

Section 5 – General Conditions of Contract

City of Toronto General Conditions of Contract – Linear Infrastructure July 2018

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Paragraph GC 1.0 Interpretation

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Captions

The captions appearing in these General Conditions have been inserted as a matter of convenience and for ease of reference only and in no way define, limit or enlarge the scope or meaning of the General Conditions or any provision hereof.

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Abbreviations

For the purposes of the Contract Documents where used anywhere in the Contract Documents, the following abbreviations shall have the corresponding meanings:

| | |
|----------|--|
| "AASHTO" | - American Association of State Highway Transportation Officials |
| "ACI" | - American Concrete Institute |
| "ANSI" | - American National Standards Institute |
| "ASTM" | - American Society for Testing and Materials |
| "AWG" | - American Wire Gauge |
| "AWWA" | - American Water Works Association |
| "CCIL" | - Canadian Council of Independent Laboratories |
| "CGSB" | - Canadian General Standards Board |
| "CSA" | - Canadian Standards Association |
| "CWB" | - Canadian Welding Bureau |
| "GC" | - General Condition |
| "MOECC" | - Ministry of the Environment and Climate Change (Ontario) |
| "MTO" | - Ontario Ministry of Transportation |
| "MUTCD" | - Manual of Uniform Traffic Control Devices, published by MTO |
| "NSF" | - NSF International |
| "OPS" | - Ontario Provincial Standard |
| "OPSD" | - Ontario Provincial Standard Drawing |
| "OPSS" | - Ontario Provincial Standard Specification |
| "OTM" | - Ontario Traffic Manual |
| "PEO" | - Professional Engineers Ontario |
| "SAE" | - Society of Automotive Engineers |
| "SSPC" | - Structural Steel Painting Council |
| "THESL" | - Toronto Hydro Energy Services Limited |
| "TRCA" | - Toronto Region Conservation Authority |
| "UL" | - Underwriters Laboratories |
| "ULC" | - Underwriters Laboratories Canada |
| "WHMIS" | - Workplace Hazardous Materials Information System |

1.03

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Gender and Singular References

References to the masculine or singular throughout the Contract Documents shall be considered to include the feminine and the plural and vice versa as the context requires.

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1.04

Definitions

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For the purposes of the Contract Documents the following definitions shall apply:

Actual Measurement means a field measurement approved by the Contract Administrator with respect to an item of Work.

Addenda mean any additions or changes in the tender documents issued by the Owner prior to tender closing.

Base means a layer of material of specified type and thickness placed immediately below the Pavement, driving surface, finished grade, curb and gutter or sidewalk.

Bid means an offer in writing from the Contractor to complete the Work, submitted in accordance with the Tender Call.

Certificate of Subcontract Completion means the certificate issued by the Contract Administrator in accordance with paragraph GC 8.02.03.02, Certificate of Subcontract Completion.

Certificate of Substantial Performance means the certificate issued by the Contract Administrator at Substantial Performance.

Change Directive means a written instruction signed by the Owner, or by the Contract Administrator where so authorized, directing the Contractor to proceed with a Change in the Work .

Change in the Work means the deletion, extension, increase, decrease or alteration of lines, grades, dimensions, quantities, methods, drawings, changes in the character of the Work to be done or materials of the Work or part thereof, including changes in geotechnical, subsurface, surface or other conditions.

Change Order means a written amendment to the Contract signed by the Owner, or the Contract Administrator where so authorized, and the Contractor, covering contingencies, a Change in the Work, and establishing the basis for payment and the time allowed for the adjustment of the Contract Time, if any.

City means the City of Toronto

Completion has the meaning as set out in the Construction Act, R.S.O. 1990, c. C.30, as amended;

Completion Certificate means the certificate issued by the Contract Administrator at Completion.

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Completion Payment Certificate means the certificate described more particularly in paragraph GC 8.02.03.07

Contract means the undertaking by the Owner and the Contractor to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents.

Contract Administrator means the person, partnership or corporation designated by the Owner to be the Owner's representative for the purposes of the Contract.

Contract Documents mean the executed agreement between the Owner and the Contractor, including its various schedules, the Tender Call, the General Conditions, the Specific Conditions, Standard Specifications, Special Specifications, Contract Drawings, Addenda, such other documents as may be listed in the agreement and any Change Orders.

Contract Drawings or **Contract Plans** mean drawings or plans, any Geotechnical Report, any Subsurface Report and other reports and information provided by the Owner for the Work, and without limiting the generality thereof, may include soil profiles, foundation investigation reports, reinforcing steel schedules, aggregate sources lists, cross-sections and Standard Drawings.

Contract Price means the amount payable by the Owner to the Contractor for Work to be completed under the Contract in accordance with the method and manner of payment stipulated in the Contract Documents and the unit prices or lump sum prices tendered by the Contractor, and includes any additional amounts payable for approved Changes in the Work as provided for and authorised in the Contract Documents.

Contract Time means the time stipulated in the Contract Documents for Completion of the Work, including any extension of time made pursuant to the Contract Documents.

Contractor means the person, partnership or corporation undertaking the Work as identified in the Contract Documents.

Controlling Operation means any component of the Work that, if delayed, may delay the completion of the Work.

Cut-off Date means the date up to which payment may be made for Work performed.

Daily Work Records means daily records detailing the number and categories of workers and hours worked and on standby, types and quantities of Equipment and number of hours in use and on standby, and description and quantities of Material utilized.

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Day means a calendar day.

Drawings or Plans mean any Contract Drawings or Contract Plans or any Working Drawings or Working Plans, or any reproductions of drawings or plans pertaining to the Work.

Equipment means all machinery and equipment used for preparing, fabricating, conveying or erecting the Work and commonly referred to as "construction machinery" or "equipment".

Estimate means a calculation of the quantity or cost of the Work or part of it depending on the context.

Final Acceptance means the date on which the Contract Administrator determines that the Work has passed all inspection and testing requirements and the Contract Administrator is satisfied that the Contractor has rectified all imperfect Work and has discharged all of the Contractor's obligations under the Contract Documents.

Final Acceptance Certificate means the certificate issued by the Contract Administrator at Final Acceptance.

Form of Agreement means the Contract Execution Package Form of Agreement

GC or General Conditions means these general conditions, which shall form part of the Contract Documents;

Geotechnical Report means a report or other information identifying surface and below surface soil, rock and ground water conditions in the area of any proposed Work.

Grade means the required elevation of a specific part of the Work.

Hand Tools means tools that are commonly referred to as "tools of the trade" or "implements of the trade" and include small power tools.

Hazardous Material means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls, coal tar and any other biological or chemical agent, substance or material named, described, declared or defined to be hazardous, toxic, or a contaminant or pollutant in, or pursuant to, any applicable federal, provincial or municipal statutes, by-laws, regulations, codes, agreements, standards or orders.

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Highway means a common and public highway, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

Lot means a specific quantity of material or a specific amount of construction commonly from a single source and produced by the same process.

Lump Sum Item means a Tender Call item for which payment will be made at a single tendered price rather than based on a measured quantity.

Major Item means any Tender Call item that has a value, calculated on the basis of its actual or estimated Tender Call quantity, whichever is the larger, multiplied by its Tender Call unit price, which is equal to or greater than the lesser of:

- i. \$100,000, or
- ii. 5% of the total Tender Call value calculated on the basis of the total of all the estimated Tender Call quantities and the Tender Call unit prices.

Material means material, machinery, equipment and fixtures forming part of the Work.

Owner means the City.

Pavement means a wearing course or courses placed on the Roadway and consisting of asphaltic concrete, hydraulic cement concrete, Portland cement concrete, or plant or road mixed mulch.

Plan Quantity means that quantity as computed from within the boundary lines of the Work as shown in the Contract Documents.

Progress Payment Certificate means that certificate described in paragraph GC 8.02.03.01, Progress Payment Certificate.

Record means any of the Contractor's books, payrolls, accounts, invoices, receipts or other information or documentation that relates to the Work or any Change in the Work or claims arising therefrom or that are required to identify or calculate taxes paid or payable and any savings resulting from tax changes.

Roadway means that part of the Highway designed or intended for use by vehicular traffic and includes the Shoulders.

Shop Drawing means any drawing, diagram, illustration, schedule, performance chart, scheme, brochure or data which is provided or required to be provided by the Contractor to illustrate specific details of the performance and construction of a portion of the Work.

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Shoulder means that portion of the Roadway between the edge of the wearing surface and the top inside edge of the ditch or fill slope.

Special Specification means a specification containing requirements specific to the Work that are not included in any Standard Specification or which are intended to supplement, amend or override part or all of a Standard Specification.

Specific Conditions means that part of the Tender Call referred to as 'Specific Conditions'.

Standard Specification or Standard Drawing means a standard practice required and stipulated by the Owner for performance of the Work.

Subbase means a layer of material of specified type and thickness between the Subgrade and the Base.

Subcontractor means a person, partnership or corporation undertaking the execution of a part of the Work by virtue of an agreement with the Contractor.

Subgrade means the earth or rock surface, whether in cut or fill, as prepared to support the pavement structure, consisting of Base, Subbase and Pavement.

Substantial Performance has the meaning as set out in the Construction Act, R.S.O. 1990, c. C.30, as amended.

Substantial Performance Payment Certificate means a payment certificate as defined more particularly in paragraph GC 8.02.03.05.02.

Subsurface Report means a report or other information identifying the location of Utilities, concealed and adjacent structures and physical obstructions that fall within the Working Area.

Superintendent means the Contractor's authorized representative in charge of the Work and who shall be a "competent person" within the meaning of the definition contained in the Occupational Health and Safety Act, R.S.O. 1990, c. O.1, as amended.

Surety means the person, partnership or corporation, other than the Contractor, licensed in Ontario to transact business under the *Insurance Act*, R.S.O. 1990, c.i.8, as amended, executing the bond provided by the Contractor and as required by the Contract Documents.

Tender Call means the Tender Call package in its entirety, inclusive of all appendices and Addenda/Addendum that may be issued by the City.

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Time and Material means costs calculated according to paragraph GC 8.02.04, Payment on a Time and Material Basis.

Utility means an aboveground or underground facility maintained by a municipality, public utility authority or regulated corporation and includes services such as sanitary sewer, storm sewer, water, electric, gas, oil, steam, data transmission, telephone and cable television.

Warranty Period means the period of 24 months measured from the date of Substantial Performance or such longer or shorter period as may be specified for certain Materials or some or all of the Work, in the Contract Documents.

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

Working Area means all the lands and easements owned or acquired by the Owner for the construction of the Work.

Working Day means any Day,

- a) except Saturdays, Sundays and statutory holidays;
- b) except a Day as determined by the Contract Administrator, on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom, from proceeding with a Controlling Operation. For the purposes of this definition, this shall be a Day during which the Contractor cannot proceed with at least 60% of the normal labour and Equipment force effectively engaged on the Controlling Operation for at least 5 hours;
- c) except a Day on which the Contractor is prevented from proceeding with a Controlling Operation, as determined by the Contract Administrator by reason of,
 - i. any breach of the Contract by the Owner, or another contractor hired by the Owner, or an employee of any one of them, or by anyone else acting on behalf of the Owner.
 - ii. non-delivery of Owner-supplied materials.
 - iii. any cause beyond the reasonable control of the Contractor that can be substantiated by the Contractor to the satisfaction of the Contract Administrator.

Working Drawings or Working Plans means any Drawings or Plans prepared by the Contractor for the execution of the Work and may, without limiting the generality thereof, include formwork, falsework and shoring plans, Roadway protection plans, Shop Drawings, shop plans or erection diagrams.

1.05
.01

Final Acceptance

For the purposes of determining whether Final Acceptance has occurred, the Contract Administrator shall not take into account, in determining the discharge of the Contractor's obligations, any warranty obligation of the Contractor to the extent that the warranty extends beyond 24 months after Substantial Performance.

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1.06

Interpretation of Certain Words

.01

The words "acceptable", "approval", "authorized", "considered necessary", "directed", "required", "satisfactory", or words of like import, shall mean approval of, directed, required, considered necessary or authorized by and acceptable or satisfactory to the Contract Administrator, unless the context clearly indicates otherwise.

1.07

Language of the Contract

.01

For the purposes of this Contract, all documents and communications pertaining to this Contract shall be in the English language.

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Paragraph GC 2.0 Contract Documents

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- 2.01 Reliance on Contract Documents – Underground Structures and Utilities**
- .01 The Owner represents that the information furnished in the Contract Documents can be relied upon, but subject to the following limitations or exceptions:
- a) the location of all underground utilities or other structures that may affect the Work shall be shown in any drawing to a tolerance of:
 - a) 1 meter horizontal and
 - b) 0.3 meters vertical;
- .02 Despite paragraph GC 2.01.01, the Owner does not warrant or make any representation with respect to:
- a) interpretations of data or opinions expressed in any Subsurface Report or Geotechnical Report available for the perusal of the Contractor, whether or not such report is included as part of the Contract Documents, and
 - b) other information specifically excluded from this warranty.
- 2.02 Order of Precedence**
- .01 In the event of any inconsistency or conflict in the contents of the following documents , which form part of the Contract Documents, such documents shall take precedence and govern in the following descending order:
- a) Form of Agreement
 - b) Addenda
 - c) Pricing Form, which forms part of the Bid
 - d) Special Specifications
 - e) Contract Drawings
 - f) Scope of Work
 - g) Standard Specifications and Standard Drawings
 - h) Specific Conditions
 - i) General Conditions
 - j) Working Drawings
- Later dates shall govern within each of the above categories of documents.
- .02 In the event of any conflict among or inconsistency in the information shown on Drawings, the following rules shall apply:
- a) Dimensions shown in figures on a Drawing shall govern where they differ from dimensions scaled from the same Drawing;
 - b) Drawings of larger scale shall govern over those of smaller

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- scale;
 - c) Detailed Drawings shall govern over general Drawings; and
 - d) Drawings of a later date shall govern over those of an earlier date in the same series.
- .03 In the event of any inconsistency or conflict in the contents of Standard Specifications and Standard Drawings, the following order of precedence shall govern:
- a) City of Toronto Standard Specifications and Standard Drawings, then
 - b) Ontario Provincial Standard Specifications and Drawings; including any amendments, then
 - c) Other Standard Specifications, such as those produced by Canadian Standards Association, Canadian General Standards Board, American Society for Testing and Materials and American National Standards Institute and referenced in the City of Toronto Standard Specifications, Standard Drawings or Ontario Provincial Standard Specifications.
- .04 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

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Paragraph GC 3.0 Administration of the Contract

GC #

3.01

Contract Administrator's Authority

.01

The Contract Administrator shall be the Owner's representative during construction and until the issuance of the Completion Certificate or the issuance of the Final Acceptance Certificate whichever is later. Instructions to the Contractor including instructions from the Owner may be issued by the Contract Administrator or the Owner. The Contract Administrator shall have the authority to act on behalf of the Owner to the extent provided in the Contract Documents.

.02

All claims, disputes and other matters in question relating to the performance and the quality of the Work or the interpretation of the Contract Documents shall be referred to the Contract Administrator in writing by the Contractor.

.03

The Contract Administrator may inspect the Work to evaluate his or her conformity with the Contract Documents, and to record any data deemed necessary by the Contract Administrator or the Owner.

.04

The Contract Administrator shall determine the amounts owing to the Contractor under the Contract and shall issue certificates for payment in such amounts as provided for in paragraph GC 8.0, Measurement and Payment.

.05

The Contract Administrator shall, with reasonable promptness, review and take appropriate action upon the Contractor's submissions such as Shop Drawings, product data, and samples in accordance with the Contract Documents.

.06

The Contract Administrator shall be entitled to investigate all allegations of a Change in the Work made by the Contractor in writing and issue appropriate instructions.

.07

The Contract Administrator shall prepare Change Directives and Change Orders for the Owner's approval.

.08

Upon written application by the Contractor, the Contract Administrator and the Contractor shall jointly conduct an inspection of the Work to establish the date of Substantial Performance of the Work or the date of Completion of the Work or both.

.09

The Contract Administrator shall be, in the first instance, the interpreter of the Contract Documents and the judge of the performance thereunder by both parties to the Contract Documents. Interpretations and decisions of the Contract Administrator shall be consistent with the intent of the Contract Documents and in making these decisions the Contract Administrator shall not show partiality to either party.

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- .10 The Contract Administrator shall have the authority to reject any part of the Work or Material that does not conform to the Contract Documents.
- .11 In the event that the Contract Administrator determines that any part of the Work performed by the Contractor is defective, whether the result of poor workmanship, the use of defective material, or damage through carelessness or other act or omission of the Contractor and whether or not incorporated in the Work or otherwise fails to conform to the Contract Documents, then the Contractor shall when directed by the Contract Administrator promptly, as directed by the Contract Administrator, remove the Work and replace, make good, or re-execute the Work at no additional cost to the Owner.
- .12 Any part of the Work destroyed or damaged by such removals, replacements or re-executions shall be made good, promptly, at no additional cost to the Owner.
- .13 If, in the opinion of the Contract Administrator, it is not expedient to correct defective work or work not performed in accordance with the Contract Documents, the Owner may deduct from monies otherwise due to the Contractor the difference in value between the work as performed and that called for by the Contract Documents, which amount shall be determined in the first instance by the Contract Administrator.
- .14 Notwithstanding any inspections made by the Contract Administrator or the issuance of any certificates or the making of any payment by the Owner, the failure of the Contract Administrator to reject any defective work or Material shall not constitute acceptance of defective work or Material.
- .15 The Contract Administrator shall have the authority to temporarily suspend the Work for such reasonable time as may be necessary, for the following reasons:
- a) to facilitate the checking of any portion of the Contractor's construction layout;
 - b) to facilitate the inspection of any portion of the Work; or
 - c) for the Contractor to remedy its non-compliance with any provision of the Contract Documents.

The Contractor shall not be entitled to any compensation for suspension of the Work in these circumstances.

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- .16 In the case of non-compliance with the provisions of the Contract Documents by the Contractor, the Contract Administrator shall have the authority to either suspend the Work for such reasonable time as may be necessary to remedy such non-compliance or terminate the Work, at the sole discretion of the Owner. The Contractor shall not be entitled to any compensation for suspension or termination of the Work in these circumstances.
- .17 If the Contract Administrator determines that any worker employed on the Work is incompetent, as defined by the Occupational Health and Safety Act, or is disorderly, then the Contract Administrator shall provide written notice to the Contractor and the Contractor shall immediately remove the worker from the Working Area. Such worker shall not return to the Working Area without the prior written consent of the Contract Administrator.
- 3.02 Working Drawings**
- .01 The Contractor shall arrange for the preparation of clearly identified and dated Working Drawings as called for by the Contract Documents.
- .02 The Contractor shall submit Working Drawings to the Contract Administrator in accordance with an agreed upon schedule or otherwise with reasonable promptness and in orderly sequence so as to not cause delay in the Work. If either the Contractor or the Contract Administrator so requests they shall jointly prepare a schedule fixing the dates for submission and return of Working Drawings. Working Drawings shall be submitted in printed form. At the time of submission the Contractor shall notify the Contract Administrator in writing of any deviations from the Contract Documents that exist in the Working Drawings.
- .03 The Contract Administrator shall review and return Working Drawings in accordance with an agreed upon schedule, or otherwise, with reasonable promptness so as not to cause delay.
- .04 The Contract Administrator's review shall check for conformity with the design concept and for general arrangement only and such review shall not relieve the Contractor of responsibility for errors or omissions in the Working Drawings or of responsibility for meeting all requirements of the Contract Documents unless a deviation on the Working Drawings has been approved in writing by the Contract Administrator.
- .05 The Contractor shall make any changes in Working Drawings that the Contract Administrator may require to make the Working Drawings consistent with the Contract Documents and resubmit unless otherwise directed by the Contract Administrator. When resubmitting, the Contractor shall notify the Contract Administrator in writing of any revisions other than those requested by the Contract Administrator.

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- .06 Work related to the Working Drawings shall not proceed until the Working Drawings have been signed and dated by the Contract Administrator and marked with the words "Reviewed. Permission to construct granted".
- .07 The Contractor shall keep one set of the reviewed Working Drawings, marked as above, at the site at all times.
- 3.03 Right of the Contract Administrator to Modify Methods and Equipment**
- .01 The Contractor shall, when requested in writing, make alterations in the method, Equipment or work force at any time the Contract Administrator considers the Contractor's actions to be unsafe, or damaging to either the Work or existing facilities or the environment.
- .02 The Contractor shall, when requested in writing, alter the sequence of its operations on the Contract so as to avoid interference with work being performed by others.
- .03 Notwithstanding the foregoing, the Contractor shall ensure that all necessary safety precautions and protection are maintained throughout the Work.
- 3.04 Emergency Situations**
- .01 The Contract Administrator has the right to determine the existence of an emergency situation, and when such an emergency situation is determined to exist, the Contract Administrator may instruct the Contractor to take action to remedy the situation. If the Contractor does not take timely action, or if the Contractor is not available, the Contract Administrator may direct others to remedy the situation.
- .02 If the emergency situation was the fault of the Contractor, the remedial work shall be done at the Contractor's expense. If the emergency situation was not the fault of the Contractor, the Owner shall pay for the remedial work.
- 3.05 Layout**
- .01 The Contract Administrator shall provide baseline and benchmark information for the general location, alignment, and elevation of the Work. The Owner shall be responsible only for the correctness of the information provided by the Contract Administrator.
- 3.06 Working Area**
- .01 The Contractor's sheds, site offices, toilets, other temporary structures and storage areas for material and equipment shall be grouped in a compact manner and maintained in a neat and orderly condition at all times.
- .02 The Contractor shall confine its construction operations to the Working Area. Should the Contractor require more space than that shown on the Contract Drawings, the Contractor shall, with the Contract Administrator's written consent, obtain such space at no additional cost to the Owner.

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- .03 The Contractor shall not enter upon or occupy any private property for any purpose, unless the Contractor has received prior written permission from the property owner.
- .04 All benchmarks and survey monuments within the Working Area shall be protected by the Contractor. In the case of their destruction or removal, such benchmarks and survey monuments shall be replaced by the Owner at the Contractor's expense.
- 3.07 Extension of Contract Time**
- .01 An application for an extension of Contract Time shall be made in writing by the Contractor to the Contract Administrator as soon as the Contractor is of the opinion that such an extension may be required and at least 15 Days prior to the expiration of the Contract Time. The application for an extension of Contract Time shall enumerate the reasons, and state the length of extension required. Neither the Owner nor the Contract Administrator shall be under any obligation to consider an extension of the Contract Time unless the Contractor makes a request for an extension of Contract Time under this paragraph.
- .02 Circumstances suitable for consideration of an extension of Contract Time include:
- a) Delays, in accordance with paragraph GC 3.08; and
 - b) Changes in the Work, in accordance with paragraph GC 3.11
- .03 The Contract Administrator shall, in considering an application for an extension to the Contract Time, take into account whether the delays or Changes in the Work involve a Controlling Operation.
- .04 The Contract Time shall be extended for such additional time as may be recommended by the Contract Administrator and deemed fair and reasonable by the Owner.
- .05 The terms and conditions of the Contract shall continue for such extension of Contract Time.
- 3.08 Delays**
- .01 If the Contractor is delayed in the performance of the Work by,
- a) war, blockades, and civil commotions, errors in the Contract Documents;
 - b) an act or omission of the Owner or Contract Administrator, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents;
 - c) the Contract Administrator giving notice as described in paragraph GC 7.09, Suspension of Work;
 - d) abnormal inclement weather; or
 - e) archaeological finds in accordance with paragraph GC 3.16, Archaeological Finds,

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then the Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay, provided that in the case of an application for an extension of Contract Time due to abnormal inclement weather, the Contractor shall, with the Contractor's application, submit evidence from Environment Canada in support of such application. Extension of Contract Time will be considered in accordance with paragraph GC 3.07, Extension of Contract Time.

.02 If the Work is delayed by labour disputes, strikes or lock-outs - including lock-outs decreed or recommended to its members by a recognized contractor's association, of which the Contractor is a member or to which the Contractor is otherwise bound - which are beyond the Contractor's control, then the Contract Time shall be extended in accordance with paragraph GC 3.07, Extension of Contract Time. In no case shall the extension of Contract Time be less than the time lost as the result of the event causing the delay, unless a shorter extension is agreed to by the Contractor. The Contractor shall not be entitled to payment for costs incurred as the result of such delays unless such delays are the result of actions of the Owner.

.03 The Contractor shall not be entitled to payment for the cost of delays incurred as a result of a dispute between the Contractor and Owner. The Contractor shall execute the Work and may pursue resolution of the dispute in accordance with paragraph GC 3.14, Claims, Negotiations, Mediations.

3.09 Assignment of Contract

.01 The Contractor shall not assign the Contract, either in whole or in part, without the prior written consent of the Owner, which consent may be withheld or given subject to such terms and conditions as the Owner deems appropriate.

3.10 Subcontracting by the Contractor

.01 Subject to paragraph GC 3.10.03, the Contractor may subcontract any part of the Work, in accordance with the Contract Documents and any limitations specified therein.

.02 The Contractor shall notify the Contract Administrator 10 Days prior to the start of construction, in writing, of the intention to subcontract. Such notification shall identify the part of the Work, and the Subcontractor with whom it is intended.

.03 The Contract Administrator shall, within 10 Days of receipt of such notification, accept or reject the intended Subcontractor. A rejection shall be in writing and shall include the reasons for the rejection.

.04 The Contractor shall not, without the written consent of the Owner, change a Subcontractor who has been engaged in accordance with the Contract Documents.

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- .05 The Contractor shall preserve and protect the rights of the Owner under the Contract Documents with respect to that part of the Work to be performed under subcontract and shall,
- a) enter into agreements with the intended Subcontractors to require them to perform their work in accordance with the Contract Documents; and
 - b) be as fully responsible to the Owner for acts and omissions of the Contractor's Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.
- .06 The Owner's consent to subcontracting by the Contractor shall not be construed to relieve the Contractor from any obligation under the Contract and shall not impose any liability upon the Owner. Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Owner.
- .07 The Contractor and all associated Subcontractors shall be subject to the Owner's Fair Wage Policy, as adopted by the Owner from time to time, and any of the Owner's or legislated labour trades requirements. Failure to comply with this policy and/or these requirements, may lead to termination of the Contract, or termination or rejection of a Subcontractor, as the case may be, with no recourse by the Contractor in respect of such termination or rejection.
- 3.11 Changes in the Work**
- .01 The Owner, or the Contract Administrator where so authorized, may, by order in writing, make a Change in the Work without invalidating the Contract.
- .02 Where a Change in the Work relates solely to quantities of tendered unit price Work items, or where a Change in the Work must be undertaken prior to agreement between the Owner and the Contractor on a change in the Contract Price and/or Contract Time, the Change in the Work may be ordered by a Change Directive. The Contractor shall not be required to proceed with a Change in the Work until in receipt of a Change Directive. Upon the receipt of such Change Directive the Contractor shall proceed with the Change in the Work.
- .03 The Contractor may apply for an extension of Contract Time according to the terms of paragraph GC 3.07, Extension of Contract Time.
- .04 If the Change in the Work relates solely to quantities of unit price Work items in the Tender Call, payment for the Work shall be made according to the conditions in paragraph GC 8.01.02, Variations in Tender Call Quantities. If the Change in the Work does not relate solely to quantities of unit price Work items in the Tender Call, payment for the Change in the Work shall be made in accordance with:

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- a) a lump sum price or unit price agreed to between the Contractor and the Contract Administrator prior to commencement of the Change in the Work, in which case the Contract Administrator shall issue a Change Order that states the agreed lump sum price or unit price, as applicable; or
- b) the Schedule of Prices for Changes in the Work in the event that the Contract Documents include such a Schedule and the work item required is set out in the Schedule, in which case the Contract Administrator shall issue a Change Order; or
- c) the provisions contained in paragraph GC 8.02.04, Payment on a Time and Material Basis.

3.12

Notices

.01

Any notice permitted or required to be given to the Contract Administrator or the Superintendent in respect of the Work shall be deemed to have been given to and received by the addressee on the date of delivery if delivered by hand, email or by facsimile transmission and on the fifth Day after the date of mailing if sent by mail.

.02

The Contractor and the Owner shall provide each other with the mailing addresses, telephone numbers, email addresses and facsimile terminal numbers for the Contract Administrator and the Superintendent at the commencement of the Work, and update as necessary.

.03

In the event of an emergency situation or other urgent matter the Contract Administrator or the Superintendent may give a verbal notice, provided that such notice is confirmed in writing within 2 Days.

.04

Any notice permitted or required to be given to the Owner or the Contractor shall be given in accordance with the notice provision of the Contract.

3.13

Use and Occupancy of the Work Prior to Substantial Performance

.01

The Owner may use or occupy the Work or any part thereof prior to Substantial Performance unless otherwise specified in the Contract Documents.

.02

The use or occupancy of the Work or any part thereof by the Owner prior to Substantial Performance shall not constitute an acceptance of the Work or parts so occupied. In addition, the use or occupancy of the Work shall not relieve the Contractor or the Contractor's Surety from any liability that has arisen, or may arise, from the performance of the Work. Such use or occupancy of any part of the Work by the Owner does not waive the Owner's right to charge the Contractor liquidated damages in accordance with the terms of the Contract.

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3.14 Claims, Negotiations, Mediation

3.14.01 Continuance of the Work

.01 Unless the Contract Documents have been terminated or completed, the Contractor shall in every case, after serving or receiving any notification of a claim or dispute, verbal or written, continue to proceed with the Work with due diligence and expedition. It is understood by the parties that such action shall not jeopardize any claim it may have.

3.14.02 Record Keeping

.01 Immediately upon commencing Work that may result in a claim, the Contractor shall keep Daily Work Records during the course of the Work, sufficient to substantiate the Contractor's claim, and the Contract Administrator shall keep Daily Work Records to be used in assessing the Contractor's claim, all in accordance with paragraph GC 8.02.07, Records.

.02 The Contractor and the Contract Administrator shall attempt to reconcile their respective Daily Work Records on a daily basis, to simplify review of the claim, when submitted. If the Contractor and the Contract Administrator fail to reconcile their respective Daily Work Records, then the Contractor shall submit its Daily Work Records as part of its claim, whereby the resolution of the dispute about the Daily Work Records shall not be resolved until there is a resolution of the claim.

.03 The keeping of Daily Work Records by the Contract Administrator or the reconciling of such Daily Work Records with those of the Contractor shall not be construed to be acceptance of the claim.

3.14.03 Claims Procedure

.01 The Contractor shall give oral notice to the Contract Administrator of any situation which may lead to a claim for additional payment immediately upon becoming aware of the situation and shall provide written notice to the Contract Administrator of such situation or of any express intent to claim such payment, within seven Days of the commencement of any part of the work which may be affected by the situation or shall form part of the claim.

.02 The Contractor shall submit detailed claims as soon as reasonably possible and in any event no later than 30 Days after completion of the work affected by the situation. The detailed claim shall:

- a) identify the item or items in respect of which the claim arises;
- b) state the grounds, contractual or otherwise, upon which the claim is made; and
- c) include the Records maintained by the Contractor supporting such claim.

In exceptional cases the 30 Days may be increased to a maximum of 90 Days with approval in writing from the Contract Administrator.

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- .03 Within 30 Days of the receipt of the Contractor's detailed claim, the Contract Administrator may request the Contractor to submit any further and other particulars as the Contract Administrator considers necessary to assess the claim. The Contractor shall submit the requested information within 30 Days of receipt of such request.
- .04 Within 90 Days of receipt of the detailed claim, the Owner, or if authorized by the Owner, the Contract Administrator, shall advise the Contractor, in writing, of the Owner's opinion with regard to the validity of the claim.
- 3.14.04 Negotiations**
- .01 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, open and timely disclosure of relevant facts, information, and documents to facilitate these negotiations.
- .02 Should the Contractor disagree with the opinion given in paragraph GC 3.14.03.04, with respect to any part of the claim, the Contract Administrator shall enter into negotiations with the Contractor to resolve the matters in dispute. Negotiation shall occur on three levels; first, with the Contract Administrator, second with the Owner's Manager level, and third, with the Owner's Director, General Manager or Executive Director. Corresponding level shall be involved in the discussions on behalf of the Contractor. Any agreement reached with the Contract Administrator shall be subject to the Owner's approval. Prior to commencement of construction the Owner and the Contractor shall meet to determine the names of the representatives at the three levels of discussion. These names shall be put in writing, to be used in the event of a dispute in issue.
- .03 Discussions with the Contract Administrator shall be completed as soon as possible and shall be limited to a period of no more than 30 Days following receipt of the opinion given in paragraph GC 3.14.03.04. The Manager level discussion shall be completed as soon as possible following failed discussions with the Contract Administrator, and shall be limited to a period of no more than a further 30 Days. The Director, General Manager or Executive Director level discussion shall be completed as soon as possible following failed Manager level discussions, and shall be limited to a period of no more than a further 30 Days
- .04 Each party shall be responsible for elevating an issue to the next level of negotiation, if the issue has not been resolved at the current level. The Contractor or Contract Administrator shall notify the other party in writing if he or she wishes to pursue an issue to the next level of negotiation.
- .05 Where a negotiated settlement cannot be reached, or it is agreed that payment cannot be made on a Time and Material basis in accordance with paragraph GC 8.02.04, Payment on a Time and Material Basis, the parties may, upon mutual agreement, proceed in accordance with paragraph GC 3.14.05, Mediation.

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- 3.14.05 Mediation**
- .01 If a claim is not resolved satisfactorily through the negotiation process in paragraph GC 3.14.04, and either party wishes to pursue the issue further, the parties may, upon mutual agreement, utilize the services of an independent third party mediator.
- .02 The mediator shall be mutually agreed upon by the Owner and Contractor.
- .03 The mediator shall be knowledgeable regarding the area of the disputed issue. The mediator shall meet with the parties together or separately, as necessary, to review all aspects of the issue. The mediator may provide the parties with his or her non-binding, without prejudice, settlement recommendation, on the day of the mediation.
- .04 Each party is responsible for its own costs related to the use of the third party mediator process. The costs of the third party mediator shall be equally shared by the Owner and Contractor.
- 3.14.06 Payment**
- .01 In the event that the parties resolve a claim through mediation, then any agreed upon payment shall be made no later than 30 Days after the date of resolution of the claim or dispute, unless the parties agree otherwise.
- 3.14.07 Rights of Both Parties**
- .01 Unless the parties agree otherwise, no action taken under this paragraph GC 3.14, Claims, Negotiations, Mediation, by either party shall be construed as a renunciation or waiver of any of the rights or recourse available to the parties.
- 3.15 Arbitration**
- 3.15.01 Conditions for Arbitration**
- .01 If a claim is not resolved satisfactorily through the negotiation process, or mediation if utilized, either party may request an arbitration of the dispute and the parties, by mutual agreement, may submit such dispute to arbitration and the provisions of the Ontario *Arbitration Act*, 1991, as amended, shall apply to such arbitration, including the provisions for appeal therein, except as otherwise provided in this section 3.15. Notwithstanding this, in the case of claims for amounts less than \$150,000, exclusive of H.S.T., the provisions of article GC 3.15, Arbitration shall be mandatory if requested by either party, and the matter shall proceed to arbitration if not resolved through the said negotiation or mediation processes.
- .02 If the Parties engage in arbitration to resolve the issue, notification to that effect shall be communicated in writing to the Contract Administrator within 30 Days of completing the negotiations referred in paragraph 3.14.04, or, if the parties proceed to mediation under paragraph 3.14.05, within 30 Days of completing that mediation.

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- .03 The parties shall be bound by the decision of the arbitrator.
- .04 The rules and procedures of the Arbitration Act, 1991, S.O. 1991, c.17, as amended, shall apply to any arbitration conducted hereunder except to the extent that they are modified by the express provisions of this paragraph GC 3.15, Arbitration.
- 3.15.02 Arbitration Procedure**
- .01 If the Parties agree to engage in arbitration to resolve an issue, the parties shall enter into an agreement to arbitrate in accordance with the Arbitration Act, 1991, S.O. 1991, Ch. 17.
- The following provisions shall be included in the agreement to arbitrate:
- a) All existing actions in respect of the matters under arbitration shall be stayed pending arbitration;
 - b) All then unresolved claims and matters to be settled shall be set out in a schedule to the agreement. Only such claims and matters as are in the schedule shall be arbitrated; and
 - c) Before proceeding with the arbitration, the Contractor shall confirm that all matters in dispute are set out in the schedule.
- 3.15.03 Appointment of Arbitrator**
- .01 The arbitrator shall be mutually agreed upon by the Owner and Contractor to adjudicate the dispute.
- .02 Where the Owner and Contractor cannot agree on a sole arbitrator within 30 Days of the notification of arbitration referred to in paragraph GC 3.15.01.02, the Owner and the Contractor shall each choose an appointee with 37 Days of the notice of arbitration.
- .03 The appointees shall mutually agree upon an arbitrator to adjudicate the dispute within 15 Days after the last appointee was chosen or they shall refer the matter to the Arbitration and Mediation Institute of Ontario Inc. which shall select an arbitrator to adjudicate the dispute within 7 Days of being requested to do so.
- .04 The arbitrator shall not be interested financially in the Contract nor in either party's business and shall not be employed by either party.
- .05 The arbitrator is not bound by the rules of evidence which govern the trial of cases in court but may hear and consider any evidence which the arbitrator considers relevant.
- .06 The hearing shall commence within 90 Days of the appointment of the arbitrator.

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3.15.04

Costs

- .01 The arbitrator's fee shall be equally shared by the Owner and the Contractor.
- .02 The fees of any independent experts and any other persons appointed to assist the arbitrator shall be shared equally by the Owner and the Contractor.
- .03 The arbitration hearing shall be held in a place mutually agreed upon by both parties or in the event the parties do not agree, a site shall be chosen by the arbitrator. The cost of obtaining appropriate facilities shall be shared equally by the Owner and the Contractor.
- .04 The arbitrator may, in his or her discretion, award reasonable costs, related to the arbitration.

3.15.05

The Decision

- .01 The reasoned decision shall be made in writing within 90 Days of the conclusion of the hearing. An extension of time to make a decision may be granted with consent of both parties. Payment shall be made in accordance with the decision of the Arbitrator.

3.16

Archaeological Finds

- .01 If the Contractor's operations expose any items that may indicate an archaeological find, such as building remains, hardware, accumulations of bones, pottery, or arrowheads, the Contractor shall immediately notify the Contract Administrator and suspend operations within the area identified by the Contract Administrator. Initial notification may be verbal provided that such notice is confirmed in writing by the Contractor within 2 Days. Work shall remain suspended within that area until otherwise directed by the Contract Administrator in writing, in accordance with paragraph GC 7.09, Suspension of Work.
- .02 Any delay in the completion of the Contract that is caused by such a suspension of Work shall be considered to be beyond the Contractor's control in accordance with paragraph GC 3.08.01.
- .03 Any work directed or authorized in connection with an archaeological find shall be considered as a Change in the Work in accordance with paragraph GC 3.11, Changes in the Work.
- .04 The Contractor shall take all reasonable action to minimize additional costs that may accrue as a result of any work stoppage.

3.17

Changed Geotechnical or Subsurface Conditions

- .01 If the geotechnical or subsurface conditions in the Working Area appear to the Contractor or the Contract Administrator to differ materially from those indicated in the Contract Documents, then the Contractor or the Contract

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Administrator, respectively, shall immediately notify the other party. Notification may be verbal provided that the notice is confirmed in writing by the party giving the notice within 2 Days. The Contract Administrator shall promptly investigate the apparent changed geotechnical or subsurface conditions and make a finding. Subject to the provisions of GC 2.01, if the finding is that the conditions differ materially and this would cause an increase or decrease in the Contract Price or Contract Time, then the Contract Administrator, with the Owner's approval, shall provide the Contractor with a Change Directive in accordance with the provisions of GC 3.11. If the finding is that the conditions are not materially different or that no change in the Contract Price or the Contract Time is justified, the Contract Administrator shall promptly report the reasons for this finding to the Contractor and Owner in writing.

Section 5 – General Conditions of Contract

Paragraph GC 4.0 Owner's Responsibilities and Rights

GC #**4.01****Working Area**

.01

The Owner shall acquire all property rights that are deemed necessary by the Owner for the construction of the Work, including temporary working easements.

4.02**Approvals and Permits**

.01

The Owner shall pay for all plumbing and building permits.

.02

The Owner shall obtain and pay for all permits, licenses and certificates solely required for the design of the Work.

4.03**Management and Disposition of Materials**

.01

The Owner shall identify in the Contract Documents the materials to be moved within or removed from the Working Area, and any characteristics of those materials that necessitate special materials management and disposition.

.02

In accordance with regulations under the Occupational Health and Safety Act, R.S.O. 1990, c.O.1, as amended, the Owner advises that,

- a) the designated substance arsenic may be present throughout the Working Area occurring naturally, in contaminated soil or in sewage;
- b) the designated substance asbestos is typically present throughout the Working Area in cement products, asphalt, and conduits for utilities. Exposure may occur as a result of activities by the Contractor such as cutting, grinding, drilling, blasting, breaking, crushing or removing of cement products, asphalt or conduits;
- c) the designated substance lead may be present throughout the Working Area in contaminated soil, in sewage or in lead-containing paints, coatings, or conduits. Exposure may occur during soil excavation, or during removal or high temperature cutting/welding of paints/coatings or during cutting, grinding, drilling or removing of conduits;
- d) the designated substance silica is typically present throughout the Working Area in cement materials. Exposure may occur as a result of activities such as sweeping, drilling, cutting, grinding, breaking or removing rock, concrete, masonry, stone or refractory materials; and
- e) The designated substances benzene and mercury may be present throughout the Working area in sewage.

.03

Where building records or test results indicate the presence of a designated substance as set out above, specific information on its condition and location shall be provided by the Owner in the Contract Documents.

.04

If the Owner or Contractor discovers or is advised of the presence of designated substances or hazardous materials that are in addition to those listed in paragraph GC 4.03.02, or not clearly identified in the Contract

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Documents according to paragraph GC 4.03.03, then verbal notice shall be provided to the other party immediately and written confirmation shall be provided within 2 Days. The Contractor shall stop work in the area immediately and shall determine the necessary steps required to complete the Work in accordance with applicable legislation and regulations.

.05 The Owner shall be responsible for any reasonable additional costs of removing, managing and disposing of any Hazardous Materials not identified in the Contract Documents, or where conditions exist that could not have been reasonably foreseen at the time of tendering. All work under this paragraph GC 4.03.05 shall be deemed to be a Change in the Work.

.06 Prior to commencement of the Work, the Owner shall provide to the Contractor a list of those products controlled under the Workplace Hazardous Materials Information System (WHMIS), that the Owner shall supply or use as part of the Work, together with copies of the Safety Data Sheets for these products. The Owner shall notify the Contractor in writing of changes to the list and provide relevant Safety Data Sheets.

4.04 Construction Affecting Railway Property

.01 The Owner shall pay the costs of all flagging and other traffic control measures required and provided by a railway company unless such costs are solely a function of the Contractor's chosen method of completing the Work.

.02 Every precaution shall be taken by the Contractor to protect all railway property at track crossings or otherwise, on which construction operations are to take place in accordance with the terms of this Contract Documents.

.03 The Contractor shall be required to conduct the construction operations in such a manner as to avoid the possibility of damaging any railway property in the vicinity of the Work. Every reasonable precaution shall be taken by the Contractor to ensure the safety of all workers, Subcontractors, and Equipment, as well as railway property throughout the duration of the Contract.

4.05 Default by the Contractor

.01 If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Contractor's insolvency, or if a receiver is appointed because of the Contractor's insolvency, the Owner may, without prejudice to any other right or remedy the Owner may have, by giving the Contractor or receiver or trustee in bankruptcy notice in writing, terminate the Contract.

.02 If the Contractor fails to commence the Work within 14 Days of a formal order to commence work signed by the Contract Administrator or, upon commencement of the Work, should neglect to execute the Work properly or otherwise fails to comply with the requirements of the Contract, the Owner

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may, without prejudice to any other right or remedy the Owner may have, notify the Contractor in writing that the Contractor is in default of the Contractor's contractual obligations and instruct the Contractor to correct the default in the 5 Working Days immediately following the receipt of such notice.

4.06

Notification of Default

.01

The Owner may give written notice of a default to the Contractor, provided that failure to give such notice in a timely way shall neither constitute nor be construed as waiver of the default. The notice shall include instructions to correct the default within 5 Working Days following receipt of such notice.

4.07

Contractor's Right to Correct a Default

.01

The Contractor shall have the right within the 5 Working Days following the receipt of a notice of default to correct the default and provide the Owner with satisfactory proof that appropriate corrective measures have been taken.

.02

If the Owner determines that the correction of the default cannot be completed within 5 Working Days following receipt of the notice, the Contractor shall not be in default if the Contractor,

- a) commences the correction of the default within the 5 Working Days following receipt of the notice;
- b) provides the Owner with a schedule satisfactory to the Owner for the progress of such correction; and
- c) completes the correction in accordance with such schedule.

4.08

Owner's Right to Correct Default or Terminate the Contract

.01

If the Contractor fails to correct the default within the time specified in paragraph GC 4.07, Contractor's Right to Correct a Default, the Owner may, without prejudice to any other right or remedy:

- a) correct such default and deduct the cost thereof, as certified by the Contract Administrator, from any payment then or thereafter due to the Contractor; and
- b) terminate the Contractor's right to continue the Work in whole or in part by giving written notice to the Contractor.

.02

If the Owner terminates the Contractor's right to continue with the Work in whole or in part, the Owner shall be entitled to,

- a) take possession of the Working Area or that portion of the Working Area devoted to that part of the Work terminated;
- b) utilize any Material within the Working Area ;
- c) withhold further payments to the Contractor with respect to the Work or the portion of the Work withdrawn from the Contractor until the Work or portion thereof withdrawn is completed;
- d) charge the Contractor the additional cost over the Contract Price of completing the Work or portion thereof withdrawn from the Contractor, as certified by the Contract Administrator, which additional cost shall include any additional compensation paid to the

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- Contract Administrator arising from the correction of the default;
- e) charge the Contractor a reasonable allowance, as determined by the Contract Administrator, to cover correction to the Work performed by the Contractor that may be required under paragraph GC 7.15, Warranty;
 - f) charge the Contractor for any damages the Owner may have sustained as a result of or in relation to the default; and
 - g) charge the Contractor the amount by which the cost of corrections to the Work under paragraph GC 7.15, Warranty, exceeds the allowance provided for such corrections.

4.09

.01

Final Payment to Contractor

If the Owner's cost to correct and complete the Work in whole or in part is less than the amount withheld from the Contractor under paragraph GC 4.08.02, the Owner shall pay the balance to the Contractor as soon as the final accounting for the Contract is complete.

4.10

.01

Continuation of Contractor's Obligations

The Contractor's obligation under the Contract as to quality, correction and warranty of the Work performed prior to the time of termination of the Contract or termination of the Contractor's right to continue with the Work in whole or in part shall continue to be in force after such termination.

4.11

.01

Owner's Right to Request Documents

The Contractor shall, at the sole request of the Owner, provide any documentation requested by the Owner, where that documentation relates to any of the Work. The Contractor shall ensure that all such documentation is provided no later than ten (10) Days following the receipt of any such request.

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Paragraph GC 5.0 Material

GC #

5.01

.01

Supply of Material

All Material necessary for the proper completion of the Work, except those listed as being supplied by the Owner, shall be supplied by the Contractor at its sole expense.

5.02

.01

Quality of Material

All Material supplied by the Contractor shall be new, unless otherwise specified in the Contract Documents.

.02

Material supplied by the Contractor shall conform to the requirements of the Contract Documents.

.03

As specified in the Contract Documents or as otherwise requested by the Contract Administrator, the Contractor shall make available for inspection or testing a sample of any Material to be supplied by the Contractor.

.04

The Contractor shall obtain for the Contract Administrator the right to enter onto the premises of the Material manufacturer or supplier to carry out such inspection, sampling and testing as specified in the Contract Documents or as otherwise requested by the Contract Administrator.

.05

The Contractor shall notify the Contract Administrator of the sources of supply sufficiently in advance of the Material shipping dates to enable the Contract Administrator to perform the required inspection, sampling and testing.

.06

The Owner shall not be responsible for any delays to the Contractor's operations where the Contractor fails to give sufficient advance notice to the Contract Administrator to enable the Contract Administrator to carry out the required inspection, sampling and testing before the scheduled shipping dates.

.07

The Contractor shall not change the source of supply of any Material without the written authorization of the Contract Administrator.

.08

Material that is not specified shall be of a quality best suited to the purpose required, and the use of such Material shall be subject to the approval of the Contract Administrator.

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.09 All Material inspection, sampling, and testing shall be carried out on a random basis in accordance with the standard inspection or testing methods required for the Material. Any approval given by the Contract Administrator for the Material that is based upon the random method shall not relieve the Contractor from the responsibility of incorporating Material that conforms to the Contract Documents into the Work or properly performing the Contract and of any liability arising from the failure to properly perform as specified in the Contract Documents.

5.03 Rejected Material

.01 The Contractor shall remove rejected Material from the Working Area expeditiously after the notification to that effect from the Contract Administrator. Where the Contractor fails to comply with such notice, the Contract Administrator may cause the rejected Material to be removed from the Working Area and disposed of in what the Contract Administrator considers to be the most appropriate manner, and the Contractor shall pay the costs of disposal and the appropriate overhead charges.

5.04 Substitutions

.01 Where the Tender Call requires the Contractor to supply a Material designated by a trade or other name, the Bid shall be based only upon supply of the Material so designated, which shall be regarded as the standard of quality required by the Tender Call. After the acceptance of the Bid, the Contractor may apply to the Contract Administrator to substitute another Material identified by a different trade or other name for the Material designated in the Tender Call. The application to the Contract Administrator shall be in writing and shall state the price for the proposed substitute Material, and such other information as the Contract Administrator may require.

.02 The Contractor shall not propose any substitute Material prior to the acceptance of the Bid. The Contractor shall not substitute any Material without the prior approval of the Contract Administrator. The approval or rejection of a proposed substitution shall be made at the discretion of the Contract Administrator.

5.05 Owner Supplied Material

5.05.01 Ordering of Excess Material

.01 Where Material is supplied by the Owner and where this Material is ordered by the Contractor in excess of the amount specified to complete the Work, such excess Material shall become the property of the Contractor on completion of the Work and shall be charged to the Contractor at cost plus applicable overheads.

5.05.02 Care of Material

.01 The Contractor shall, in advance of receipt of shipments of Material supplied by the Owner, provide adequate and proper storage facilities acceptable to the Contract Administrator and on the receipt of such Material shall promptly

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- place it in storage except where it is to be incorporated forthwith into the Work.
- .02 The Contractor shall be responsible for acceptance of Material supplied by the Owner, at the specified delivery point and for its safe handling and storage. If such Material is damaged while under the control of the Contractor, it shall be replaced or repaired by the Contractor at no expense to the Owner, and to the satisfaction of the Contract Administrator. If such Material is rejected by the Contract Administrator for reasons that are not the fault of the Contractor it shall remain in the care and at the risk of the Contractor until its disposition has been determined by the Contract Administrator.
- .03 Where Material supplied by the Owner arrives at the delivery point in a damaged condition or where there are discrepancies between the quantities received and the quantities shown on the bills of lading, the Contractor shall immediately report such damage or discrepancies to the Contract Administrator who shall arrange for an immediate inspection of the shipment and provide the Contractor with a written release from responsibility for such damage or deficiencies. Where damage or deficiencies are not so reported, it shall be assumed that the shipment arrived in good condition and order, and any damage or deficiencies reported thereafter shall be made good by the Contractor at no extra cost to the Owner.
- .04 All Material supplied by the Owner in each shipment shall be accounted for by the Contractor and such Material shall be at the risk of the Contractor after taking delivery. Such Material shall not, except with the written permission of the Contract Administrator, be used by the Contractor for purposes other than the performance of the Work under the Contract.
- .05 Empty reels, crates, containers and other types of packaging from Material supplied by the Owner shall become the property of the Contractor when they are no longer required for their original purpose and shall be disposed of by the Contractor at the Contractor's expense unless otherwise specified in the Contract Documents.
- .06 Immediately upon receipt of each shipment, the Contractor shall provide the Contract Administrator with copies of bills of lading, or such other documentation the Contract Administrator may require to substantiate and reconcile the quantities of Material received.
- .07 Where Material supplied by the Owner is ordered and stockpiled prior to the award of the Contract, the Contractor shall, at no extra cost to the Owner, immediately upon commencement of operations, check the Material, report any damage or deficiencies to the Contract Administrator and take charge of the Material at the stockpile site. Where damage or deficiencies are not so recorded by the Contractor, it shall be assumed that the stockpile was in good condition and order when the Contractor took charge of it, and any

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damage or deficiencies reported thereafter shall be made good by the Contractor at no extra cost to the Owner.

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Paragraph GC 6.0 Insurance, Protection and Damage

GC #

6.01

.01

Protection of Work, Persons and Property

The Contractor, the Contractor's agents, and all workers employed by or under the control of the Contractor, including Subcontractors, shall protect the Work, persons, and property, including but not limited to, structures and utilities that may be impacted by the Work from damage or injury. The Contractor shall be responsible for all losses and damage which may arise as the result of the Contractor's operations under the Contract unless indicated to the contrary below.

.02

The Contractor shall be responsible for the full cost of any necessary temporary protective work or works and the restoration of all damage where the Contractor damages the Work or property in the performance of the Contract. If the Contractor is not responsible for the damage that occurs to the Work or property, the Contractor shall restore such damage, and such work and payment shall be administered according to the Contract Documents.

.03

The Contractor shall immediately inform the Contract Administrator of all damage and injuries that occur during the term of the Contract. The Contractor shall then investigate and report back to the Contract Administrator within 15 Days of the occurrence of the damage or injuries. The Contract Administrator may conduct its own investigation and the Contractor shall provide all assistance to the Contract Administrator as may be necessary for that purpose.

.04

The Contractor shall not be responsible for loss and damage that occurs as a result of,

- a) war;
- b) blockades and civil commotions;
- c) errors in the Contract Documents; or
- d) acts or omissions of the Owner, the Contract Administrator, their agents and employees, or others not under the control of the Contractor, but within the Working Area with the Owner's permission.

.05

The Contractor and its Surety or Sureties shall not be released from any term or provision of any responsibility, obligation or liability under the Contract or waive or impair any of the rights of the Owner except by a release duly executed by the Owner.

6.02

.01

Indemnification

The Contractor shall indemnify and hold harmless the Owner and the Contract Administrator, and each of their elected officials, officers, employees and agents (hereinafter referred to collectively as the "Indemnitees") from and against all claims, demands, actions, suits or proceedings which may be brought against or made by third parties,

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hereinafter called "claims", directly or indirectly arising or alleged to arise out of the performance of or the failure to perform any of its obligations under the Contract Documents.

- .02 The Contractor shall indemnify and hold harmless the Owner from all and every claim for damages, royalties or fees for the infringement of any patented invention or copyright occasioned by the Contractor in connection with the Work performed or Material furnished by the Contractor under the Contract.
- .03 The Owner shall indemnify and hold harmless the Contractor from and against all claims, demands, actions, suits or proceedings brought against the Contractor by third parties that arise out of the Contractor's direct involvement in this Contract provided such claims are directly caused by the negligent act or omission of the Owner, and then only to the extent the loss or damage was caused by the Owner.
- .04 The Owner shall indemnify and hold harmless the Contractor, its agents, officers and employees from and against all claims, demands, losses, expenses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of its obligations under the Contract Documents which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the Working Area. The Contractor expressly waives the right to indemnity for claims other than those stated above.
- .05 The Contractor shall pay to the Indemnitees, or any of them, on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by the Indemnitees, or any of them, in consequence of any such action, suit, claim, lien, execution or demand pursuant to GC 6.01 and any moneys paid or payable by the Indemnitees in settlement or in discharge or on account thereof. If the Contractor fails to make such payment, all such mentioned loss, costs, damages and expenses and all such moneys so paid or payable may be deducted from any moneys of the Contractor then remaining in the possession of the Owner on account of the Work or from moneys payable by the Owner to the Contractor on any account whatever or may be recovered from the Contractor or its Surety, as the case may be, in any court of competent jurisdiction as moneys paid at their request. The Contractor hereby authorizes and empowers the Owner or the Contract Administrator as the case may be, or their Solicitor, for the time being, to defend, settle or compromise any of such actions, suits, claims, liens, executions or demands as the Owner or the Contract Administrator, as the case may be, or their said Solicitor may deem expedient. The Contractor shall ratify and confirm all the acts of the Owner or the Contract Administrator or their Solicitor in that behalf, and shall pay to such Solicitor on demand his or her reasonable costs of any such defense, settlement and/or compromise, and that in default of such payment the same may be deducted from any moneys payable by the Owner to the Contractor on any account whatever.

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6.03

Contractor's Insurance

.01

Without restricting the generality of paragraph GC 6.02, Indemnification, the Contractor shall, at no additional cost to the Owner, at all times until the Work has been completed and handed over to the Owner, obtain and maintain insurance policies for the Work as outlined in the Contract Documents and as described below.

.02

The Contractor shall obtain Commercial General Liability Insurance such that the policy:

- a) is in the amount of not less than Five Million Dollars (\$5,000,000.00), per occurrence;
- b) adds the Contract Administrator, the City, its boards, agencies and commissions and subsidiary operations, as applicable, as additional insured(s) but only with respect to liability arising out of the operation of the Contractor for which a contract is issued by the City;
- c) has provisions for cross-liability and severability of interest, blanket form contractual liability, owner's and contractor's protective liability, broad form property damage, contingent and/or employer's liability, products/completed operations, non-owned automobile liability and any other provision relevant as detailed in the proposal/contract documents, and if applicable, including coverage for blasting, pile driving and collapse; and

.03

The Contractor shall provide the following policies of insurance:

- a) Standard Automobile Liability Insurance for all owned or leased licensed motorized vehicles that will be used in the performance of the Work with a limit of not less than TWO Million Dollars (\$2,000,000.00);
- b) Contractor's Equipment Insurance – All-Risk property insurance on the Contractor's equipment, materials and supplies used in the performance of the contract, including temporary boilers and pressure vessels in an amount to reflect replacement cost. The Contractor shall have no claim against the Owner or the Owner's insurers for any damage or loss to its property and shall require its property insurers to waive any right of subrogation against the Owner.

.04

The Contractor shall, if requested by the City, provide the following policies of insurance as described below:

- a) Contractor's Pollution with a limit of \$1,000,000 for sudden and gradual pollution occurrences associated with the Work, if applicable;

.05

All policies taken out by the Contractor shall be placed with an insurance company licensed to write in the Province of Ontario.

.06

The insurance policies required pursuant to this paragraph GC 6.03 shall be primary and shall not call into contribution any insurance available to the Owner.

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- .07 Prior to the commencement of the Work, the Contractor shall deliver to the City an original certificate of insurance in the City's standard form, signed by the insurer or an authorized agent of the insurer. The Contractor shall provide original signed Certificates evidencing renewals or replacements to the Owner prior to the expiration date of the original policies, without notice or request by the Owner.
- .08 The Contractor agrees that the insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne entirely by the Contractor. The amount of the deductible for the purpose of this Contract shall not be more than \$25,000.00.
- .09 Unless specified otherwise the duration of each insurance policy shall be from the date of commencement of the Work until 10 Days after the date of Final Acceptance of the Work, as set out in the Final Acceptance Certificate.
- .10 It is understood and agreed that the coverage and limits of liability noted above are not to be construed as the limit of liability of the Contractor in the performance of the Work.
- .11 The Contractor shall maintain completed operations coverage for a period of six (6) years from Substantial Performance, unless otherwise indicated in the Contract Documents. On an annual basis the Contractor shall submit to the City a renewal certificate or a replacement policy prior to the expiration date of the existing policy without notice or demand by the City. If the Contractor fails to do so, any limitation period for claiming indemnity described in the Contract Documents shall not be binding on the Owner.
- .12 Each policy (except for the policy of automobile insurance required under paragraph 1 of GC 6.03.03) shall contain an endorsement requiring the insurer(s) to notify the City of Toronto in writing, by registered mail, at least thirty (30) Days, (fifteen (15) Days if cancellation is due to non-payment of premium), prior to any cancellation of the Contractor's insurance.
- 6.04 Bonding**
- .01 The Contractor shall provide the Owner with any bonds required by the Tender Call, which bonds shall be addressed to the correct obligee, in the amount and for the duration set out in the Tender Call.
- .02 Such bonds shall be issued by a Surety and shall be maintained in good standing until the fulfillment of all obligations set out in the Contract Documents.
- .03

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Paragraph GC 7.0 Contractor's Responsibilities and Control of the Work

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7.01

General

- .01 The Contractor warrants that the site of the Work has been visited during or prior to the preparation of the Bid and the character of the Work and all local conditions which may affect the performance of the Work are known.
- .02 The Contractor shall not commence the Work nor deliver anything to the Working Area until the Contractor has received a written order to commence the Work, signed by the Contract Administrator.
- .03 The Contractor shall effectively direct and supervise the Work so as to ensure conformity with the Contract Documents. The Contractor shall be responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work. The Contractor shall provide adequate labour, Equipment, and Material to ensure the completion of the Work in accordance with the Contract Documents. The Work shall be performed as vigorously and as continuously as weather conditions or other interferences may permit.
- .04 The Contractor, so as to ensure conformity with the Contract Documents shall, except where otherwise required by the Owner, have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use.
- .05 Notwithstanding paragraph GC 7.01.04, where the Contract Documents include designs for temporary structures and other temporary facilities or specify a method of construction in whole or part, such facilities and methods shall be considered to be part of the design of the Work, and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner that the Contractor is responsible for the execution of the Work.
- .06 The Contractor shall execute the terms of the Contract in strict compliance with the requirements of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1 (the "Act") and Ontario Regulation 213/91 (which regulates Construction Projects) and any other regulations under the Act (the "Regulations") which may affect the performance of the Work, as the "constructor" or "employer", as defined by the Act, as the case may be. The Contractor shall ensure that:
- a) worker safety is given first priority in planning, pricing and performing the Work;
 - b) its officers and supervisory employees have a working knowledge of the duties of a "constructor" and "employer" as defined by the Act and the provisions of the Regulations applicable to the Work, and a

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- personal commitment to comply with them;
 - c) a copy of the most current version of the Act and the Regulations are available at the Contractor's office within the Working Area, or, in the absence of an office, in the possession of the supervisor responsible for the performance of the Work;
 - d) workers employed to carry out the Work possess the knowledge, skills and protective devices required by law or recommended for use by a recognized industry association to allow them to work in safety;
 - e) its supervisory employees are "Competent Persons" as defined in the Act, and carry out their duties in a diligent and responsible manner with due consideration for the health and safety of the workers; and
 - f) all Subcontractors and their workers are properly protected from injury while in the Working Area.
- .07 The Contractor, when requested, shall provide the Owner with a copy of its health and safety policy and program and shall respond promptly to requests from the Owner for confirmation that its methods and procedures for carrying out the Work comply with the Act and Regulations. The Contractor shall cooperate with inspectors appointed to enforce the Act and the Regulations in any investigations of worker health and safety in the performance of the Work. The Contractor shall indemnify and save the Owner harmless from any additional expense which the Owner may incur to have the Work performed in compliance with the Act or in respect of any fine incurred or claim made as a result of the Contractor's failure to comply with the requirements of the Act and the Regulations.
- .08 Prior to commencement of the Work the Contractor shall provide to the Contract Administrator a list of those products controlled under the Workplace Hazardous Materials Information System (WHMIS), which the Contractor expects to use for the Work. Related Safety Data Sheets shall accompany the submission. All containers used in the application of products controlled under WHMIS shall be labelled. The Contractor shall notify the Contract Administrator, in writing, of changes in the products to be used and provide relevant Safety Data Sheets.
- .09 The Contractor shall have a Superintendent on the site while any Work is being performed, to supervise the Work and to act for or on the Contractor's behalf. Prior to commencement of construction, the Contractor shall notify the Contract Administrator of the names, addresses, positions and cell phone, pager and telephone numbers of the Superintendent who can be contacted at any time to deal with matters relating to the Contract and update as necessary.
- .10 The Contractor shall designate a person to be responsible for traffic control and work zone safety. The designated person shall be a competent worker who is qualified because of knowledge, training, and experience to perform the duties, is familiar with Book 7 of the OTM and has knowledge of all

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potential or actual danger to workers and motorists. Prior to the commencement of construction, the Contractor shall notify the Contract Administrator of the name, address, position, cell phone, pager, and telephone numbers of the designated person, and update as necessary. The designated person may have other responsibilities, including other construction sites, and need not be present in the Work Area at all times.

- .11 The Contractor shall, at no additional cost to the Owner, furnish all reasonable aid, facilities and assistance required by the Contract Administrator for the proper inspection and examination of the Work or the taking of measurements for the purpose of payment.
- .12 The Contractor shall prepare, and update as required, a construction schedule of operations, indicating the proposed methods of construction and sequence of work and the time the Contractor proposes to complete the various items of work within the Contract Time. The schedule shall be designed to ensure conformity with the specified Contract Time. The schedule shall be submitted to the Contract Administrator within 7 Days from the date of the Contract award, unless otherwise required by the Contract. If the Contractor's schedule is materially affected by changes, the Contractor shall submit an updated construction schedule, if requested by the Contract Administrator, within 7 Days of the request. This updated schedule shall show how the Contractor proposes to perform the balance of the Work, so as to complete the Work within the time specified in the Contract Documents. The Owner shall at its sole discretion be entitled to decide to not issue an order to commence work, until such a schedule has been received.
- .13 Where the Contractor finds any error, inconsistency or omission relating to the Contract Documents or the Work, the Contractor shall promptly report it to the Contract Administrator and shall not proceed with the activity affected until receiving advice from the Contract Administrator.
- .14 The Contractor shall arrange with the appropriate utility authorities for the stake out of all underground utilities and service connections that may be affected by the Work. The Contractor shall observe the location of the stake outs, prior to commencing the Work, and in the event that there is a discrepancy between the location of the stake outs and the locations shown on the Contract Documents, that may affect the Work, the Contractor shall immediately notify the Contract Administrator and the affected utility companies, in order to resolve the discrepancy. The Contractor shall be responsible for any damage done to the underground Utilities and service connections by the Contractor's forces during construction.

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- .15 The Contractor shall comply with and conform to all statutes, laws, by-laws, regulations, requirements, ordinances, notices, rulings, orders, directives and policies of the municipal, provincial and federal governments and any other lawful authority and all court orders, judgments and declarations of a court of competent jurisdiction (collectively referred to as the “Laws”), applicable to the Work to be provided by, and the undertakings and obligations of, the Contractor under this Contract.
- 7.02 Layout**
- 7.02.01 Layout by Contractor**
- .01 Where the Contract Documents provide for the Contractor to lay out the Work, sub paragraphs .02 to .08 of paragraph 7.02.01 shall apply.
- .02 Prior to commencement of construction, the Contract Administrator and the Contractor shall locate on site those property bars, baselines and benchmarks that are necessary to delineate the Working Area and to lay out the Work, all as shown on the Contract Drawings.
- .03 The Contractor shall be responsible for the preservation of all property bars while the Work is in progress, except those property bars that must be removed to facilitate the Work. Any other property bars disturbed, damaged or removed by the Contractor's operations shall be replaced by an Ontario Land Surveyor, at the Contractor's expense.
- .04 At no extra cost to the Owner, the Contractor shall provide the Contract Administrator with such materials and devices as may be necessary to lay out the baseline and benchmarks, and as may be necessary for the inspection of the Work.
- .05 The Contractor shall provide qualified personnel to lay out and establish all lines and grades necessary for construction. The Contractor shall notify the Contract Administrator of any layout work carried out, so that the same may be checked by the Contract Administrator.
- .06 The Contractor shall install and maintain substantial alignment markers and secondary benchmarks as may be required for the proper execution and inspection of the Work. The Contractor shall supply one copy of all alignment and grade sheets to the Contract Administrator.
- .07 The Contractor shall assume full responsibility for alignment, elevations and dimensions of each and all parts of the Work, regardless of whether the Contractor's layout work has been checked by the Contract Administrator.
- .08 All stakes, marks and reference points shall be carefully preserved by the Contractor. In the case of their destruction or removal, for any reason, before the end of the Contract Time, such stakes, marks and reference points shall be replaced, to the satisfaction of the Contract Administrator, at the Contractor's expense.

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- 7.02.02 Layout by Owner**
- .01 Where the Contract Documents provide for the Owner to layout the Work, sub paragraphs .02 to .09 of paragraph 7.02.02 shall apply.
- .02 The Owner shall be responsible for setting out the line and setting out the Grade for the project.
- .03 The Owner shall supply a copy of the alignment and grade sheets to the Contractor to facilitate the construction of the Work according to the Contract Drawings.
- .04 The Owner shall install and maintain substantial alignment markers and secondary benchmarks as may be required for the proper execution and inspection of the Work.
- .05 All stakes, marks and reference points provided by the Owner shall be carefully preserved by the Contractor. In the case of the destruction or removal as a result of the Contractor's operations, such stakes, marks and reference points shall be replaced by the Owner at the Contractor's expense.
- .06 The Contractor shall give the Owner at least 24 hours notice before requiring levels, lines or stakes, on any portion of the Work and the Contractor shall clearly state in such notice the exact locality or localities where such are needed for use.
- .07 The Contractor must satisfy itself before commencing work at any point as to the meaning and accuracy of all stakes and marks, and no claim shall be considered by the Owner for or on account of any alleged inaccuracies or for any alternations subsequently rendered necessary on account of any such alleged inaccuracies, unless the Contractor notifies the Owner thereof in writing before commencing the Work.
- .08 The Contractor shall be responsible for the preservation of all property bars while the Work is in progress, except those property bars which must be removed to facilitate the Work. Any other property bars disturbed, damaged or removed by the Contractor's operations shall be replaced by an Ontario Land Surveyor, at the Contractor's expense.
- .09 All stakes, marks and reference points shall be carefully preserved by the Contractor. In the case of their destruction or removal as a result of the Contractor's operations, such stakes, marks and reference points shall be replaced, to the satisfaction of the Contract Administrator, at the Contractor's expense.
- 7.03 Damage by Vehicles or Other Equipment**
- .01 If at any time, in the opinion of the Contract Administrator, damage is being done or is likely to be done to any Roadway or any improvement thereon,

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outside the Working Area, by the Contractor's vehicles or other Equipment, whether licensed or unlicensed Equipment, the Contractor shall, on the direction of the Contract Administrator, and at no extra cost to the Owner, make changes or substitutions for such vehicles or Equipment, and shall alter loadings, or in some other manner, remove the cause of such damage to the satisfaction of the Contract Administrator.

7.04

Excess Loading of Motor Vehicles

.01

Where a vehicle is hauling Material for use on the Work, in whole or in part, upon a Highway, and where motor vehicle registration is required for such vehicle, the Contractor shall not cause or permit such vehicle to be loaded beyond the legal limit specified in the Highway Traffic Act, R.S.O. 1990, c.H.8, as amended, whether such vehicle is registered in the name of the Contractor or otherwise, except where there are designated areas within the Working Area where overloading is permitted. The Contractor shall bear the onus of weighing disputed loads.

7.05

Condition of the Working Area

.01

The Contractor shall maintain the Working Area in a tidy condition and free from the accumulation of debris and prevent nuisance, mud and ponding water, other than that caused by the Owner or others.

7.06

Maintaining Roadways and Detours

.01

Where an existing Roadway is affected by construction, it shall, at all times, be kept open to traffic. The Contractor shall, at no additional cost to the Owner, be responsible for providing and maintaining, for the duration of the Work an alternative route for both pedestrian and vehicular traffic through the Working Area in accordance with the OTM, whether along the existing Highway under construction or on a detour road beside or adjacent to the Highway under construction.

.02

Subject to the approval of the Contract Administrator, the Contractor may block traffic for short periods of time to facilitate construction of the Work in accordance with the OTM. Any temporary lane closures shall be kept to a minimum.

.03

The Contractor shall not be required to maintain a road through the Working Area until such time as the Contractor has commenced operations or during seasonal shut down or on any part of the Work that has been accepted in accordance with the Contract Documents. The Contractor shall not be required to apply de-icing chemicals or abrasives or carry out snowplowing unless otherwise specified in the Contract Documents.

.04

Where localized and separated sections of a Highway are affected by the Contractor's operations, the Contractor shall not be required to maintain intervening sections of that Highway until such times as these sections are located within the limits of the Highway affected by the Contractor's general operations under the Contract. Nothing in this section shall be taken as limiting the Contractor's obligation to maintain all areas of a Highway

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affected by the traffic control measures undertaken in relation to the Work and to fulfill all traffic control responsibilities thereon.

.05 Where the Contract Documents provide for, or the Contract Administrator requires, detours at specific locations, payment for the construction of the detours, and if required, for the subsequent removal of the detours, shall be made at the Contract Prices appropriate to such work.

.06 The Contractor shall maintain, to the satisfaction of the Owner and the Contract Administrator, a road through the Working Area. The road through the Working Area shall include any detour constructed in accordance with the Contract Documents or required by the Contract Administrator. Compensation for all labour, Equipment and Materials to do this Work shall be at the Contract prices appropriate to the Work or, where there are no such prices, at negotiated prices. Notwithstanding the foregoing, the cost of blading required to maintain the surface of such roads and detours shall be deemed to be included in the prices bid for the various tender items and no additional payment shall be made.

.07 Where Work is discontinued for any extended period including seasonal shutdown, the Contractor shall, when directed by the Contract Administrator, open and place the Highway and detours in a passable, safe and satisfactory condition for public travel.

.08 Where the Contractor constructs a detour that is not specifically provided for in the Contract Documents or required by the Contract Administrator, the construction of the detour and, if required, the subsequent removal shall be performed at the Contractor's sole expense. The detour shall be constructed and maintained to structural and geometric standards approved by the Contract Administrator. Removal and site restoration shall be performed as directed by the Contract Administrator.

.09 Where, with the prior written approval of the Contract Administrator, a Highway is closed and the traffic diverted entirely off the Highway to any other Highway, the Contractor shall, at no extra cost to the Owner, supply, erect and maintain traffic control devices in accordance with the OTM.

.10 Compliance with the foregoing provisions shall in no way relieve the Contractor of obligations under paragraph GC 6.01, Protection of Work, Persons and Property, dealing with the Contractor's responsibility for damage claims, except for claims arising on sections of a Highway within the Working Area that are being maintained by others.

7.07 Access to Properties Adjoining the Work and Interruption of Utility Services

.01 The Contractor shall provide, at all times, and at no extra cost to the Owner,

a) safe and adequate pedestrian and vehicular access; and

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- b) continuity of Utility services; and
- c) access for any and all emergency response vehicles and services,

to any and all properties adjoining the Working Area.

.02 The Contractor shall provide, at all times and at no extra cost to the Owner, access to fire hydrants, water and gas valves, and all other Utilities located in the Working Area.

.03 Where any interruptions in the supply of Utility services are required and are authorized by the Contract Administrator, the Contractor shall give the affected property owners notice in accordance with paragraph GC 7.11, Notices by the Contractor, and shall arrange such interruptions so as to create a minimum of interference to those affected.

7.08 Approvals and Permits

.01 Except as specified in paragraph GC 4.02, Approval and Permits, the Contractor shall obtain and pay for any permits, licenses, and certificates that are required for the performance of the Work.

.02 The Contractor shall arrange for all necessary inspections required by the approvals and permits specified in paragraph GC 7.08.01

7.09 Suspension of Work

.01 The Contractor shall, upon written notice from the Contract Administrator, discontinue or delay any or all of the Work and Work shall not be resumed until the Contract Administrator so directs in writing. Delays, in these circumstances, shall be administered according to paragraph GC 3.08, Delays.

7.10 Contractor's Right to Stop the Work or Terminate the Contract

.01 The Contractor may notify the Owner in writing, with a copy to the Contract Administrator, that the Owner is in default of contractual obligations if,

- a) the Contract Administrator fails to issue certificates in accordance with the provisions of paragraph GC 8.0 Measurement and Payment;
- b) the Owner fails to pay the Contractor, within 30 Days of the due dates identified in paragraph GC 8.02.03, Certification and Payment, the amounts certified by the Contract Administrator or within 30 Days of an award by an arbitrator or court; or
- c) the Owner commits a major default of the requirements of the Contract.

.02 The Contractor's written notice to the Owner shall advise that if the default is not corrected in the 15 Days immediately following the receipt of the written notice the Contractor may, without prejudice to any other right or remedy the Contractor may have, stop the Work or terminate the Contract.

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- .03 If the Contractor terminates the Contract under the conditions set out in paragraph GC 7.10, above, the Contractor shall only be entitled to be paid for that portion of the Work that is, in the Contract Administrator's opinion, satisfactorily performed.
- 7.11 Notices by the Contractor**
- .01 Before Work is carried out that may affect the property or operations of any Ministry or agency of government or any person, company, partnership or corporation, including a municipal corporation or any board or commission thereof, and in addition to such notices of the commencement of specified operations as are prescribed elsewhere in the Contract Documents, the Contractor shall give at least 48 hours' advance written notice of the date of commencement of such work to the person, company, partnership, corporation, board, or commission so affected.
- .02 In the case of a spill as defined in section 91 of the Environmental Protection Act, R.S.O. 1990, c.E.19, as amended and any successor legislation, or any damage to, or interference with any Utilities, pole lines, pipe lines, conduits, farm tiles, or other public or privately owned works or property, the Contractor shall immediately notify the Owner and the Contract Administrator of the location and details of such spill, damage or interference. In the case of spills, the Contractor shall also, immediately, report the spill to the Ministry of the Environment and Climate Change (Ontario).
- 7.12 Obstructions**
- .01 Except as otherwise noted in the Contract Documents, the Contractor assumes all the risks and responsibilities arising out of any obstruction encountered in the performance of the Work and any traffic conditions, including traffic conditions on any Highway or road giving access to the Working Area caused by such obstructions, and the Contractor shall not make any claim against the Owner for any loss, damage or expense occasioned thereby.
- .02 Where the obstruction is a Utility or other man-made object, the Contractor shall not be required to assume the risks and responsibilities arising out of such obstruction, unless the location of the obstruction is shown on the plans or described in the Contract Documents and the location so shown is within the tolerance specified in paragraph GC 2.01.01(a) or unless the presence and location of the obstruction has otherwise been made known to the Contractor or could have been determined by the visual site investigation made by the Contractor in accordance with the Contract Documents.
- .03 During the course of the Contract, it is the Contractor's responsibility to consult with Utility companies or other appropriate authorities for further information in regard to the exact location of these Utilities, to exercise the necessary care in construction operations, and to take such other precautions as are necessary to safeguard the Utilities from damage.

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- 7.13 Limitations of Operations**
- .01 Except for such work as may be required by the Contract Administrator to maintain the Work in a safe and satisfactory condition, the Contractor shall not carry on operations under the Contract Documents on days other than Working Days without permission in writing from the Contract Administrator, unless otherwise required by the Contract Documents.
- .02 The Contractor shall cooperate and coordinate the Work with other contractors, Utility companies and the Owner and they shall be allowed access to their work or plant at all reasonable times.
- 7.14 Cleaning Up Before Acceptance**
- .01 Upon attaining Substantial Performance of the Work, the Contractor shall remove any surplus materials, tools, construction machinery and Equipment not required for the performance of the remaining Work. The Contractor shall also remove all temporary works and debris other than that caused by the Owner, and leave the Work and Working Area clean and suitable for occupancy by the Owner unless otherwise specified.
- .02 Notwithstanding any other terms or conditions set out herein, the Contract Administrator shall not be under any obligation to issue a Completion Certificate until such time as the Contractor has removed all surplus materials, tools, construction machinery, debris and Equipment from the Working Area.
- 7.15 Warranty**
- .01 The Contractor shall be responsible for the proper performance of the Work only to the extent that the design and specifications permit such performance.
- .02 Subject to the previous paragraph, the Contractor shall correct promptly, at no additional cost to the Owner, defects or deficiencies in the Work that appear, prior to and during the period of 24 months after the date of Substantial Performance or such longer or shorter periods as may be specified elsewhere in the Contract Documents for certain Equipment, Materials or components of Work. The Contract Administrator shall promptly give the Contractor written notice of observed defects or deficiencies.
- .03 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of paragraph GC 7.15.02

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7.16

.01

Contractor's Workers

The Contractor shall employ only orderly, competent and skillful workers to do the Work and whenever the Contract Administrator shall inform the Contractor in writing that any worker or workers involved in the Work are, in the opinion of the Contract Administrator, incompetent, or disorderly, such worker or workers shall be removed from the Work and shall not again be employed on the Work without the consent in writing of the Contract Administrator.

7.17

.01

Resident or property owner complaints or claims

The Contractor shall immediately upon becoming aware of a complaint or claim made by a resident or property owner, inform the Contract Administrator.

7.18

.01

Contractor's responsibility for drainage

The Contractor shall keep all portions of the Work well, properly and efficiently drained, to at least the same degree as that of the existing drainage conditions, during construction and until the Work is completed. The Contractor shall be solely responsible for all damages caused by, or resulting from, water backing up or flowing over, under, through, from, on or along any part of the Work or which any of his or her operations may cause to flow elsewhere and shall bear such costs, make such provisions and provide such indemnity as required in the Contract Documents.

7.19

.01

Blasting

The Contractor shall not carry out any blasting operation except with the written consent of the Contract Administrator, provided that any consent so granted shall not, under any circumstances, relieve the Contractor of the liabilities and obligations assumed by him under this Contract.

.02

The Contractor shall comply with all laws, regulations and directions of the Contract Administrator, respecting the handling, storage and use of explosives.

Section 5 – General Conditions of Contract

Paragraph GC 8.0 Measurement and Payment

| <u>GC #</u> | |
|----------------|--|
| 8.01 | Measurement |
| 8.01.01 | Quantities |
| .01 | The Contract Administrator shall make an Estimate once a month, in writing, of the quantity of Work performed. The first Estimate shall be the quantity of Work performed since the Contractor commenced the Contract, and every subsequent Estimate, except the final one, shall be of the quantity of Work performed since the preceding Estimate was made. The Contract Administrator shall provide the copy of each Estimate to the Contractor within 15 Days of the last Day of the period covered by the Estimate. |
| .02 | Progress Payments based on Estimates shall be construed and held to be approximate. The final quantities for the issuance of the Completion Certificate shall be based on the Actual Measurement of the Work completed. |
| 8.01.02 | Variations in Tender Call |
| .01 | Where it appears that the quantity of Work to be done and/or Material to be supplied by the Contractor under a unit price Tender Call item will exceed or be less than the Tender Call quantity, the Contractor shall proceed to do the Work and/or supply the Material required to complete the Tender Call item and payment will be made for the actual amount of Work done and/or Materials supplied at the unit prices stated in the Tender Call except as provided below: <ul style="list-style-type: none">a) In the case of a Major Item where the quantity of Work performed and/or Material supplied by the Contractor exceeds the tender quantity by more than 30%, the City shall have the right, in its sole discretion, to require that the portion of the Work performed and/or Material supplied which exceeds 130% of the tender quantity be paid as Work on a Time and Material Basis, in accordance with GC 8.02.04. |
| 8.02 | Payment |
| 8.02.01 | Payment for Work |
| .01 | Payment for the Work shall be full compensation for all labour, Equipment and Material required in its performance, including, but not limited to, Hand Tools, supplies and other incidentals. |
| .02 | Payment for Work not specifically detailed as part of any one item and without specified details of payment shall be deemed to be included in the items with which it is associated. |

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8.02.02

.01

Advance Payments for Material

The Owner may make advance payments for Material intended for incorporation in the Work upon the written request of the Contractor and according to the following terms and conditions:

- a) The Contractor shall deliver the Material to a site approved by the Contract Administrator and the Contractor shall, in advance of receipt of the shipment of the Material, arrange for adequate and proper storage facilities.
- b) The value of aggregates, processed and stockpiled, shall be assessed by the following procedure:
 - i. Sources Other Than Commercial
 - (1) Granular 'A', 'B' and 'M' shall be assessed at the rate of 60% of the Contract Price.
 - (2) Coarse and fine aggregates for hot mix asphaltic concrete, surface treatment and Portland cement concrete shall be assessed at the rate of 25% of the Contract Price for each aggregate stockpiled.
 - ii. Commercial Sources
Payment for separated coarse and fine aggregates shall be considered at the above rate when such materials are stockpiled at a commercial source where further processing is to be carried out before incorporating such materials into a final product. Advance payments for other materials located at a commercial source shall not be made.
- c) Payment for all other materials, unless otherwise specified elsewhere in the Contract, shall be based on the invoice Price, and the Contractor shall submit proof of cost to the Contract Administrator before payment will be made by the Owner.
- d) The payment for all Materials shall be prorated against the appropriate tender item by paying for sufficient units of the item to cover the value of the Material. Such payment shall not exceed 80% of the Contract Price for the item.
- e) All Materials for which the Contractor wishes to receive advance payment shall be placed in the designated storage location immediately upon receipt of the material and shall thenceforth be held by the Contractor in trust for the Owner as collateral security for any monies advanced by the Owner and for the due completion of the Work. The Contractor shall not exercise any act of ownership inconsistent with such security, or remove any Material from the storage locations, except for inclusion in the Work, without the consent, in writing, of the Contract Administrator.
- f) Such Materials shall remain at the risk of the Contractor who shall be responsible for any loss, damage, theft, improper use or destruction of the material however caused.

.02

Where the Owner makes advance payments subject to the conditions listed in paragraph GC 8.02.02.01, such payment shall not constitute acceptance of the Material by the Owner. Acceptance shall only be determined when the Material meets the requirements of the appropriate specifications.

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8.02.03 Certification and Payment

8.02.03.01 Progress Payment Certificate

.01 The Contract Administrator shall issue a Progress Payment Certificate in accordance with the Contract Documents and paragraph GC 8.01.01, Quantities.

.02 The Progress Payment Certificate shall show,

- a) the quantities of Work performed;
- b) the value of Work performed;
- c) any advanced payment for Material;
- d) the amount of statutory holdback, liens, Owner's set-off;
- e) the amount of any applicable taxes; and
- f) the amount due the Contractor.

.03 One copy of the Progress Payment Certificate shall be sent to the Contractor.

.04 Payment shall be made within 30 Days of the approval of the Progress Payment Certificate by the Contract Administrator.

.05 The Owner shall retain from funds owing under the Contract the statutory holdbacks required under the *Construction Act*. Unless otherwise specified in the Contract Documents, no letter of credit or demand-worded holdback will be accepted or used to retain any part of the statutory holdbacks required under the *Construction Act*.

8.02.03.02 Certification of Subcontract Completion

.01 Before Substantial Performance, the Contractor may notify the Contract Administrator, in writing that a subcontract is completed satisfactorily to the Contractor and ask that the Contract Administrator certify the completion of such subcontract.

.02 The Contract Administrator shall issue a Certificate of Subcontract Completion if the subcontract has been completed in a form satisfactory to the Contract Administrator, and all required inspection and testing of the works covered by the subcontract have been carried out and the results are satisfactory to the Contract Administrator.

.03 The Contract Administrator shall set out in the Certificate of Subcontract Completion the date on which the subcontract was completed and within 7 Days of the date the subcontract is certified complete, the Contract Administrator shall give a copy of the certificate to the Contractor and to the Subcontractor concerned.

8.02.03.03 Subcontract Statutory Holdback Release Certificate and Payment

.01 Following receipt of the Certificate of Subcontract Completion, the Owner may release and pay the Contractor the statutory holdback retained in

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respect of the subcontract. Such release shall be made 61 Days after the date the subcontract was certified complete and providing the Contractor submits the following to the Contract Administrator:

- a) a document satisfactory to the Contract Administrator that shall release the Owner from all further claims relating to the subcontract, qualified by stated exceptions such as holdback monies;
- b) evidence satisfactory to the Contract Administrator that the Subcontractor has discharged all liabilities incurred in carrying out the subcontract;
- c) a satisfactory clearance certificate or letter from the Workplace Safety and Insurance Board relating to the subcontract; and
- d) a copy of the contract between the Contractor and the Subcontractor and a satisfactory statement showing the total amount due the Subcontractor from the Contractor.

- .02 Paragraph GC 8.02.03.03.01(d) shall apply to Lump Sum Items only and then only when the Contract Administrator specifically requests it.
- .03 Upon receipt of the statutory holdback, the Contractor shall forthwith give the Subcontractor the payment due under the subcontract.
- .04 Release of statutory holdback by the Owner in respect of a subcontract shall not relieve the Contractor, or the Contractor's Surety, of any of their responsibilities.
- 8.02.03.04 Certification of Substantial Performance**
- .01 Upon application by the Contractor and when the Contract Administrator has verified that the Contract has been substantially performed, the Contract Administrator shall issue a Certificate of Substantial Performance.
- .02 The Contract Administrator shall set out in the Certificate of Substantial Performance the date on which the Contract was substantially performed and within 7 Days after signing the said certificate the Contract Administrator shall provide a copy to the Contractor.
- .03 Upon receipt of a copy of the Certificate of Substantial Performance, the Contractor shall forthwith, as required by Section 32(1) paragraph 5 of the Construction Act, R.S.O. 1990, c.C.30, as amended, publish a copy of the certificate in the manner set out in the regulations..
- .04 Where the Contractor fails to publish a copy of the Certificate of Substantial Performance as required above within 7 Days after receiving a copy of the certificate signed by the Contract Administrator, the Owner may publish a copy of the certificate at the Contractor's expense.
- .05 Except as otherwise provided for in Section 31 of the Construction Act, the 60-Day lien period prior to the release of holdback as referred to in paragraph GC 8.02.03.05, Substantial Performance Payment and Statutory Holdback Release Payment Certificates, shall commence from the date of

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publication of the Certificate of Substantial Performance as provided for above.

8.02.03.05 Substantial Performance Payment and Substantial Performance Statutory Holdback Release Payment Certificates

.01 When the Contract Administrator issues the Certificate of Substantial Performance, the Contract Administrator shall also issue the Substantial Performance Payment Certificate and the Substantial Performance Statutory Holdback Release Payment Certificate or where appropriate, a combined payment certificate.

.02 The Substantial Performance Payment Certificate shall show,
a) the value of Work performed to the date of Substantial Performance;
b) the value of outstanding or incomplete Work;
c) the amount of the statutory holdback, allowing for any previous releases of statutory holdback to the Contractor in respect of completed subcontracts and deliveries of pre-selected equipment;
d) the amount of maintenance security required; and
e) the amount due the Contractor.

.03 Subject to paragraph GC 8.02.03.05.05, payment of the amount certified shall be made within 30 Days of the date of issuance of the Substantial Performance Payment Certificate.

.04 The Substantial Performance Statutory Holdback Release Payment Certificate shall be a payment certificate releasing to the Contractor the statutory holdback due in respect of Work performed up to the date of Substantial Performance. Payment of such statutory holdback shall be due 61 Days after the date of publication of the Certificate of Substantial Performance but subject to the provisions of the Construction Act and GC 8.02.03.05.05.

.05 Despite anything to the contrary in the Contract Documents, the Owner shall be entitled to reduce the amount of the Statutory Holdback paid to the Contractor to account for any amounts that may be owed by the Contractor to the Owner.

.06 Subject to the *Construction Act*, as of the twenty-fifth calendar day before the expiry of the lien period after Substantial Performance is declared or published as provided in the *Construction Act*, the Contractor waives and releases the Owner from all claims which the Contractor has or reasonably ought to have knowledge of that could be advanced by the Contractor against the Owner arising from the Contractor's involvement in the Work, including, without limitation claims for delay, claims for an increase in the Contract Price, and those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of Substantial Performance of the Work except as follows:

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- a) claims arising prior to or on the date of Substantial Performance of the Work for which Notice in Writing of Claim has been received by the Owner from the Contractor no later than the twenty-sixth calendar day before the expiry of the lien period after Substantial Performance is declared or published as provided in the *Construction Act*;
- b) indemnification for claims advanced against the Contractor by third parties for which a right of indemnification may be asserted by the Contractor against the Owner pursuant to the provisions of this Contract;
- c) claims resulting from acts or omissions which occur after the date of Substantial Performance of the Work.

.07 The Contractor waives and releases the Owner from all claims referenced in GC 8.02.03.05.06(c) except for those referred in GC 8.02.03.05.06(b) and Claims for which Notice in Writing of Claim has been received by the Owner from the Contractor within 395 calendar days following the date of Substantial Performance of the Work.

.08 “Notice in Writing of Claim” as provided for in GC 8.02.03.05.06 and GC 8.02.03.05.07 to preserve a claim or right of action which would otherwise, by the provisions of GC 8.02.03.05.06 and GC 8.02.03.05.07, be deemed to be waived, must include the following:

- a) a clear and unequivocal statement of the intention to claim;
- b) a statement as to the nature of the claim and the grounds upon which the claim is based; and
- c) a statement of the estimated quantum of the claim.

.09 The Contractor giving “Notice in Writing of Claim” as provided for in GC 8.02.03.05.08 shall submit within a reasonable time a detailed account of the amount claimed.

.10 Where the event or series of events giving rise to a claim made under GC 8.02.03.05.06 has a continuing effect, the detailed account submitted under GC 8.02.03.05.09 shall be considered to be an interim account and the Contractor shall, when making the claim, submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The Contractor, when making the claim, shall submit a final account after the end of the effects resulting from the event or series of events.

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8.02.03.06

Certification of Completion

.01

Upon application by the Contractor and when the Contract Administrator has verified that the Contract has reached Completion, the Contract Administrator shall issue a Completion Certificate.

.02

The Contract Administrator shall set out in the Completion Certificate the date of Completion and, within 7 Days of signing the said certificate, the Contract Administrator shall provide a copy to the Contractor.

8.02.03.07

Completion Payment and Completion Statutory Holdback Release Payment Certificates

.01

When the Contract Administrator issues the Completion Certificate, the Contract Administrator shall also issue the Completion Payment Certificate and the Completion Statutory Holdback Release Payment Certificate or where appropriate, a combined payment certificate.

.02

The Completion Payment Certificate shall show,

- a) measurement and value of Work at Completion;
- b) the amount of the further statutory holdback based on the value of further work completed over and above the value of work completed shown in the Substantial Performance Payment Certificate referred to above; and
- c) the amount due the Contractor.

.03

The Completion Statutory Holdback Release Payment Certificate shall be a payment certificate releasing to the Contractor the further statutory holdback. Payment of such statutory holdback shall be due 61 Days after the date of Completion of the Work as established by the Completion Certificate but subject to the provisions of the Construction Act and any right of set-off the Owner may have.

8.02.03.08

Owner's Set-off

.01

Pursuant to Section 12 of the Construction Act, the Owner may retain from monies owing to the Contractor under this Contract Document an amount sufficient to cover any outstanding or disputed liabilities including the cost to remedy deficiencies, the reduction in value of substandard portions of the Work, claims for damages by third parties that have not been determined in writing by the Contractor's insurer, undetermined claims by the Owner, any assessment due the Workplace Safety and Insurance Board and any monies to be paid to workers in accordance with paragraph GC 8.02.06, Payment of Workers.

.02

Where the Owner intends to retain money under paragraph GC 8.02.03.08.01, the Owner shall give the Contractor appropriate notice of such action.

8.02.04

Payment on a Time and Material Basis

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8.02.04.01
.01

Definitions

For the purpose of paragraph GC 8.02.04 the following definitions shall apply:

127 Rate: means the rate for a unit of Equipment as listed in OPSS.PROV 127, Schedule of Rental Rates for Construction Equipment Including Model and Specification Reference, that is current at the time the Work is carried out or for Equipment that is not so listed, the rate that has been calculated by the Owner, using the same principles as used in determining the 127 Rates.

Cost of Labour: means the amount of wages, salary and Payroll Burden paid or incurred directly by the Contractor to or in respect of labour and supervision actively and necessarily engaged on the Work based on the recorded time and hourly rates of pay for such labour and supervision, but shall not include any payment or costs incurred for general supervision, administration and management time spent on the entire Work or any wages, salary or Payroll Burden for which the Contractor is compensated by any payment made by the Owner for Equipment.

Cost of Material: means the cost of Material purchased or supplied from stock, and valued at current market prices, for the purpose of carrying out Work on a Time and Material Basis, by the Contractor, or by others when such arrangements have been made by the Contractor for completing the Work, as shown by itemized invoices.

Operated Rented Equipment: means Rented Equipment for which an operator is provided by the supplier of the equipment and for which the rent or lease includes the cost of the operator.

Payroll Burden: means the payments in respect of workplace insurance, vacation pay, employment insurance, sickness and accident insurance, pension fund, and such other welfare and benefit payments forming part of the Contractor's normal labour costs.

Rented Equipment: means equipment that is rented or leased for the special purpose of Work on a Time and Material Basis from a person, firm or corporation that is not an associate of the lessee as defined by the *Securities Act*, R.S.O. 1990, c.S.5, as amended, and is approved by the Contract Administrator.

Road Work: means the preparation, construction, finishing and construction maintenance of roads, streets, Highways and parking lots and includes all work incidental thereto other than work on structures.

Sewer and Watermain Work: means the preparation, construction, finishing and construction maintenance of sewer systems and watermain systems, and includes all work incidental thereto other than work on structures.

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Standby Time: means any period of time that is not considered Working Time and which together with the Working Time does not exceed 10 hours in any one Working Day and during which time a unit of equipment cannot practically be used on other work but must remain on the site in order to continue with its assigned task and during which time the unit is in fully operable condition.

Structure Work: means the construction, reconstruction, repair, alteration, remodelling, renovation or demolition of any bridge, building, tunnel or retaining wall and includes the preparation for and the laying of the foundation of any bridge, building, tunnel or retaining wall and the installation of equipment and appurtenances incidental thereto.

Work on a Time and Material Basis: means a Change in the Work, approved by the Contract Administrator for payment on a Time and Material basis. The Work on a Time and Material Basis shall be subject to all the terms, conditions, specifications and provisions of the Contract Documents.

Working Time: means each period of time during which a unit of Equipment is actively and of necessity engaged on a specific operation and the first 2 hours of each immediately following period during which that unit is not so engaged but during which the operation is otherwise proceeding and during which time the unit cannot practically be transferred to other work but must remain on the site in order to continue with its assigned tasks and during which time the unit is in a fully operable condition.

8.02.04.02 .01

Daily Work Records

Daily Work Records prepared, as the case may be, by either the Contractor's representative or the Contract Administrator and reporting the labour and Equipment employed and the Material used for Work on a Time and Material Basis, shall be reconciled and signed each day by both the Contractor's representative and the Contract Administrator. If it is not possible to reconcile the Daily Work Records, then the Contractor shall submit the un-reconciled Daily Work Records with its claim, whereby the resolution of the dispute about the Daily Work Records shall not be resolved until there is a resolution of the claim

8.02.04.03 .01

Payment for Work

Payment as herein provided shall be full compensation for all labour, Equipment and Material to do the Work on a Time and Material Basis except where there is agreement to the contrary prior to the commencement of the Work on a Time and Material Basis. The payment adjustments on a Time and Material basis shall apply to each individual Change Order authorized by the Contract Administrator.

8.02.04.04

Payment for Labour

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- .01 The Owner shall pay the Contractor for labour employed on each Time and Material project at 135% of the Cost of Labour up to \$3000, then at 120% of any portion of the Cost of Labour in excess of \$3000.
- .02 At the Owner's discretion, an audit may be conducted in which case the actual Payroll Burden so determined shall be applied to all Work on Time and Material Basis on the Contract
- 8.02.04.05 Payment for Material**
- .01 Where payments are to be made on a Time and Material Basis, the Owner shall pay the Contractor for Material used at 120% of the Cost of Material up to \$3,000, then at 115% of any portion of the Cost of Material in excess of \$3,000.
- 8.02.04.06 Payment for Equipment**
- 8.02.04.06.01 Working Time**
- .01 The Owner shall pay the Contractor for the Working Time of all Equipment other than Rented Equipment and Operated Rented Equipment used on the Work on a Time and Material basis at the 127 Rates with a cost adjustment as follows:
- a) Cost \$10,000 or less - no adjustment;
 - b) Cost greater than \$10,000 but not exceeding \$20,000 - payment \$10,000 plus 90% of the portion in excess of \$10,000; and
 - c) Cost greater than \$20,000 - \$19,000 plus 80% of the portion in excess of \$20,000.
- .02 The Owner shall pay the Contractor for the Working Time of Rented Equipment used on the Work on a Time and Material Basis at 110% of the invoice price approved by the Contract Administrator up to a maximum of 110% of the 127 Rate. This constraint may be waived when the Contract Administrator approves the invoice price prior to the use of the Rented Equipment.
- .03 The Owner shall pay the Contractor for the Working Time of Operated Rented Equipment used on the Work on a Time and Material Basis at 110% of the Operated Rented Equipment invoice price approved by the Contract Administrator prior to the use of the Equipment on the Work on a Time and Material Basis.

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8.02.04.06.02 Standby Time

- .01 The Owner shall pay the Contractor for Standby Time of Equipment at 35% of the 127 Rate or 35% of the invoice price whichever is appropriate. The Owner shall pay reasonable costs for Rented Equipment where this is necessarily retained in the Working Area for extended periods agreed to by the Contract Administrator. This shall include Rented Equipment intended for use on other work, but has been idled due to the circumstances giving rise to the Work on a Time and Material Basis.
- .02 In addition, the Owner shall include the Cost of Labour of operators or associated labourers who cannot be otherwise employed during the Standby Time or during the period of idleness caused by the circumstances giving rise to the Work on a Time and Material Basis.
- .03 The Contract Administrator may require Rented Equipment idled by the circumstances giving rise to the Work on a Time and Material Basis to be returned to the lessor until the Work requiring the Equipment can be resumed. The Owner shall pay such costs as result directly from such return.
- .04 When Equipment is transported, solely for the purpose of the Work on a Time and Material Basis, to or from the Working Area on a Time and Material basis, payment shall be made by the Owner only in respect of the transporting units. When Equipment is moved under its own power it shall be deemed to be working. The method of moving Equipment and the rates shall be subject to the approval of the Contract Administrator.

8.02.04.07 Payment for Hand Tools

- .01 Notwithstanding any other provision of this paragraph, no payment shall be made to the Contractor for, or in respect of, Hand Tools or Equipment that are tools of the trade.

8.02.04.08 Payment for Work By Subcontractors

- .01 For Changes in the Work, where the Work is performed by a Subcontractor the Owner shall pay the Contractor a mark up in the amount of 10 % of the first \$ 10,000 plus 5 % of the amount in excess of \$ 10,000.
- .02 No further markup shall be applied regardless of the extent to which the Work is assigned or sublet to others. If Work is assigned or sublet to an associate, as defined by the Securities Act no markup whatsoever shall be applied

8.02.04.09 Submission of Invoices

- .01 At the start of the Work on a Time and Material Basis, the Contractor shall provide the applicable labour and Equipment rates not already submitted to the Contract Administrator during the course of such Work.
- .02 Separate summaries shall be completed by the Contractor and each such summary shall include the Change Directive or Change Order number and

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covering dates of the Work and shall itemize separately labour, Materials and Equipment. Invoices for Materials, Rented Equipment and other charges incurred by the Contractor on the Work on a Time and Material Basis shall be included with each summary.

.03 Each month the Contract Administrator shall include with the monthly Progress Payment Certificate, the costs of the Work on a Time and Material Basis incurred during the preceding month all in accordance with the contract administrative procedures and the Contractor's invoice of the Work on a Time and Material Basis.

.04 The final summary required under 8.02.04.09.02 shall be submitted by the Contractor within 60 Days after the completion of the Work on a Time and Material Basis.

8.02.04.10 Payment Other Than on a Time and Material Basis

.01 Paragraph GC 8.02.04 shall not preclude the option of the Contract Administrator and the Contractor negotiating a Lump Sum or Unit Price payment for Changes in the Work.

8.02.04.11 Payment Inclusions

.01 Except where there is agreement in writing to the contrary, the payments described herein shall be accepted by the Contractor as compensation in full for profit and all costs and expenses arising out of the Work including all cost of general supervision, administration and management time spent on the Work and no other payment or allowance shall be made in respect of such Work.

8.02.05 Final Acceptance Certificate

.01 After the acceptance of the Work the Contract Administrator shall issue the Final Acceptance Certificate, or, where applicable, after the Warranty Period has expired. The Contract Administrator shall have no obligation to issue the Final Acceptance Certificate until all known deficiencies have been adjusted or corrected, as the case may be, and the Contractor has discharged all obligations under the Contract Documents.

8.02.06 Payment of Workers

.01 The Contractor shall, in addition to any fringe benefits, pay the workers employed on the Work in accordance with the labour conditions set out in the Contract Documents and at intervals of not less than twice a month.

.02 The Contractor shall require each Subcontractor doing any part of the Work to pay the workers employed by the Subcontractor on the Work in the same manner as set out in paragraph GC 8.02.06.01.

.03 Where any person employed by the Contractor or any Subcontractor or other person on the Work is paid less than the amount required to be paid under the Contract Documents, the Owner may set off monies owing to the Contractor to reflect the amount required to be paid under the Contract Documents.

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- 8.02.07 Records**
- .01 The Contractor shall maintain and keep accurate Records relating to the Work, including any Changes in the Work, and claims arising therefrom. Such Records shall be of sufficient detail to support the total cost of the Work, and any Changes in the Work. The Contractor shall preserve all such original Records until 12 months after the Final Acceptance Certificate is issued or until all claims have been settled, whichever is longer. The Contractor shall require that Subcontractors employed by the Contractor preserve all original Records pertaining to the Work, or any Changes in the Work and claims arising therefrom for the same period of time.
- .02 If, in the opinion of the Contract Administrator, Daily Work Records are required, the Contractor's Daily Work Records shall include the labour and Equipment employed and the Material used on any specific portion of the Work. The Daily Work Records shall be reconciled with and signed by the Contractor's representative each day.
- .03 The Owner may inspect and audit the Contractor's Records relating to the Work, and any Changes in the Work at any time during the period of the Contract. The Contractor shall supply certified copies of any part of its Records required whenever requested by the Owner.
- 8.02.08 Taxes and Duties**
- .01 Where a change in Canadian Federal or Provincial taxes occurs after the date of the Tender Call closing for this Contract, and this change could not have been anticipated at the time of bidding, the Owner shall increase or decrease Contract payments to account for the exact amount of tax change involved.
- .02 Claims for compensation for additional tax cost shall be submitted by the Contractor to the Contract Administrator on forms provided by the Contract Administrator to the Contractor. Such claims for additional tax costs shall be submitted not less than 30 Days after the date of Final Acceptance.
- .03 Where the Contractor benefits from a change in Canadian Federal or Provincial taxes, the Contractor shall submit to the Contract Administrator, on forms provided by the Contract Administrator, a statement of such benefits. This statement shall be submitted not later than 30 Days after Final Acceptance.
- .04 Changes in Canadian Federal or Provincial taxes that impact upon commodities, which when left in place form part of the finished Work, or the provision of services, where such services form part of the Work and where the manufacture or supply of such commodities or the provision of such services is carried out by the Contractor or a Subcontractor, are subject to a claim or benefit as detailed above. Services in the latter context means the supply and operation of equipment, the provision of labour and the supply of commodities, which do not form part of the Work.

Section 5 – General Conditions of Contract

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Liquidated Damages

It is agreed by the parties to the Contract that if all the Work is not completed within the time specified or any extension thereof by the Contract Administrator, damage will be sustained by the Owner, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the Owner will sustain in the event of and by reason of such delay and the parties hereto agree that the Contractor will pay to the owner Five Hundred Dollars (\$500.00), or as otherwise indicated in the Contract Documents, for liquidated damages for each and every Working Day's delay in finishing the Work beyond the date of completion or number of days prescribed. It is agreed that this amount is an estimate of actual damage to the Owner which will accrue during the period in excess of the prescribed date of Completion, and is not a penalty.

The Owner may deduct any amount under this paragraph from any monies that may be due or payable to the Contractor on any account with respect to the Contract Documents. The liquidated damages payable under this paragraph are in addition to and without prejudice to any other remedy action or other alternative that may be available to the Owner.