign the Agreement for and on behalf of the organization, should be attached.