



## HALTON REGION SPECIAL NOTICE:

### TRANSITION TO THE CCDC 2 (2020) FORM OF CONTRACT AND VENDOR PERFORMANCE MANAGEMENT POLICY

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**HALTON REGION HAS TRANSITIONED TO THE CCDC 2(2020) FORM OF CONTRACT. PLEASE NOTE THE FOLLOWING:**

**The Region's contract documents have changed** – The Region has adopted the CCDC 2 (2020) Stipulated Price Contract with new Supplementary Conditions, and correspondingly updated its tender documents. The key project-specific details can be found in the Agreement Between Owner and Contractor and the Agreement Term Sheet, located in Appendix 1 of the Supplementary Conditions.

**The Region's bonding requirements have changed for projects using the CCDC 2 (2020) Stipulated Price Contract** – Bonds will only be required where the tender price is equal to or greater than \$500,000.00. For those projects, the Region now requires Performance Bonds with a coverage limit of 50% of the Contract Price (plus HST), rather than 100%. See the Instructions to Bidders Section 12 for details.

**The Region's insurance requirements have changed for projects using the CCDC 2 (2020) Stipulated Price Contract** – Insurance requirements can be found in the Supplementary Conditions SC-110 and SC-111, as well as Appendix 3 to the Supplementary Conditions.



**VENDOR PERFORMANCE MANAGEMENT POLICY.  
PLEASE NOTE THE FOLLOWING:**

The Region of Halton will be utilizing a Vendor Performance Management Policy as of January 1, 2024 for selected Public Works Construction contracts.

The Region will evaluate the Contractor's performance in accordance with the Policy and provide a written evaluation and record of the Contractor's performance of this Contract.

Please refer to the Supplementary Instruction to Bidders and the Instruction to Bidders in the bid document to see whether the Policy applies to this tender and for further details regarding this new policy.

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**The Regional Municipality of Halton**

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## REQUEST FOR TENDERS

**T-675-24**

### **ALLENDALE LONG TERM CARE HOME SITE REHABILITATION, MILTON, ONTARIO**

**\*\*\* PRE-QUALIFICATION REQUIREMENT \*\*\***

**Halton Region will only accept bid submissions from the following General Contractors** that were pre-qualified under Request for Prequalification # T-258A-23 (Category 1: General Contractor).

- 2SC Contracting Inc.
- Alpeza General Contracting Inc.
- Anacond Contracting Inc.
- Canada Construction Limited
- Chart Construction Management Inc.
- CPM GROUP INC.
- GEN-PRO/1320376 Ontario Ltd.
- Joe Pace & Sons Contracting Inc
- MIR CONSTRUCTION INC.
- RENOKREW
- Rutherford Contracting Ltd.
- West Metro Contracting Inc.



**THE REGIONAL MUNICIPALITY OF HALTON**

**REQUEST FOR TENDERS**

**FOR**

**Allendale Long Term Care Home Site Rehabilitation,  
Milton, Ontario**

**TENDER # T-675-24**

**BIDS SHALL BE SUBMITTED VIA THE BIDDING SYSTEM AT**  
*<https://haltonregion.bidsandtenders.ca>*

**\*\*\*\*\* ELECTRONIC SUBMISSIONS ONLY \*\*\*\*\***



## Supplementary Instructions to Bidders

**Contract No. T-675-24**

**Allendale Long Term Care Home Site Rehabilitation, Milton, Ontario**

### 1. Key Bid Dates:

**a. Bid Issue Date: Tuesday, June 11, 2024**

**b. Pre-Bid Meeting and Site Visit:**

**Non-Mandatory Site Meeting: Thursday, June 20, 2024 at 10:00 AM**

The non-mandatory site meeting will be held at 185 Ontario St South, Milton ON.

Attendees will be met at the Main Entrance. The site meeting will begin promptly at the designated time. Bidders are encouraged to arrive prior to the time indicated above in order to sign in. Refer to section 7 “Pre-Bid Meeting, Site Visit and Site Conditions” of the Instructions to Bidders for further information.

**c. Question Deadline Date: Wednesday, July 3, 2024 at 4:00 PM**

Any questions regarding this bid document are to be submitted in writing through Halton Region’s Public Procurement Website (<https://haltonregion.bidsandtenders.ca>) by using the “Submit a Question” feature. Refer to section 2 “Any Communications” of the Instructions to Bidders for further information.

**d. Bid Closing Date and Closing Time:**

<b>Tuesday, July 9, 2024 at 2:00 PM local time</b>
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**e. Irrevocability Period: 90 days from the Closing Date**

*Please note, should the Bidder complete any obligations, including submitting completed documentation, after the Irrevocability Period, the Irrevocability Period shall be extended by the number of days of the delay and the Bidder shall not be entitled to an extension of Contract Time or delay claims as a result of said delay.*

REGIONAL MUNICIPALITY OF HALTON

**2. Key Construction Milestones**

- a. **Commence Work:** The successful Bidder shall commence the Work within seven (7) days from the receipt of the Notice of Award Letter.
- b. **Ready-for-Takeover:** The successful Bidder shall achieve Ready-for-Takeover within twelve (12) weeks from commencement date.
- c. **Completion:** The successful Bidder shall achieve Completion within two (2) weeks from Ready-for-Takeover date.

*Please note, in the event of any conflicting or inconsistent provisions between the Agreement Term Sheet and these terms and conditions, the Agreement Term Sheet shall always prevail and take precedence with respect to any such conflicting or inconsistent provisions.*

**3. Vendor Performance Management Policy**

- a. **The Vendor Performance Management Policy shall not apply to the successful Bidder’s Contract.**

**4. List of Bid Documents**

Below is a list of Bid Documents included with this Request for Tender:

<b>Bid Documents</b>	<b>No. of Pages</b>
Special Notice	2
Pre-Qualification Requirement	1
Cover Page	1
Supplementary Instructions to Bidders	2
Instructions to Bidders	49
CCDC 2 – 2020 Stipulated Price Contract	30
Supplementary Conditions CCDC 2 - 2020	67
Appendix 1 to the Supplementary Conditions – Agreement Term Sheet	1
Appendix 2 to the Supplementary Conditions – Proper Invoice Requirements	5
Appendix 3 to the Supplementary Conditions – Insurance	3
Technical Specifications	44
Drawings	9
Appendix A – IPAC Standards	33
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## **INSTRUCTIONS TO BIDDERS**

February 2024

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## 1. DEFINITIONS

“Act” means the Construction Act, R.S.O. 1990, CHAPTER C.30;

“Addendum” or “Addenda” means a change, addition or to respond to questions in relation to the Request for Tenders;

“Agreement” means the executed Agreement between the Region and the Contractor for the performance of the Work, included in Appendix “C” of the Instructions to Bidders;

“Award” means the award of a Contract by the Region to one (1) or more Bidders;

“Bid” means a Bidder submission offered in response to a procurement solicitation;

“Bidder” means a Vendor that submits a Bid;

“Bid Documents” means the documents included in this Request for Tender as listed in the Supplementary Instructions to Bidders, and any Addenda issued;

“Bid Security” means the security submitted by the Bidder with its Bid, which provides financial protection to the Region should the successful Bidder not enter into the Contract;

“Bidding System” or “Public Procurement Website” means the Region’s publicly accessible procurement website for issuing procurement solicitations and/or receiving Bids;

“Closing Date” and “Closing Time” means the deadline for submission of Bids as indicated in the Supplementary Instructions to Bidders;

“Construction” means any construction, reconstruction, demolition, repair or renovation of a building, structure, road or other engineering or architectural work;

“Contract” means the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire Agreement between the Region and one (1) or more Contractors for the supply of Goods, Services and/or Construction, or a combination thereof;

“Contract Documents” consist of those documents listed in Article A-3 of the Agreement –  
CONTRACT DOCUMENTS;

“Contract Price” means the amount stipulated in Article A-4 of the Agreement –  
CONTRACT PRICE;

“Contractor” means the successful Bidder in respect of whose Bid an Award is made;

“Designated Sourcing Representative” means the Regional staff in Supply Chain Management responsible for the entire process until a Contract is Awarded by the Region;

“ECA” means the Electronic Commerce Act, 2000, S.O. 2000, c. 17;

“Goods” means material, furniture, merchandise, equipment, stationery and other supplies and goods, including any incidental services;

“HST” means taxes payable under the *Excise Tax Act*, R.S.C. 1985, c.E-15, or any tax that replaces HST;

“Irrevocability Period” means the duration in which the Bid shall remain irrevocable and open to Award by the Owner and is the duration indicated in the Supplementary Instructions to Bidders;

“Letter of Intent” means the letter sent by the Region to a Bidder following the Bid review period, indicating the Region’s intent to Award subject to Senior Management and/or Regional Council approval, the Bidder’s fulfilment of the requirements of the Request for Tender, and formal execution of the Agreement between the Bidder and the Region;

“Notice of Award Letter” means the letter sent by the Region to the successful Bidder confirming the Award of the Contract and will include direction to commence Work;

“Owner”, “Region”, “Halton” and “Halton Region” means The Regional Municipality of Halton;

“Plan Taker” means one who downloads documents associated with the bid opportunity via the Bidding System;

“Product” or “Products” means material, machinery, equipment, and fixtures forming part of the Work, but does not include Construction Equipment;

“Proper Invoice” means a Proper Invoice, submitted by the Contractor, as defined in section 6.1 of the Act and the Region’s Contract Documents;

“Ready-for-Takeover” shall have been attained when the conditions set out in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER have been met, as verified by the Consultant pursuant to paragraph 12.1.4.2 of GC 12.1 – READY-FOR-TAKEOVER;

“Request for Tenders” or “RFT” means a procurement solicitation that includes commercial terms with clearly defined scope of Goods, Services and/or Construction where cost is the primary evaluation criterion when making an Award;

“Schedule of Prices” means the schedule supplied as part of the Request for Tender for the purposes of inputting pricing for the Work, which shall be completed by the Bidder and submitted back to the Region in its entirety through the Bidding System. Any reference in the Contract Documents to Bid Form shall be deemed to refer to Schedule of Prices;

“Services” means a non-physical, intangible Product resulting from a Vendor’s performance that cannot be stored or transported and that comes into existence at the time it is bought or consumed;

“Specifications” means that portion of the Contract Documents, wherever located and whenever issued, consisting of the written requirements and standards for Products, systems, workmanship, quality, and the services necessary for the performance of the Work;

“Supplementary Instructions to Bidders” means amendments to the Instructions to Bidders, issued as a separate document, which describe instructions unique to the Region and/or a particular Project;

“Suspension” means that, for the specified duration of the Suspension, the Suspended Vendor will not be permitted to participate in any procurement solicitations, as a Vendor or subcontractor, including prequalification processes, issued by the Region and “Suspend” and “Suspended” have corresponding meaning;

“Total Bid Price” means the price stipulated in the Schedule of Prices in the Bidding System;

“Vendor” means any legal person or entity providing or interested in providing Goods, Services and/or Construction, including suppliers, contractors, consultants and other service providers;

“Vendor Code of Conduct” means the Region’s Vendor Code of Conduct as available on the Region’s website at [www.halton.ca](http://www.halton.ca);

“Vendor Performance Management Policy” means the policy outlining the Region’s process for evaluating Vendor performance of Contracts and the consequences resulting from “Unacceptable” performance, as may be amended from time to time;

“Work” has the meaning indicated in the Contract Documents.

## **2. ANY COMMUNICATIONS**

2.1 Any questions regarding this Request for Tenders are to be submitted in writing through Halton Region’s Public Procurement Website (<https://haltonregion.bidsandtenders.ca>) by using the “Submit a Question” link associated with this bid request. Questions or clarification requests received by telephone or e-mail will not be accepted. Questions are to be submitted no later than the date indicated in the Supplementary Instructions to Bidders.

2.2 The Region reserves the right to neither accept nor consider any questions received after 4:00 P.M on the date indicated on the Supplementary Instructions to Bidders. The Region will review all questions received and prepare a response that is made available as an Addendum, if necessary, to all Plan Takers.

- 2.3 It will be the Bidder's responsibility to clarify with the Region any questions arising from this Request for Tenders or any matter they consider unclear in accordance with this section before submitting their Bid. Under no circumstances shall Bidders rely upon any information or instructions from the Region, its employees, or its agents, unless the information or instructions are provided in writing in the form of an Addendum.
- 2.4 A Bidder or its representative(s) will only communicate with the Designated Sourcing Representative for the Bid. A Bidder or its representative(s) shall not communicate with any other Regional staff or elected officials from the time of issuance of this Request for Tenders until the final Award. The Region reserves the right to disqualify any Bidder who contravenes this prohibition.
- 2.5 A Bidder or its representative(s) shall not threaten, harass nor intimidate staff, elected officials or any other supplier from bidding on a Regional solicitation or performing a Regional Contract. The Region reserves the right to disqualify any Bidder who contravenes this prohibition.

### **3. REGISTERED PLAN TAKER**

- 3.1 Bid documents are available online via the Bidding System at <https://haltonregion.bidsandtenders.ca>. A Vendor that subscribes to the Bidding System can login to their account to purchase and download the bid document(s) without the preview watermark. A Vendor that does not subscribe to the Bidding System may choose to purchase a one-time only download of this bid opportunity. Bid documents are only available via the Bidding System and will not be provided in any other format.
- 3.2 All Bidders shall have a Bidding System account and be registered as a Plan Taker for this bid opportunity, which will enable the Bidder to download the bid document without the watermark preview, to receive Addenda/Addendum email notifications, download Addenda and to submit their Bid electronically through the Bidding System. To ensure receipt of the latest information and updates via email regarding this bid, the onus is on the Bidder to create a Bidding System account and register as a Plan Taker for the bid opportunity.
- 3.3 Bidders must be registered as a Plan Taker for this bid opportunity on the Bidding System in order to submit a Bid. Should the Region receive a Bid that is subsequently found to be from a Bidder that is not a registered Plan Taker, the Region reserves the right to remove the Bid from further consideration.

### **4. ELECTRONIC BID SUBMISSION ONLY**

- 4.1 Bids shall be submitted via the Bidding System no later than the Closing Date and Closing Time specified in the Supplementary Instructions to Bidders.
- 4.2 **Only Bids submitted via the Bidding System will be accepted.** Bids submitted by any other method or format will be automatically rejected. It is the sole

responsibility of each Bidder to make sure that their Bid is delivered and received by the Bidding System by the Closing Date and Closing Time. Bids received after the specified Closing Date and Closing Time will not be accepted by the Bidding System.

- 4.3 There will not be a public Bid opening. When the Bids are opened, the unofficial bid results will be posted on the Bidding System at <https://haltonregion.bidsandtenders.ca>.
- 4.4 Bidders are cautioned that the timing of their Bid submission is based on when the Bid is successfully received by the Bidding System, not when a Bid is submitted by a Bidder, as Bid transmission can be delayed for a number of reasons, including the file transfer size, transmission speed, etc.
- 4.5 The Region shall not be liable for any costs, expenses, loss or damage resulting from any technical difficulty with the Bidding System, including, without limitation, computer system failures of either the Bidder or the Region's Bidding System service provider, a power failure, delays caused by internet/network traffic and/or failure of any computer system element.
- 4.6 For the above reasons, the Region recommends that Bidders allow sufficient time to upload their Bid and attachment(s) (if applicable). The Closing Date and Closing Time shall be determined by the clock used by the Bidding System.
- 4.7 The Region also encourages Bidders to take advantage of the Bidding System feature that allows Bidders to view their uploaded documents prior to submission of their Bid. Bidders are solely responsible for ensuring that they can access the Bidding System and submit their Bid before the Closing Date and Closing Time.
- 4.8 The Bidding System will send a confirmation email to the Bidder advising that their Bid was submitted successfully. If you do not receive a confirmation email, contact technical support at Bids & Tenders via telephone at 1-800-594-4798 or email: [support@bidsandtenders.ca](mailto:support@bidsandtenders.ca).

## **5. OMISSIONS, DISCREPANCIES AND INTERPRETATIONS IN REGION'S DOCUMENT (ADDENDUM)**

- 5.1 Should a Bidder find omissions from or discrepancies in any Contract Documents or be in doubt as to the meaning or any part of the Contract Documents, the Bidder shall immediately notify the Region in writing.
- 5.2 Through Addendum, the Manager, Strategic Sourcing may:
  - a) revise, delete, add to or substitute any part of the Bid Documents;
  - b) extend the Closing Date; or
  - c) provide a written explanation or interpretation of this Request for Tenders.

- 5.3 No oral explanation or interpretation by the Region shall modify any of the requirements or provisions of the Bid Documents.
- 5.4 Bidders are advised that Addenda will be posted at <https://haltonregion.bidsandtenders.ca> under the applicable bid call.
- 5.5 The Bidding System will attempt to notify each Plan Taker by email, of the issuance of an Addendum to the Bid Documents. The Bidding System will use the email address supplied by the Plan Taker at the time of purchase of the Bid Documents. The Region will not be responsible for missing or invalid email addresses.
- 5.6 It is the Bidder's responsibility to view and/or download all applicable Addenda prior to submitting a Bid. Addenda form part of the Bid Documents and must be taken into consideration when submitting a Bid.
- 5.7 Bidders shall acknowledge receipt of any Addenda when submitting their Bid through the Bidding System. Bidders shall check a box for each Addendum/Addenda and any applicable attachments that have been issued before a Bidder can submit their Bid.
- 5.8 It is the responsibility of the Bidder to ensure they have received all Addendum/Addenda that have been issued. Bidders should check online at <https://haltonregion.bidsandtenders.ca> prior to submitting their Bid to confirm all Addendum/Addenda have been received.
- 5.9 If a Bidder submits their Bid at any time prior to the Closing Date and Closing Time and an Addendum/Addenda is subsequently issued by the Region after the submission of the Bid, the Bidding System will automatically **WITHDRAW** the Bid submission and change the Bid submission to an **INCOMPLETE STATUS**. A Bid with an incomplete status will **NOT be accepted by the Region**. The withdrawn Bid can be viewed by the Bidder in the **"MY BIDS"** section of the Bidding System. The Bidder is solely responsible to:
- a. Make any required adjustments to their Bid;
  - b. Acknowledge the Addendum/Addenda; and
  - c. Ensure that the re-submitted Bid is successfully received by the Bidding System no later than the Closing Date and Closing Time.

## 6. WITHDRAWAL OR REVISION OF BIDS

- 6.1 Bidders may edit or withdraw their Bid submission through the Bidding System prior to the Closing Date and Closing Time. If the Bidder wishes to re-submit a Bid, the Bidder is solely responsible to:
- a. Make any required adjustments to their Bid;
  - b. Acknowledge the Addendum/Addenda; and

- c. Ensure the re-submitted Bid is successfully received by the Bidding System no later than the Closing Date and Closing Time.
- 6.2 Requests to withdraw Bids received by the Bidding System will not be considered after the Closing Date and Closing Time.

## **7. PRE-BID MEETING, SITE VISIT AND SITE CONDITIONS**

- 7.1 Bidders are responsible to conduct any site examinations deemed necessary by the Bidder for the proper preparation of a Bid and/or to make themselves aware of all conditions that may affect the work. Nothing in this Request for Tenders shall relieve the Bidders from undertaking all investigation and clarification on all matters related to this Request for Tenders. No allowance will be made for additional costs nor will any claim be considered in connection with conditions or circumstances that could have been reasonably ascertained by the Bidders had reasonable efforts been made prior to the Closing Date and Closing Time.
- 7.2 If a pre-bid meeting and site visit is required, details will be provided in the Supplementary Instructions to Bidders.
- 7.3 General Instructions for pre-bid meetings and site visits:
  - 7.3.1 The site meeting will begin promptly at the designated time. Bidders are encouraged to arrive prior to the time indicated in order to sign in.
  - 7.3.2 Attendees will be provided with an overview of the project. It is the responsibility of each Bidder to conduct a sufficient investigation of the site(s) and of the Work and obtain all required information about local conditions to be met with during the Work prior to submitting their Bid. The Bidders shall make their own estimates and measurements of the facilities and difficulties that may be encountered. Bidders may not claim at any time after submission of the Bid that there was any misunderstanding of the terms and conditions of the Contract relating to site conditions evident or apparent during the Bid period.
  - 7.3.3 The Region will not be held responsible for a Bidder's failure to obtain such information in section 7.3.2. The Region assumes no responsibility and will not pay additional costs for any omissions in the bid submission as a result of site-specific conditions that Bidders could have seen if they visited the site(s).
  - 7.3.4 It is the responsibility of the Bidder to verify actual site conditions and measurements. The price submitted is for the completed Work, including all items which may not have been mentioned but are required to complete the scope of Work.
- 7.4 Mandatory Site Meeting Instructions (where applicable):

- 7.4.1 Where there is a mandatory site meeting(s), Bidders who fail to attend and register their attendance at the mandatory site meeting(s) will be disqualified from submitting a Bid.
- 7.4.2 At the Region's discretion, a Bidder that arrives late to the mandatory site meeting(s) may be disqualified from submitting a Bid.
- 7.5 Non-Mandatory Site Meeting Instructions (where applicable):
  - 7.5.1 Where there is a non-mandatory site meeting(s), Bidders are not required to attend the site meeting(s) in order to submit a Bid. However, the Region strongly recommends that Bidders attend the site meeting(s) in order to familiarize themselves with the existing conditions prior to submitting their Bid.

## **8. SCHEDULE OF PRICES & TOTAL BID PRICE**

- 8.1 Bidders shall complete and submit the Schedule of Prices through the Bidding System.
- 8.2 The Total Bid Price shall be in Canadian Dollars and shall include the furnishing of all materials, supplies and equipment and the provision of all labour, construction tools and equipment, utility and transportation services necessary to perform and complete all the Work required under the Contract, including all miscellaneous Work, whether specifically included in the Contract Documents or not. Goods and Services rendered will be billed to actual expenses, in accordance with the rates as Bid.
- 8.3 The Total Bid Price does not include HST.
- 8.4 It is the intention of the Contract Documents to provide finished Work. Any items omitted therefrom which are clearly necessary for the completion of the Work or its appurtenances shall be considered a portion of the Work though not directly specified and/or shown or called for in the Contract Documents and shall be included in the Total Bid Price.
- 8.5 Failure to complete any part of the Schedule of Prices or to provide all requested information may result in a Bid being declared non-compliant.

## **9. KEY CONSTRUCTION MILESTONES**

- 9.1 Refer to the Supplementary Instructions to Bidders for key construction milestones including the commence work date, the Ready-for-Takeover date, and the completion date.

## **10. ONTARIO HARMONIZED SALES TAX (HST)**



- 10.1 The Contractor will be required to provide the Region with its HST registration number and indicate the applicable HST on each progress payment certificate.
- 10.2 Where a change in Canadian Federal or Provincial taxes occurs after a Bid Closing Date, the Region shall adjust progress payment certificates to account for the exact amount of the tax change.

## **11. BID SECURITY**

- 11.1 Bidders shall upload to the Bidding System the following: Bid Security in the amount of no less than **5 (five) percent of the Total Bid Price plus HST** in the following form:
  - 11.1.1 A **digital bid bond** in an electronically verifiable and enforceable (e-Bond) format, in the form CCDC 220 – 2002 naming “The Regional Municipality of Halton” as obligee and issued by a surety licensed to conduct surety and insurance business in Canada or in Ontario, in the amount set out in Section 11.1. **The digital bid bond form is included in Appendix “A” to this Instructions to Bidders.**
  - 11.1.2 The version submitted by the Bidder must be verifiable by the Region with respect to the totality and wholeness of the bond form, including: the content; all digital signatures; all digital seals; with the surety, or an approved verification service provider of the surety.
  - 11.1.3 The version submitted must be viewable, printable and storable in standard electronic file formats compatible with the Region, and in a single file. Allowable formats include pdf.
  - 11.1.4 The verification may be conducted by the Region immediately or at any time during the life of the bond and at the discretion of the Region with no requirement for passwords or fees.
  - 11.1.5 The results of the verification must provide a clear, immediate and printable indication of pass or fail regarding Item 11.1.2.
- 11.2 A scanned PDF copy of bonds, original certified cheque, bank draft, money order or any other format other than a digital bid bond is not acceptable and shall be rejected.
- 11.3 A digital bid bond failing the verification process will NOT be considered to be valid.
- 11.4 A digital bid bond passing the verification process will be treated as original and authentic.

- 11.5 Bidders shall upload their Bid Security to the Bidding System, labelled as “**Digital Bid Bond**”. All instructions and details for assessing authentication shall be included with the digital bid bond uploaded in the Bidding System.
- 11.6 The digital bid bond will not be returned to the Bidder.
- 11.7 The Bid Security shall be valid and not expire for at least the duration of the Irrevocability Period. In the event the Irrevocability Period is extended in accordance with section 18 of the Instructions to Bidders, the Bidder shall secure from its surety an extension of the Bid Security and provide evidence of same, which may be in the form of a rider to the Bid Security or some other form of written communication from the surety.

## 12. PERFORMANCE SECURITY, LABOUR & MATERIAL SECURITY

### *Agreement to Bond*

- 12.1 Bidders shall upload to the Bidding System evidence that if awarded the Contract the Bidder will provide the **performance bond** required by the Contract. Such evidence shall be in the following form:

12.1.1 Where the Total Bid Price is equal to or greater than \$500,000 a **digital agreement to bond** in an electronically verifiable and enforceable (e-Bond) format issued by a surety licensed to conduct surety and insurance business in Canada or in Ontario for a **performance bond** in the Form 32 Performance Bond under section 85.1 of the Act, in the amount of fifty percent (50%) of the Total Bid Price (plus HST). The agreement to bond shall remain valid and not expire for at least the duration of the Irrevocability Period. In the event the Irrevocability Period is extended in accordance with section 18 of the Instructions to Bidders (the “Extended Irrevocability Period”), the Bidder shall secure from its surety an extension of the agreement to bond and provide evidence of same, which may be in the form of a rider to the agreement to bond or some other form of written communication from the surety. **The digital agreement to bond form is included in Appendix “B” to this Instructions to Bidders.**

- 12.2 Bidders shall upload to the Bidding System evidence that if awarded the Contract the Bidder will provide the **labour & material payment bond** required by the Contract. Such evidence shall be in the following form:

12.2.1 Where the Total Bid Price is equal to or greater than \$500,000, a **digital agreement to bond** in an electronically verifiable and enforceable (e-Bond) format issued by a surety licensed to conduct surety and insurance business in Canada or in Ontario for a **labour & material payment bond** in the Form 31 Labour and Material Payment Bond under section 85.1 of the Act, in the amount of fifty percent (50%) of the Total Bid Price (plus HST). The agreement to bond shall remain valid and not expire for at least the duration of the Irrevocability Period. In the event the Irrevocability

Period is extended in accordance with section 18 of the Instructions to Bidders (the “Extended Irrevocability Period”), the Bidder shall secure from its surety an extension of the agreement to bond and provide evidence of same, which may be in the form of a rider to the agreement to bond or some other form of written communication from the surety. **The digital agreement to bond form is included in Appendix “B” to this Instructions to Bidders.**

- 12.3 Bidders shall upload the digital Agreement to Bond described in sections 12.1 and 12.2 of the Instructions to Bidders (collectively the “**Digital Agreement to Bond Performance Security and Labour & Material Security**”) to the Bidding System, labelled as “**Digital Agreement to Bond**”. All instructions and details for assessing authentication shall be included with the digital agreement to bond uploaded in the Bidding System.

#### *Agreement to Bond Requirements*

- 12.4 The digital agreement to bond performance security and labour & material security shall be in the form as provided in Appendix “B” and shall include an express acknowledgement from the surety that a digitally signed and sealed performance bond and a digitally signed and sealed labour & material payment bond delivered to the Region by electronic means are:
- 12.4.1 permitted under the ECA;
  - 12.4.2 binding on the surety;
  - 12.4.3 enforceable in accordance with their terms and enforceable in law;
  - 12.4.4 for the purposes of any applicable statutory or common laws, regulations or guidelines, deemed to be originals hand delivered to the Region; and
  - 12.4.5 on the basis of the forgoing, the surety acknowledges and agrees that it would be estopped from and covenant not to challenge the enforceability of the bonds on the basis that each are digitally signed and sealed and delivered to the Region by electronic means.
- 12.5 The version submitted by the Bidder must be verifiable by the Region with respect to the totality and wholeness of the digital agreement to bond performance security and labour & material security form, including: the content; all digital signatures; all digital seals; with the surety, or an approved verification service provider of the surety.
- 12.6 The version submitted must be viewable, printable and storable in standard electronic file formats compatible with the Region, and in a single file. Allowable formats include pdf.
- 12.7 The verification may be conducted by the Region immediately or at any time during the life of the digital agreement to bond performance security and labour & material security and at the discretion of the Region with no requirement for passwords or fees.

- 12.8 The results of the verification must provide a clear, immediate and printable indication of pass or fail regarding Item 12.5.
- 12.9 A scanned PDF copy of an agreement to bond, or any other format other than a digital agreement to bond is not acceptable and shall be rejected.
- 12.10 An agreement to bond failing the verification process will NOT be considered to be valid.
- 12.11 An agreement to bond passing the verification process will be treated as original and authentic.
- 12.12 The digital agreement to bond performance security, labour & material security will not be returned to the Bidder.

*Performance and Labour & Material Payment Bonds*

- 12.13 Where the Contract Price is equal to or greater than \$500,000, prior to the execution of the Contract, the accepted Bidder will be required to provide a Form 32 Performance Bond, under section 85.1 of the Act, in the amount of fifty percent (50%) of the Total Bid Price (including HST) (“**Performance Bond**”), and a Form 31 Labour and Material Payment Bond under section 85.1 of the Act in the amount of fifty percent (50%) of the Total Bid Price (including HST) (“**Labour & Material Bond**”) to guarantee the faithful performance of the Contract.
- 12.14 The Performance Bond and Labour & Material Payment Bond shall be submitted to the Region in one of the following forms:
  - 12.14.1 Certified originals, issued in triplicate-; or
  - 12.14.2 An electronically verifiable and enforceable (e-Bond) format issued by a surety licensed to conduct surety and insurance business in Canada or in Ontario, that meets the requirements as outlined in sections 12.16 of the Instructions to Bidders.
- 12.15 The Performance Bond and Labour and Material Payment Bond shall be in the prescribed form under the Act, using the current version of the form. The necessary information will be inputted into the forms after Bid closing and sent to the selected Bidder with the Letter of Intent. Changes to the prescribed forms under the Act will not be accepted.

*Digital Performance Bond and Labour and Material Payment Bond Requirements*

- 12.16 The Performance Bond and Labour and Material Payment Bond issued in an electronically verifiable and enforceable (e-Bond) format in accordance with Section 12.14.2 shall be delivered by email transmission to the Regional Project Manager and shall satisfy and be subject to the following requirements:

- 12.16.1 The version submitted by the selected Bidder must be verifiable by the Region with respect to the totality and wholeness of the Performance Bond and Labour & Material Payment Bond, including: the content; all digital signatures; all digital seals; with the surety, or an approved verification service provider of the surety.
- 12.16.2 The version submitted by the selected Bidder must be viewable, printable and storable in standard electronic file formats compatible with the Region, and in a single file. Allowable formats include pdf.
- 12.16.3 The verification may be conducted by the Region immediately or at any time during the life of the Performance Bond and Labour & Material Payment Bond and at the discretion of the Region with no requirement for passwords or fees.
- 12.16.4 The results of the verification must provide a clear, immediate and printable indication of pass or fail regarding Section 12.16.1.
- 12.16.5 A scanned PDF copy of Performance Bond and Labour & Material Payment Bond or any other format other than the formats provided for in Sections 12.14.1 and 12.14.2 are not acceptable and shall be rejected.
- 12.16.6 A Performance Bond and Labour & Material Payment Bond failing the verification process will NOT be considered to be valid.
- 12.16.7 A Performance Bond and Labour & Material Payment Bond passing the verification process will be treated as original and authentic.

### **13. VENDOR CODE OF CONDUCT**

- 13.1 The Vendor Code of Conduct, as included in the Bid Documents, sets out the principles applicable to Vendors that wish to establish and maintain a business relationship with the Region.
- 13.2 The Region intends to do business with Bidders that demonstrate solid business integrity that aligns with the Region's core values and high standards of ethical behaviour expected by the Region. The Vendor Code is not to be read in lieu of, but in addition to obligations as set out in any agreements with the Region. Bidders are responsible to familiarize themselves with the Vendor Code of Conduct and comply with it. Bidders are to complete, sign and return the Vendor Code of Conduct Acknowledgement Form with their Bid submission.

### **14. BID IRREGULARITIES**

- 14.1 Irregularities in connection with any Bid shall be resolved in accordance with Regional policies and procedures governing bid irregularities.

### **15. PRIVILEGE CLAUSE**

- 15.1 The Region shall have the right to reject any or all Bids. The Bid with the lowest Total Bid Price will not necessarily be accepted. The Region reserves the right to accept all or part of any Bid.
- 15.2 The Manager, Strategic Sourcing may cancel the Request for Tenders at their sole discretion.
- 15.3 In addition to any other right expressed or implied, the Region reserves the right to:
- a) make public the names of any or all Bidders and members of a Bidder's team;
  - b) check references other than those provided by any Bidder;
  - c) disqualify or invalidate any Bid that contains material misrepresentations or any other materially inaccurate or misleading information;
  - d) make changes, including substantial changes, to this Request for Tenders provided that those changes are issued by way of Addenda;
  - e) if a single Bid is received, reject the Bid of the sole Bidder and cancel this Request for Tenders process or enter into direct negotiations with the sole Bidder.
- 15.4 The Region shall not be responsible for any liabilities, costs, expenses, loss or damage incurred, sustained or suffered by any Bidder by reason of the acceptance or the non-acceptance of the Bid, delay in Awarding the Contract, or cancellation of the Request for Tenders.
- 15.5 The Region, in its sole discretion, may reject a Bid from a Suspended Vendor and/or a Bid that includes a Suspended Vendor as a sub-contractor, in accordance with the Vendor Performance Management Policy.

## **16. TIED BIDS**

- 16.1 In the event that two or more Bidders have exactly the same Total Bid Price, the Region shall have the sole right to select the successful Bid. The Region may, at its sole option, conduct a coin toss in the presence of the two (2) Bidders to select the successful Bid. The Region shall determine the manner and rules that shall govern the coin toss.

## **17. CLAIMS OR LITIGATION**

- 17.1 The Region reserves the right, and in its absolute discretion after considering the criteria outlined in subsection 17.2, to reject a Bid submitted by a Bidder if the Region is engaged in legal action dispute including but not limited to a contractual claim and/or legal action against the Bidder, or, if the Bidder or any officer or director of the Bidder is engaged, either directly or indirectly through a corporation or personally, in a legal action dispute, including but not limited to a contractual claim and/or legal action against the Region, its elected representatives, appointed officers, or employees, in relation to:

- a. any other Contract, Goods or Services;
  - b. any matter arising from the Region's exercise of its powers, duties, or functions.
- 17.2 In determining whether or not to reject a Bid the Region will consider;
- a. whether the litigation is likely to adversely affect the Bidder's ability to work with the Region, its consultants and representatives; or,
  - b. whether the Region's experience with the Bidder indicates that the Region is likely to incur increased staff and legal costs in the administration of the Contract if it is Awarded to the Bidder; or,
  - c. whether the Bidder has been convicted of a criminal act against the Region or one of its local boards or corporations; or,
  - d. whether the Bidder has failed to satisfy an outstanding debt to the Region, including Provincial Offences Act fines, or one of its local boards or corporations; or,
  - e. there are reasonable grounds to believe it would not be in the best interests of the Region to enter into a Contract with the Bidder.

## **18. EXTENSION OF IRREVOCABILITY PERIOD**

- 18.1 In the event the Region is unable to Award the Bid within the Irrevocability Period as set out in the Supplementary Instructions to Bidders, the Region shall request a formal extension in writing from one or more Bidders.
- 18.2 Subject to agreement by the Bidder(s) in writing, the Irrevocability Period shall be extended and the Bid Documents shall be considered automatically amended to reflect the revised Irrevocability Period.

## **19. CONTRACT EXECUTION**

- 19.1 Where the Contract Price is more than \$250,000 (excluding HST), the Agreement to be executed by the parties shall be in the form provided in Appendix "C" to this Instructions to Bidders. This Agreement is a template only; the necessary information will be inserted into the Agreement after Bid closing and provided to the selected Bidder. Where the Contract Price is equal to or less than \$250,000 (excluding HST) the selected Bidder shall execute the Notice of Award. A Letter of Intent and the Contract Documents will be sent to the selected Bidder. The Bidder shall fully execute and return the Contract Documents together with the applicable Bonds (if required), Certificates of Liability Insurance, Workplace Safety and Insurance, New/Change Vendor & Electronic Funds Transfer Application (if required), and any other required documents to the Region within ten (10) calendar days of the date of receipt of the Letter of Intent, failing which the Region reserves the right to retain the Bidder's Bid Security and not Award to the Bidder. The aforementioned documents shall be completed to the satisfaction of the Region with no errors and omissions.

19.2 The Letter of Intent does not constitute Award of the Contract. Award is subject to Senior Management and/or Regional Council approval, the Bidder's fulfilment of the requirements of the Request for Tender, such as the submission of the required documentation as set out in the Letter of Intent, which may include but is not limited to those items referenced in section 19.1, and formal execution of the Agreement or Notice of Award between the Bidder and the Region.

19.3 In the event the Region, in its sole discretion, allows an extension of time for the Bidder to submit the required documentation referenced in section 19.1, the Bidder shall not be entitled to an extension of Contract time or delay claims as a result of the Bidder's delay in submitting completed documentation.

## **20. VENDOR PERFORMANCE MANAGEMENT POLICY**

20.1 Bidders shall refer to the Supplementary Instructions to Bidders to confirm the applicability of the Vendor Performance Management Policy (the "Policy") to the Contract upon Award.

20.2 If the Policy applies to the Awarded Contract:

- a) The Region will evaluate the Contractor's performance in accordance with the Policy and provide a written evaluation and record of the Contractor's performance of this Contract. The Contractor will be provided with regular feedback of its performance of a Contract, to confirm satisfactory or unacceptable performance as applicable, and the consequences of unacceptable performance as outlined in the Policy.
- b) The Policy may be amended from time to time, and the latest version of the Policy shall form part of this Contract.
- c) The Policy and the applicable evaluation form can be accessed on the Region's website at [www.halton.ca](http://www.halton.ca).

## **21. SUBCONTRACTORS**

21.1 Bidders must ensure they and any subcontractors they retain are in good standing with the Region, in accordance with the Policy. It is the responsibility of Bidders to review the Suspended Vendor List on [www.halton.ca](http://www.halton.ca) prior to submitting a Bid or retaining any subcontractors.

## **22. ELECTRONIC PAYMENT DEPOSIT**

22.1 The Region strongly encourages payment to the Contractor through electronic payment deposit. The successful Bidder(s) is to provide the New/Change Vendor & Electronic Funds Transfer Application Form as part of the documentation required prior to Award. Bidders are not to include the form with their Bid submission.



22.2 If during the Contract term, there is any change to the direct deposit information, the Contractor shall submit a new form, which must be authorized by a signing officer, and a person with the ability to bind the corporation. The Region will verify any and all changes to the banking information with the Contractor prior to making any changes.

### **23. PROPER INVOICE REQUIREMENTS**

23.1 The Contractor will be required to comply with the prompt payment provisions pursuant to Part I.1 of the Act and the Proper Invoice requirements set out in the Region's Contract Documents.

### **24. INTERIM ADJUDICATION**

24.1 The Contractor will be required to comply with the construction dispute interim adjudication provisions pursuant to Part II.1 of the Act and the Region's Contract Documents.

### **25. INTELLECTUAL PROPERTY**

25.1 All reports, plans, designs, and other documents to be produced by the Contractor to this Request for Tenders shall, on submission to the Region, become the property of the Region.

### **26. DIGITAL DRAWINGS**

26.1 Should a Bidder choose to print any of the drawings supplied by the Region in a PDF format, to preserve the scale of the prints, the Bidder must disable all page scaling options during printing. The Region assumes no responsibility whatsoever for the Bidder's failure to properly print, including the failure to print to the proper scale, any drawings supplied by the Region.

26.2 It is the Bidder's sole responsibility to verify that all PDF drawings are printed without PDF scaling enabled by verifying the final PDF prints with the associated drawing scale references in the applicable drawings title block.

### **27. GREEN PROCUREMENT**

Not Applicable

### **28. ONTARIANS REGULATION 191/11 – INTEGRATED ACCESSIBILITY STANDARDS**

28.1 Pursuant to Ontario Regulation 191/11 under the Accessibility for Ontarians with Disabilities Act, 2005, the Region is required to incorporate accessibility design, criteria and features when procuring or acquiring goods, services or facilities, except where it is not practicable to do so.

28.2 When determining which bid will result in an Award the Region may, in its sole discretion and without limiting any of its other express or implied rights regarding the discretion to make an Award, consider whether the Goods, Services or facilities to be provided incorporate accessibility design, criteria and features.

## **29. NON-RESIDENT WITHHOLDING TAX**

29.1 Should the Region make an Award to a non-resident Vendor, the Region shall under the *Income Tax Act*, R.S.C., 1985, c. 1 (5<sup>th</sup> Supp.), and the *Income Tax Regulations*, C.R.C., c.945, all as amended from time to time, withhold 15% (fifteen percent) from payments of fees, commissions, or other amounts paid to non-resident Vendors, in respect of Services rendered in Canada, in accordance with the above, for Services rendered in Canada. The Region is not required to withhold this amount under subsection 105(1) of the *Regulations*, if the non-resident Vendor obtains a waiver certificate from the Canada Revenue Agency prior to the commencement of the Contract.

## **30. FREEDOM OF INFORMATION**

30.1 The information provided in response to this Request for Tenders is collected in accordance with the Region's Purchasing By-law No. 63-23, or as amended, and will be used for all purposes related to awarding the Bid and administering By-law No. 63-23. The Bidder acknowledges that the Region is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O 1990, c.M.25, as amended ("MFIPPA") and as a result the contents of any Bid submitted by the Bidder are public and that with the exception of personal information the Bid will be disclosed if the Region receives a request for it under MFIPPA.

APPENDIX "A"

BID BOND

BID BOND

Standard Construction Document

CCDC 220 - 2002

No. \_\_\_\_\_ Bond Amount \$ \_\_\_\_\_
\_\_\_\_\_ as Principal, hereinafter called the Principal, and
\_\_\_\_\_ a corporation created and existing under the laws
of \_\_\_\_\_ and duly authorized to transact the business of Suretyship in \_\_\_\_\_ as Surety, hereinafter
called the Surety, are held and firmly bound unto \_\_\_\_\_ as
Obligee, hereinafter called the Obligee, in the amount of \_\_\_\_\_
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) lawful money of Canada, for the payment
of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has submitted a written bid to the Obligee, dated \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_
for \_\_\_\_\_

The condition of this obligation is such that if the Principal shall have the bid accepted within the time period prescribed in the Obligee's bid
documents, or, if no time period is specified in the Obligee's bid documents, within \_\_\_\_\_ ( ) days from the closing
date as specified in the Obligee's bid documents, and the Principal enters into a formal contract and gives the specified security, then this obligation
shall be void; otherwise, provided the Obligee takes all reasonable steps to mitigate the amount of such excess costs, the Principal and the Surety will
pay to the Obligee the difference in money between the amount of the bid of the Principal and the amount for which the Obligee legally contracts
with another party to perform the work if the latter amount be in excess of the former.

The Principal and Surety shall not be liable for a greater sum than the Bond Amount.

It is a condition of this bond that any suit or action must be commenced within seven (7) months of the date of this Bond.

No right of action shall accrue hereunder to or for the use of any person or corporation other than the Obligee named herein, or the heirs,
executors, administrators or successors of the Obligee.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond dated \_\_\_\_\_ day of \_\_\_\_\_,
in the year \_\_\_\_\_.

SIGNED and SEALED \_\_\_\_\_ Principal
in the presence of \_\_\_\_\_

ATTORNEY IN FACT \_\_\_\_\_
Signature
Name of person signing

Surety

Signature
Name of person signing



(CCDC 220 - 2002 has been approved by the Surety Association of Canada)

**APPENDIX “B”**

**AGREEMENT TO BOND**

We, the undersigned, hereby agree to become bound as Surety for \_\_\_\_\_ (hereinafter referred to as the Bidder) for a Performance Bond totalling fifty percent (50%) of the Total Bid Price (including HST) and for a Labour & Material Payment Bond totalling fifty per cent (50%) of the Total Bid Price (including HST) all conforming to the Contract Documents, for the full and due performance of the work shown as described therein and for the payment of all labour and materials and maintenance, if the Bid for the construction of

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is accepted by The Regional Municipality of Halton.

It is a condition of this Agreement to Bond that if the above-mentioned Bid is accepted, the undersigned will supply the above-specified bonds within ten (10) days from the day upon which notification of selection of the Bid is given.

This Agreement to Bond shall remain valid for the duration of the Irrevocability Period as set out in the Supplementary Instructions to Bidders.

The surety acknowledges that a digitally signed and sealed Performance Bond and Labour & Material Bond delivered to the Region by electronic means are:

- i. permitted under the *Electronic Commerce Act, 2000*, S.O. 2000, c. 17;
- ii. binding on the surety;
- iii. enforceable in accordance with the surety’s terms and enforceable in law;
- iv. for the purposes of any applicable statutory or common laws, regulations or guidelines, deemed to be originals hand delivered to the Region; and
- v. on the basis of the forgoing, the surety acknowledges and agrees that it would be estopped from and covenants not to challenge the enforceability of the bonds on the basis that each are digitally signed and sealed and delivered to the Region by electronic means.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20

Name of Surety Company

Signature of Authorized Person Signing for Company

(Company Seal)

Title

NOTE: Surety must be licensed to conduct surety and insurance business in Canada or in Ontario, satisfactory to the Region in its reasonable discretion.

APPENDIX "C"

AGREEMENT BETWEEN OWNER AND CONTRACTOR

AGREEMENT BETWEEN OWNER AND CONTRACTOR
For use when a stipulated price is the basis of payment.

This Agreement made on [ ] day of [ ] in the year [ ]
by and between the parties

[Redacted]

hereinafter called the "Owner"

and

[Redacted]

hereinafter called the "Contractor"

The Owner and the Contractor agree as follows:

ARTICLE A-1 THE WORK

The Contractor shall:

1.1 perform the Work required by the Contract Documents for (insert below the description or title of the Work)

[Redacted]

located at (insert below the Place of the Work)

[Redacted]

for which the Agreement has been signed by the parties, and for which (insert below the name of the Consultant)

[Redacted]

is acting as and is hereinafter called the "Consultant" and

1.2 do and fulfill everything indicated by the Contract Documents, and

1.3 commence the Work by the [ ] day of [ ] in the year [ ] and, subject to adjustment in Contract Time as provided for in the Contract Documents, attain Ready-for-Takeover, by the [ ] day of [ ] in the year [ ]

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

2.1 The Contract supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the Work, including the bid documents that are not expressly listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS.

2.2 The Contract may be amended only as provided in the Contract Documents.

CCDC 2 - 2020

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**ARTICLE A-3 CONTRACT DOCUMENTS**

3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE WORK:

- Agreement between *Owner* and *Contractor*
- Definitions
- General Conditions
- \*



\* *(Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. supplementary conditions; Division 01 of the Specifications – GENERAL REQUIREMENTS; Project information that the Contractor may rely upon; technical Specifications, giving a list of contents with section numbers and titles, number of pages and date; material finishing schedules; Drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date; time schedule)*

CCDC 2 – 2020

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**ARTICLE A-4 CONTRACT PRICE**

- 4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:  
[redacted] /100 dollars \$ [redacted]
- 4.2 *Value Added Taxes* (of [redacted] %) payable by the *Owner* to the *Contractor* are:  
[redacted] /100 dollars \$ [redacted]
- 4.3 Total amount payable by the *Owner* to the *Contractor* for the *Work* is:  
[redacted] /100 dollars \$ [redacted]
- 4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.
- 4.5 All amounts are in Canadian funds.

**ARTICLE A-5 PAYMENT**

- 5.1 Subject to the provisions of the *Contract Documents* and *Payment Legislation*, and in accordance with legislation and statutory regulations respecting holdback percentages, the *Owner* shall:
  - 1 make progress payments to the *Contractor* on account of the *Contract Price* when due in the amount certified by the *Consultant* unless otherwise prescribed by *Payment Legislation* together with such *Value Added Taxes* as may be applicable to such payments,
  - 2 upon *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
  - 3 upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.
- 5.2 Interest
  - 1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by adjudication, arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
    - (1) 2% per annum above the prime rate for the first 60 days.
    - (2) 4% per annum above the prime rate after the first 60 days.Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by  
(*Insert name of chartered lending institution whose prime rate is to be used*)  
[redacted]  
for prime business loans as it may change from time to time.
  - 2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.2.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the *General Conditions – DISPUTE RESOLUTION* or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

**ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

- 6.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 6.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 6.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it will be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* will be deemed to have been received on the *Working Day* next following such day.
- 6.4 A *Notice in Writing* sent by any form of electronic communication will be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it will be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.
- 6.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

CCDC 2 – 2020 3  
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In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED  
in the presence of:

**WITNESS**

*signature*

*name of person signing*

**OWNER**

*name of Owner*

*signature*

*name and title of person signing*

**WITNESS**

*signature*

*name of person signing*

**CONTRACTOR**

*name of Contractor*

*signature*

*name and title of person signing*

- N.B.** Where legal jurisdiction, local practice or Owner or Contractor requirement calls for:
- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
  - (b) the affixing of a corporate seal, this Agreement should be properly sealed.

CCDC 2 – 2020

Note: This contract is protected by copyright. Use of a CCDC 2 document not containing a CCDC 2 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 2 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 2 – 2020 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

5



**APPENDIX “D”**

**VENDOR CODE OF CONDUCT**



# HALTON REGION Vendor Code of Conduct

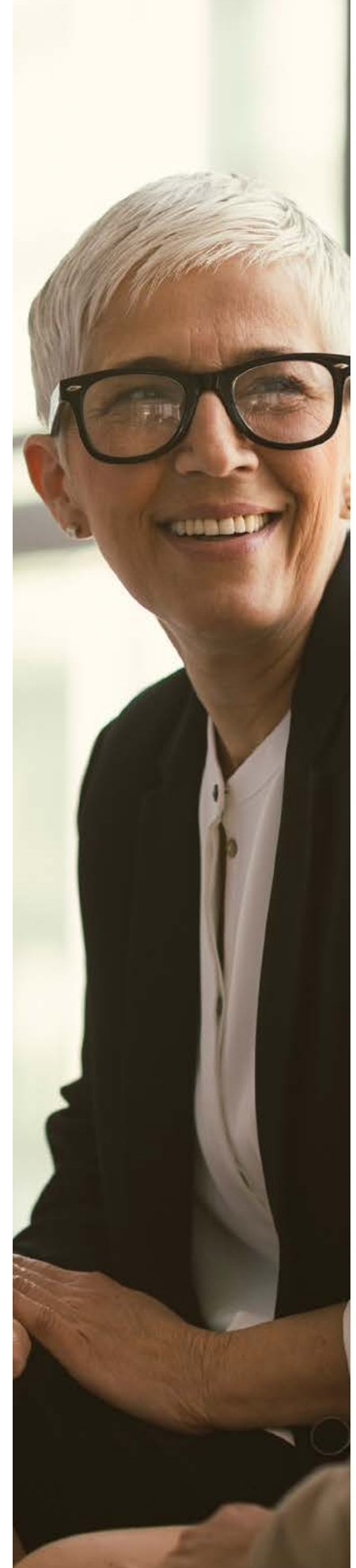


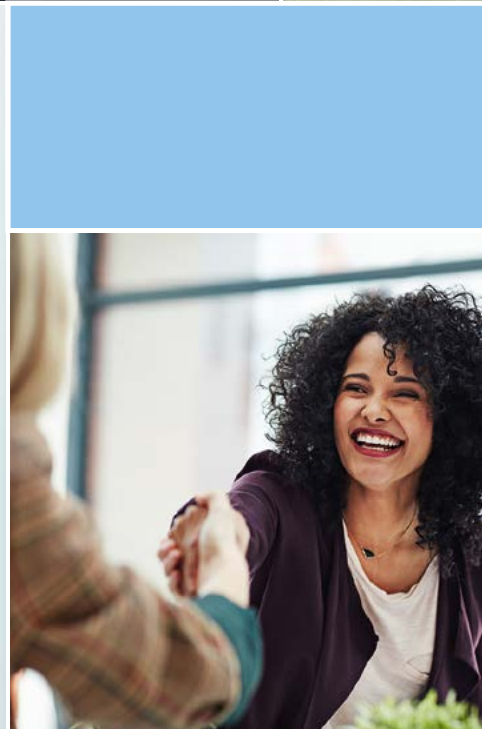
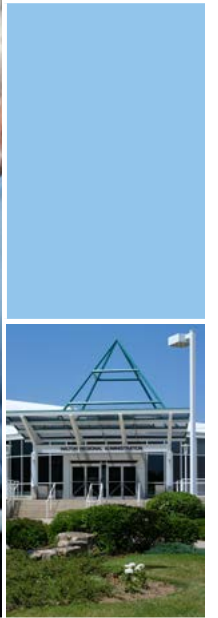


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# Introduction and Purpose

The Regional Municipality of Halton (herein after referred to as “The Region”) is committed to purchasing goods and services from responsible Vendors that provide quality goods and services at competitive prices. Vendors, subcontractors, employees, agents, bidders and potential bidders that provide goods and services to the Region (herein after referred to as “Vendors”) are expected to support the Region’s goals and objectives of encouraging competitive bidding, ensuring fairness, accountability and transparency in the procurement process, and obtaining the best possible value in the procurement of goods and services for the Region.

The Region expects Vendors to perform all duties in a competent and impartial manner that can withstand the closest public scrutiny. Vendors are expected to exercise good judgement when doing business with the Region. This Vendor Code of Conduct (herein after referred to as “Vendor Code”) sets out the principles applicable to Vendors that wish to establish and maintain a business relationship with the Region. The Region is confirming its intention to do business with Vendors that demonstrate solid business integrity that aligns with the Region’s core values and high standards of ethical behaviour. Vendors must also inform their employees and any sub-contractors or sub-vendors about this Vendor Code.

The Vendor Code is consistent with Halton Region’s Code of Conduct, which sets out the expectations for Regional staff. The Region’s Code of Conduct is available on the Region’s website.

The Vendor Code should not be read in lieu of, but in addition, to Vendors obligations as set out in any agreements between the Region and a Vendor. In the event of a conflict between this Code and an applicable agreement, the agreement shall govern.





# Vendor Responsibilities

Vendors are required to familiarize themselves with this Vendor Code and comply with it as a condition of doing business with the Region. Vendors are expected to adhere to the following core principles of business integrity:

- a) uphold the laws of the Region, Ontario and Canada, and not be a party to their breach, evasion or subversion;
- b) treat all persons honestly and fairly, with proper regard for rights, entitlements, duties and obligations, and at all times act responsibly and diligently in the performance of their duties;
- c) be professional and courteous, and resolve any work-related disagreements in a responsible and expeditious manner;
- d) be accountable and responsible for their decisions and actions, take ownership of problems and initiate corrective actions;
- e) promote the health and safety of others and prevent workplace illness, injury, harassment and violence;
- f) carry out their duties in a fair, impartial and transparent manner;
- g) complete the Acknowledgment Form as set out in Appendix A; and
- h) report on non-compliance or suspected non-compliance of the Vendor Code.

These principles are also consistent with the Halton Region Code of Conduct.

## **i. Compliance with Laws**

Vendors that wish to do business with the Region shall abide by all applicable laws and regulations including Federal, Provincial and Local laws regarding environmental matters, occupational health and safety, labour and employment practices, human rights, accessibility, immigration, product safety, shipping and product labelling. If Vendors become aware of any activities that are not in compliance with all applicable laws and regulations, they must report it immediately as specified in the non-compliance reporting section of this Vendor Code.

Vendors shall disclose:

- 1) any previous convictions of collusion, bribery, fraud or other similar practices prohibited under law for which they have not received a pardon; and
- 2) breach of the Region's Vendor Code or those of any other related Agencies or Corporation(s) of the Region.

Vendors are prohibited from misrepresenting their relevant past experiences and qualifications in relation to any solicitation process and acknowledge that the Region's process of evaluation may include information provided by the Vendor's references as well as records of past performance on previous contracts and services with the Region. The Region reserves its rights if the Vendor fails to make the appropriate disclosures and representations.







## ii. Confidentiality and Privacy

Vendors may have access to confidential and/or personal information by reason of their duties and responsibilities with the Region. Confidential information is defined as any information that is proprietary, strategic, technical, business or personal and not available to the public. All Vendors must respect such information and ensure it is safeguarded from unauthorized disclosure or access. Confidential information must be protected in accordance with the Vendor Code of Conduct. Such information must only be used or disclosed in accordance with this Vendor Code of Conduct and the provisions of the *Municipal Freedom of Information and Protection of Privacy Act, 1990* and the *Personal Health Information Protection Act, 2004*.

Disclosure of information means making the information available to others, and should only occur where disclosure is necessary and proper in the discharge of the Region's functions or where the disclosure is required by law. This includes and protects any information that is, and should be considered as, internal information relating to Regional business.

Vendors must not disclose confidential and/or personal information unless specifically and explicitly permitted in the terms of their contract. The duty of a Vendor to maintain the integrity and confidentiality of Regional information continues once that Vendor ceases to be in a contract with the Region.

When discussing business matters, Vendors must consider their surroundings. Conversations in public places should be limited to information that is non-confidential and does not include references that could identify a person or situation.

## iii. Information Security

Vendors must use information obtained through their relationship with the Region only for the purposes of the supply relationship. Vendors must store information securely and have in place appropriate information security policies and procedures. Vendors must notify the Region promptly of actual or suspected privacy breaches, security breaches or loss of Regional information.

#### iv. Social Media

The Region supports the use of online communications to enhance customer service and leverage the Region's brand. Vendors should not communicate on social media platforms on behalf of the Region unless the Vendor is expressly authorized in writing to do so by the Region. When such communication is authorized, it is to be conducted in a manner that is consistent and respectful of Canadian libel laws, *Municipal Freedom of Information and Protection of Privacy Act, 1990* and the Region's practices in regards to confidential information and intellectual property.

All Regional data or information obtained by the Vendor through the delivery of services or goods is to be considered proprietary and confidential. Without the Region's prior consent, Vendors should not communicate to social media platforms identifying the Region as a client and the associated services and goods provided to the Region. Regional consent must be obtained prior to identifying the Region as a client.





# Integrity and Public Confidence

## **i. Conflict of Interest**

Public confidence in the Region is put at risk when the conduct of a Vendor involves or appears to involve a conflict between public duty and private interests. Vendors are required to support and advance the interests of the Region and avoid placing themselves in situations where their personal interests actually or potentially conflict with the interests of the Region. Vendors shall disclose to the Region any situation that could result in an actual, apparent or perceived conflict of interest and the Regional employee that has an interest in the Vendor's business (or any other economic or family ties with the Vendor).

Vendors are expected, at minimum, to:

- a) base business decisions strictly on merit and the best interests of the Region in a manner consistent with their contractual obligations with the Region;
- b) avoid any situation that may create a real or perceived conflict of interest;
- c) not take part in, or in any way influence, any Regional decision that might result in a financial or other advantage, whether direct or indirect, as a result of the contractual association with the Region;
- d) not attempt to gain an improper advantage or preferential treatment from Regional employees; and
- e) provide no personal benefit to employees of the Region.

If Vendors become aware of any activities that may be considered a conflict of interest involving the Region, they must report it immediately as specified in the non-compliance reporting section of this Vendor Code.

## ii. Business and Personal Relationships

Vendors shall not use or seek to use their association with the Region to receive direct or indirect benefit for themselves or their family members, friends and any other businesses or consultants that they or the Region do business with.

## iii. Avoidance of Preferential Treatment

Vendors shall not grant preferential treatment to any Regional staff, their family and friends, or any businesses. Vendors must avoid creating or appear to create an obligation for the purpose of gaining any special consideration.

## iv. Gifts and Hospitality

Accepting a gift, hospitality or other benefit from a Vendor could influence an employee's judgment and performance of official duties, or give the appearance of doing so, even if the employee believes the benefit will not affect their objectivity or impartiality. Vendors must not offer, directly or indirectly, any gift, hospitality or other benefits to the Region's staff. Gifts having a monetary value such as cash, gift certificates, loans, services, discounts and ticket(s) to an entertainment event including sporting events, concerts or other such related activities must not be offered. These requirements do not change during traditional gift-giving seasons.

Under no circumstances should a Vendor solicit gifts, hospitality and/or other benefits or transfers of economic value to Region staff. The same is expected of the Region staff—not to solicit gifts or other benefits from Vendors.

All Regional staff are subject to the rules governing the acceptance of gifts outlined in the Purchasing By-law, Section 29, Prohibitions, and the Halton Region Code of Conduct.

Employees may accept common expressions of courtesy that do not cause suspicion about the objectivity and impartiality of the employee, would not compromise the integrity of the Region and:

- a) are of a nominal value not to exceed fifty (\$50);
- b) occur on infrequent and exceptional basis; and
- c) are not ticket(s) to an entertainment event including sporting events, concerts, or other such related activities.

Vendors must not place Regional employees in the difficult position of having to refuse gifts that would place them in conflict with the rules governing the acceptance of gifts outlined in this Vendor Code.





**v. Political Activity**

No Vendor shall engage in political activity on Regional property while carrying out the requirements of their contract for the Region. If Vendors become aware of any political activities, they must report it immediately as specified in the non-compliance reporting section of this Vendor Code.

**vi. Fraud**

The Region is committed to the highest standards of corporate accountability, transparency, responsibility and integrity. The Region will protect funds, property, information and other assets owned by or in the care of the Region through the prompt investigation of any alleged fraudulent conduct.

Vendors must not engage in any fraudulent activity. Examples of activities which may be considered fraudulent include, but are not limited to:

- a. forgery or alteration of documents (cheques, purchase orders, time sheets, etc.);
- b. misappropriation of funds, securities, supplies or assets;
- c. authorization or receipt of payment for goods not received, services not performed or hours not worked;
- d. any claim for reimbursement of expenses that were not incurred for the exclusive benefit of the Region;
- e. authorization of unjustified or inflated change order requests to increase profits;
- f. knowingly delivering works, goods or services that do not meet contract specification; and
- g. subcontracting to business entities that are not arm's length without prior consent of the Region.

If Regional Vendors, their employees, associates or other third parties become aware of any activities that may be considered fraudulent, they must report it immediately as specified in the non-compliance reporting section of this Vendor Code.

**vii. Theft and Vandalism**

The Region's assets must be protected from theft, destruction, vandalism and neglect, and used properly and strictly for the Region's purposes. Vendors' personal use, misuse, misappropriation of/or theft or vandalism of Regional property, resources, equipment, materials and supplies is prohibited.

## viii. Anti-Bribery and Anti-Corruption

Vendors are expected to comply with applicable anti-corruption laws, whether domestic or foreign, including but not limited to the *Corruption of Foreign Public Officials Act, 1998* and the Criminal Code, and not engage in any form of corrupt practices including, but not limited to, extortion, fraud, bribery or other unlawful payment or benefit to secure any concession, contract or other favourable treatment.

Vendors should not engage in any conduct that would put the Region at risk of violating anti-bribery laws or regulations. Bribery is the giving or receiving of a “thing” of value to influence the actions of another person or organization.

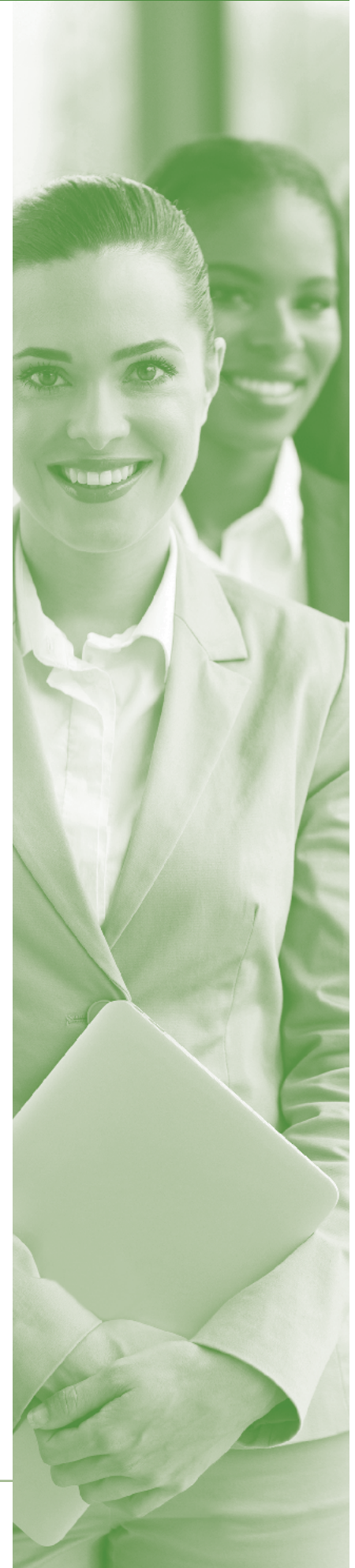
Types of bribery can include, but are not limited to:

- a) kickback payments that could be received before, during or at the end of a project/contract; and
- b) any financial benefits given with the intent of influencing the recipient which includes such things as gifts (for example, travel or entertainment), loans, credit cards, purchase overpayments, cash, fees and commissions.

## ix. Collusive Bidding

Vendors are not to participate in collusive bidding. Groups of bidders might secretly agree to submit complementary high bids to allow pre-selected Vendors to win contracts on a rotating basis, divide contracts by territory or take steps to defeat the competitive process and divide work. Vendors are not to contract with separate business entities that are not arm’s length, submit a bid through non arm’s length entity or reveal confidential information to an arm’s-length or non-arm’s length entity.

If Vendors, their employees, associates or other third parties become aware of any activities that may be considered bribery or collusive bidding, they must report it immediately as specified in the non-compliance reporting section of this Vendor Code.



A photograph of a man with short dark hair and a light beard, wearing a blue button-down shirt with a small white pattern. He is looking down at a white tablet computer he is holding in his hands. The background is a soft, out-of-focus light color.

# Workplace Well-being

## **i. Respectful Workplace**

The Region is committed to protecting the health and safety of all Regional employees and Vendors against illness, injury and incidents of violence and harassment. Every Vendor will make every effort to provide and maintain a safe and healthy work environment, as well as maintain a diverse and respectful workplace in which the dignity and self-respect of every person is valued.

Vendors must ensure that their personal conduct within the workplace and elsewhere does not adversely affect:

- a) their ability to perform their official duties;
- b) the ability of other Vendors to perform their duties; or
- c) public confidence in the Region or in the public sector.

## **ii. Accessibility for People with Disabilities**

Vendors are required to have met compliance obligations in the *Accessibility for Ontarians with Disabilities Act, 2005* and Ontario Regulation 191/11-Integrated Accessibility Standards, as applicable.

## **iii. Employment Practices**

Vendors must abide by applicable employment standards, labour, non-discrimination and human rights legislation. Where laws do not prohibit discrimination or where they allow for differential treatment, Vendors are expected to be committed to non-discrimination principles and operate in a way that does not differentiate unfairly.

#### iv. Impairment at Work

In order to minimize the risk of impaired performance due to substance use, the following are strictly prohibited for all Regional Vendors:

- use, possession, distribution, offering or sale of illegal drugs, illegal drug paraphernalia or un-prescribed drugs (for which a prescription is legally required in Canada) while on Regional business or premises;
- use, possession, distribution, offering or sale of alcoholic beverages or cannabis on Regional premises;
- intentional misuse of prescribed medications, over-the-counter medications or other substances while on Regional business or premises; and
- being unfit for work due to the effects or after-effects of alcohol, illicit or illegal drugs, un-prescribed drugs (for which a prescription is legally required in Canada) or the intentional misuse of medications or other substances.

Vendors are required to report to their Regional supervisor or project authority the use of any medication that may affect their ability to perform their job in a safe manner. Vendors have a responsibility to manage potential impairments during working hours due to the legitimate use of medications in consultation with their personal physician.

If Vendors, their employees, associates or other third parties become aware of any activities that may be considered impaired performance due to substance use, they must report it immediately as specified in the non-compliance reporting section of this Vendor Code.







# Non-Compliance Reporting

Vendors must report any practices, behaviours, activities or actions believed to be in contravention or in conflict with this Vendor Code, Halton Region Code of Conduct or any other Regional policy.

The Region will resolve all complaints regarding violations of this Vendor Code to the greatest extent possible in a timely, respectful and confidential manner, and ensure all Vendors are held accountable for their actions.

All Vendors shall be free from reprisal, discipline, harassment or discrimination as a result of reporting, in good faith, a breach or suspected breach of this Vendor Code. If it is determined, however, that a complaint is frivolous, vexatious or malicious in nature, the complainant may be subject to action as outlined in the Penalty for Non-Compliance section of this Vendor Code.

During the investigation and resolution of complaints, all information, including the identity of the complainant and any other Vendors or Vendor staff involved, will remain confidential except where sharing information is otherwise required by law or required to further the investigation.

## i. Complaint Resolution Procedure

### EARLY RESOLUTION

Vendors who become aware of or have directly experienced an action which is in contravention of this Vendor Code should:

- a) keep a written record of the incidents, dates, time, locations, possible witnesses, any attempted resolutions and behaviours of the Vendor(s) involved; and
- b) report the breach to the Director of Supply Chain Management, who must investigate and attempt to resolve the complaint as expeditiously as possible, except in the case of suspected fraud, which is to be immediately reported to the Chief Internal Auditor as specified in the Formal Complaint Investigation section of this Vendor Code.

#### **The Regional Municipality of Halton**

Director of Supply Chain Management  
1151 Bronte Road  
Oakville ON L6M 3L1  
905-825-6000 ext. 7231  
Sam.Pringle@halton.ca

If the Director of Supply Chain Management is not able to resolve the complaint to the reporting Vendor's satisfaction, and/or the complaint involves the Director of Supply Chain Management, a complaint shall be filed directly to the Region's Chief Internal Auditor or to the Code of Conduct Help Line.

### FORMAL COMPLAINT INVESTIGATION

- a) Complaints must be made in writing and signed by the complainant using a designated form. The form is available on the Region's website.
- b) Complaints must be forwarded to the Chief Internal Auditor, who will initiate an investigation into the complaint within five (5) business days of receipt.

#### **The Regional Municipality of Halton**

Chief Internal Auditor  
1151 Bronte Road  
Oakville ON L6M 3L1  
905-825-6000 ext. 7532  
Karen.Cinq-Mars@halton.ca

- c) Once the investigation is complete, the investigation findings and recommendations will be reported to the complainant and respondent, as appropriate and as determined by the Chief Internal Auditor.





## ii. **Alternative Reporting – Confidential Code of Conduct Help Line**

A Vendor who does not feel comfortable reporting a complaint as outlined above may contact the Region's confidential and anonymous Vendor Code of Conduct Help Line (available 24/7) at:

- Toll-free telephone: 1-833-210-0001
  - Website: [www.lighthouse-services.com/haltonvendor](http://www.lighthouse-services.com/haltonvendor)
  - Email: [reports@lighthouse-services.com](mailto:reports@lighthouse-services.com) (must include Halton Region in the subject line)
- a) All complaints submitted to the Vendor Code of Conduct Help Line will be received by a third party who will relay the complaint, without revealing the caller's identity (if requested), to the Chief Administrative Officer.
  - b) The confidential complaint will be reviewed by the Chief Administrative Officer and the Director of Human Resources within five (5) business days of the initial review.
  - c) Once the investigation is complete, the investigation findings and recommendations will be reported to the complainant and respondent, as appropriate, if their identities are made known.

The Region does not guarantee that an investigation will be conducted for every complaint.

# Penalty for Non-Compliance

Any vendor who contravenes the Vendor Code, including any provision of this Vendor Code, may be subject to:

- a) verbal or written warning;
- b) cancellation of business relationship and/or contract;
- c) disqualification from participating in future business opportunities; and/or
- d) such other action or penalty as may be appropriate and permitted by law in the circumstances of the particular contravention.

This Vendor Code may be modified from time to time by the Region at its discretion.



# Acknowledgement Form

The attached Vendor Code of Conduct sets forth the principles required by the Regional Municipality of Halton (“the Region”) of all Vendors who supply goods and services to the Region when conducting business with the Region.

By signing this Acknowledgement, the undersigned Vendor agrees to abide by the Vendor Code of Conduct and also agree to ensure its employees, officers, agents, representatives, and subcontractors are also made aware of and comply with it.

**ACKNOWLEDGEMENT**

I, \_\_\_\_\_ an authorized representative of \_\_\_\_\_, hereby acknowledge and agree to abide by the attached Vendor Code of Conduct, and will ensure that the employees, officers, agents, representatives and subcontractors of \_\_\_\_\_ are aware of and abide by such policies and principles in the process of preparing and submitting bids and proposals for Regional work, provisions of goods and services to the Region, and during the performance of all agreements entered into with the Region for such purposes.

Submitted by:  
(Please type/print)

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City/Town

\_\_\_\_\_  
Postal Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Contact Email Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Signing Officer

\_\_\_\_\_  
Name and Title (please print)

\_\_\_\_\_  
Signature of Contact Person

\_\_\_\_\_  
Name and Title (please print)





halton.ca ☎ 311



CCDC 2

# Stipulated Price Contract

# 2 0 2 0

Name of Project

Apply a CCDC 2 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 2 – 2020 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE  
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE  
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE



# CCDC 2 STIPULATED PRICE CONTRACT

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CCDC 2 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 2.

#### CCDC Copyright 2020

Must not be copied in whole or in part without the written permission of the CCDC.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

For use when a stipulated price is the basis of payment.

**This Agreement** made on \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.  
**by and between the parties**

hereinafter called the "Owner"

**and**

hereinafter called the "Contractor"

The *Owner* and the *Contractor* agree as follows:

**ARTICLE A-1 THE WORK**

The *Contractor* shall:

1.1 perform the *Work* required by the *Contract Documents* for *(insert below the description or title of the Work)*

located at *(insert below the Place of the Work)*

for which the Agreement has been signed by the parties, and for which *(insert below the name of the Consultant)*

is acting as and is hereinafter called the "*Consultant*" and

1.2 do and fulfill everything indicated by the *Contract Documents*, and

1.3 commence the *Work* by the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Ready-for-Takeover*, by the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.

**ARTICLE A-2 AGREEMENTS AND AMENDMENTS**

2.1 The *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Work*, including the bid documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS.

2.2 The *Contract* may be amended only as provided in the *Contract Documents*.

## ARTICLE A-3 CONTRACT DOCUMENTS

3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE WORK:

- Agreement between *Owner* and *Contractor*
- Definitions
- General Conditions

\*

*\* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. supplementary conditions; Division 01 of the Specifications – GENERAL REQUIREMENTS; Project information that the Contractor may rely upon; technical Specifications, giving a list of contents with section numbers and titles, number of pages and date; material finishing schedules; Drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date; time schedule)*

**ARTICLE A-4 CONTRACT PRICE**

4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:

/100 dollars \$

4.2 *Value Added Taxes* (of \_\_\_\_\_ %) payable by the *Owner* to the *Contractor* are:

/100 dollars \$

4.3 Total amount payable by the *Owner* to the *Contractor* for the *Work* is:

/100 dollars \$

4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

4.5 All amounts are in Canadian funds.

**ARTICLE A-5 PAYMENT**

5.1 Subject to the provisions of the *Contract Documents* and *Payment Legislation*, and in accordance with legislation and statutory regulations respecting holdback percentages, the *Owner* shall:

- .1 make progress payments to the *Contractor* on account of the *Contract Price* when due in the amount certified by the *Consultant* unless otherwise prescribed by *Payment Legislation* together with such *Value Added Taxes* as may be applicable to such payments,
- .2 upon *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

5.2 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by adjudication, arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
  - (1) 2% per annum above the prime rate for the first 60 days.
  - (2) 4% per annum above the prime rate after the first 60 days.
 Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by *(Insert name of chartered lending institution whose prime rate is to be used)*

for prime business loans as it may change from time to time.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.2.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

**ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

6.1 *Notices in Writing* will be addressed to the recipient at the address set out below.

6.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.

6.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it will be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* will be deemed to have been received on the *Working Day* next following such day.

6.4 A *Notice in Writing* sent by any form of electronic communication will be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it will be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.

6.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

**Owner**

*name of Owner\**

*address*

*email address*

**Contractor**

*name of Contractor\**

*address*

*email address*

**Consultant**

*name of Consultant\**

*address*

*email address*

*\* If it is intended that a specific individual must receive the notice, that individual's name shall be indicated.*

**ARTICLE A-7 LANGUAGE OF THE CONTRACT**

- 7.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English / French # language shall prevail.  
*# Complete this statement by striking out inapplicable term.*
- 7.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

**ARTICLE A-8 SUCCESSION**

- 8.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

**In witness whereof** the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED  
in the presence of:

**WITNESS**

**OWNER**

\_\_\_\_\_  
*name of Owner*

\_\_\_\_\_  
*signature*

\_\_\_\_\_  
*signature*

\_\_\_\_\_  
*name of person signing*

\_\_\_\_\_  
*name and title of person signing*

**WITNESS**

**CONTRACTOR**

\_\_\_\_\_  
*name of Contractor*

\_\_\_\_\_  
*signature*

\_\_\_\_\_  
*signature*

\_\_\_\_\_  
*name of person signing*

\_\_\_\_\_  
*name and title of person signing*

- N.B. Where legal jurisdiction, local practice or Owner or Contractor requirement calls for:*
- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or*
  - (b) the affixing of a corporate seal, this Agreement should be properly sealed.*

## DEFINITIONS

The following Definitions shall apply to all *Contract Documents*.

### Change Directive

A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Contractor* to proceed with a change in the *Work* within the general scope of the *Contract Documents* prior to the *Owner* and the *Contractor* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.

### Change Order

A *Change Order* is a written amendment to the *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Contractor* stating their agreement upon:

- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

### Construction Equipment

*Construction Equipment* means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

### Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Work*.

### Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

### Contract Documents

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

### Contract Price

The *Contract Price* is the amount stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

### Contract Time

The *Contract Time* is the time from commencement of the *Work* to the date of *Ready-for-Takeover* as stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE WORK .

### Contractor

The *Contractor* is the person or entity identified as such in the Agreement.

### Drawings

The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

### Notice in Writing

A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Consultant* that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

### Owner

The *Owner* is the person or entity identified as such in the Agreement.

### Other Contractor

*Other Contractor* means a contractor, other than the *Contractor* or a *Subcontractor*, engaged by the *Owner* for the *Project*.

### Payment Legislation

*Payment Legislation* means such legislation in effect at the *Place of the Work* which governs payment under construction contracts.

### Place of the Work

The *Place of the Work* is the designated site or location of the *Work* identified in the *Contract Documents*.

### Product

*Product or Products* means material, machinery, equipment, and fixtures forming part of the *Work*, but does not include *Construction Equipment*.

**Project**

The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.

**Ready-for-Takeover**

*Ready-for-Takeover* shall have been attained when the conditions set out in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER have been met, as verified by the *Consultant* pursuant to paragraph 12.1.4.2 of GC 12.1 – READY-FOR-TAKEOVER.

**Shop Drawings**

*Shop Drawings* are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Contractor* provides to illustrate details of portions of the *Work*.

**Specifications**

The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.

**Subcontractor**

A *Subcontractor* is a person or entity having a direct contract with the *Contractor* to perform a part or parts of the *Work* at the *Place of the Work*.

**Substantial Performance of the Work**

*Substantial Performance of the Work* is as defined in the lien legislation applicable to the *Place of the Work*.

**Supplemental Instruction**

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models, or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents* as required for the performance of the *Work*.

**Supplier**

A *Supplier* is a person or entity having a direct contract with the *Contractor* to supply *Products*.

**Temporary Work**

*Temporary Work* means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the *Work* but not incorporated into the *Work*.

**Value Added Taxes**

*Value Added Taxes* means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Contractor* by tax legislation.

**Work**

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

**Working Day**

*Working Day* means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.



## GENERAL CONDITIONS

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products* and services necessary for the performance of the *Work* by the *Contractor* in accordance with these documents. It is not intended, however, that the *Contractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 The *Contract Documents* are complementary, and what is required by one shall be as binding as if required by all. Performance by the *Contractor* shall be required only to the extent consistent with the *Contract Documents*.
- 1.1.3 The *Contractor* shall review the *Contract Documents* for the purpose of facilitating co-ordination and execution of the *Work* by the *Contractor*.
- 1.1.4 The *Contractor* is not responsible for errors, omissions or inconsistencies in the *Contract Documents*. If there are perceived errors, omissions or inconsistencies discovered by or made known to the *Contractor*, the *Contractor* shall promptly report to the *Consultant* and shall not proceed with the work affected until the *Contractor* has received corrected or additional information from the *Consultant*.
- 1.1.5 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
    - the Agreement between *Owner* and *Contractor*,
    - the Definitions,
    - Supplementary Conditions,
    - the General Conditions,
    - Division 01 of the *Specifications*,
    - technical *Specifications*,
    - material and finishing schedules,
    - the *Drawings*.
  - .2 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
  - .3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
  - .4 amended or later dated documents shall govern over earlier documents of the same type.
  - .5 noted materials and annotations shall govern over graphic indications.
- 1.1.6 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
  - .2 the *Consultant* and the *Contractor*, a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
- 1.1.7 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.8 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.9 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Contractor* in dividing the work among *Subcontractors* and *Suppliers*.
- 1.1.10 *Specifications*, *Drawings*, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property, with the exception of the signed *Contract* sets, which shall belong to each party to the *Contract*. All *Specifications*, *Drawings* and models furnished by the *Consultant* are to be used only with respect to the *Work* and are not to be used on other work. These *Specifications*, *Drawings* and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.
- 1.1.11 Physical models furnished by the *Contractor* at the *Owner's* expense are the property of the *Owner*.

#### GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

#### GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

- 1.3.2 No action or failure to act by the *Owner*, the *Consultant* or the *Contractor* shall constitute a waiver of any right or duty afforded any of them under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **GC 1.4 ASSIGNMENT**

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

### **PART 2 ADMINISTRATION OF THE CONTRACT**

#### **GC 2.1 AUTHORITY OF THE CONSULTANT**

- 2.1.1 The *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities and limitations of authority of the *Consultant* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner*, the *Consultant* and the *Contractor*.

#### **GC 2.2 ROLE OF THE CONSULTANT**

- 2.2.1 The *Consultant* will provide administration of the *Contract* as described in the *Contract Documents*.
- 2.2.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
- 2.2.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the *Contractor*.
- 2.2.4 Based on the *Consultant's* observations and evaluation of the *Contractor's* applications for payment, the *Consultant* will determine the amounts owing to the *Contractor* under the *Contract* and will issue certificates for payment as provided in Article A-5 of the Agreement – PAYMENT, GC 5.3 – PAYMENT and GC 5.5 – FINAL PAYMENT.
- 2.2.5 The *Consultant* will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations or general construction practice. The *Consultant* will not be responsible for the *Contractor's* failure to perform the *Work* in accordance with the *Contract Documents*.
- 2.2.6 Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, the *Consultant* will be, in the first instance, the interpreter of the requirements of the *Contract Documents*.
- 2.2.7 Matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents* shall be initially referred in writing to the *Consultant* by the party raising the question for interpretations and findings and copied to the other party.
- 2.2.8 Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents*. In making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Contractor*.
- 2.2.9 The *Consultant's* interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.2.10 With respect to claims for a change in *Contract Price*, the *Consultant* will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.
- 2.2.11 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*.
- 2.2.12 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Contractor*.
- 2.2.13 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other submittals by the *Contractor*, in accordance with the *Contract Documents*.

- 2.2.14 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.2.15 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* and verify that *Ready-for-Takeover* has been attained.
- 2.2.16 All certificates issued by the *Consultant* will be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.2.17 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Contractor* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.
- 2.2.18 If the *Consultant's* engagement is terminated, the *Owner* shall immediately engage a *Consultant* against whom the *Contractor* makes no reasonable objection and whose duties and responsibilities under the *Contract Documents* will be that of the former *Consultant*.

### **GC 2.3 REVIEW AND INSPECTION OF THE WORK**

- 2.3.1 The *Owner* and the *Consultant* shall have access to the *Work* at all times. The *Contractor* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.
- 2.3.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, by the *Consultant's* instructions, or by the laws or ordinances of the *Place of the Work*, the *Contractor* shall give the *Consultant* reasonable notification of when the work will be ready for review and inspection. The *Contractor* shall arrange for and shall give the *Consultant* reasonable notification of the date and time of inspections by other authorities.
- 2.3.3 The *Contractor* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.3.4 If the *Contractor* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Contractor* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Contractor's* expense.
- 2.3.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Contractor* shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.
- 2.3.6 The *Contractor* shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the *Contract Documents* to be performed by the *Contractor* or is required by the laws or ordinances applicable to the *Place of the Work*.
- 2.3.7 The *Contractor* shall pay the cost of samples required for any test or inspection to be performed by others if such test or inspection is designated in the *Contract Documents*.

### **GC 2.4 DEFECTIVE WORK**

- 2.4.1 The *Contractor* shall promptly correct defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work was incorporated in the *Work* or the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Contractor*.
- 2.4.2 The *Contractor* shall make good promptly *Other Contractors' work* destroyed or damaged by such corrections at the *Contractor's* expense.
- 2.4.3 If in the opinion of the *Consultant* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Contractor* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Owner* and the *Contractor* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a finding.

## **PART 3 EXECUTION OF THE WORK**

### **GC 3.1 CONTROL OF THE WORK**

- 3.1.1 The *Contractor* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*.

3.1.2 The *Contractor* shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract*.

### **GC 3.2 CONSTRUCTION BY THE OWNER OR OTHER CONTRACTORS**

3.2.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to *Other Contractors* and to perform work with own forces.

3.2.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:

- .1 provide for the co-ordination of the activities and work of *Other Contractors* and the *Owner's* own forces with the *Work* of the *Contract*;
- .2 enter into separate contracts with *Other Contractors* under conditions of contract which are compatible with the conditions of the *Contract*;
- .3 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the *Contractor* as it affects the *Work*; and
- .4 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of *Other Contractors* or the *Owner's* own forces.

3.2.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Contractor* shall:

- .1 afford the *Owner* and *Other Contractors* reasonable opportunity to store their products and execute their work;
- .2 co-ordinate and schedule the *Work* with the work of *Other Contractors* or the *Owner's* own forces that are identified in the *Contract Documents*;
- .3 participate with *Other Contractors* and the *Owner* in reviewing their construction schedules when directed to do so; and
- .4 report promptly to the *Consultant* in writing any apparent deficiencies in the work of *Other Contractors* or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Work*, prior to proceeding with that portion of the *Work*.

3.2.4 Where a change in the *Work* is required as a result of the co-ordination and integration of the work of *Other Contractors* or *Owner's* own forces with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

3.2.5 Disputes and other matters in question between the *Contractor* and *Other Contractors* shall be dealt with as provided in Part 8 of the General Conditions – DISPUTE RESOLUTION provided the *Other Contractors* have reciprocal obligations. The *Contractor* shall be deemed to have consented to arbitration of any dispute with any *Other Contractor* whose contract with the *Owner* contains a similar agreement to arbitrate. In the absence of *Other Contractors* having reciprocal obligations, disputes and other matters in question initiated by the *Contractor* against *Other Contractors* will be considered disputes and other matters in question between the *Contractor* and the *Owner*.

3.2.6 Should the *Owner*, the *Consultant*, *Other Contractors*, or anyone employed by them directly or indirectly be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

### **GC 3.3 TEMPORARY WORK**

3.3.1 The *Contractor* shall have the sole responsibility for the design, erection, operation, maintenance, and removal of *Temporary Work* unless otherwise specified in the *Contract Documents*.

3.3.2 The *Contractor* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the *Contract Documents* and in all cases where such *Temporary Work* is of such a nature that professional engineering skill is required to produce safe and satisfactory results.

3.3.3 Notwithstanding the provisions of GC 3.1 – CONTROL OF THE WORK, paragraphs 3.3.1 and 3.3.2 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for *Temporary Work* or specify a method of construction in whole or in part, such designs or methods of construction 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 as for the execution of the *Work*.

### **GC 3.4 CONSTRUCTION SCHEDULE**

3.4.1 The *Contractor* shall:

- .1 prepare and submit to the *Owner* and the *Consultant* prior to the first application for payment, a construction schedule that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time*;
- .2 monitor the progress of the *Work* relative to the construction schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
- .3 advise the *Consultant* of any revisions required to the schedule as the result of extensions of the *Contract Time* as provided in Part 6 of the General Conditions – CHANGES IN THE WORK.

### **GC 3.5 SUPERVISION**

3.5.1 The *Contractor* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while the *Work* is being performed. The appointed representative shall not be changed except for valid reason.

3.5.2 The appointed representative shall represent the *Contractor* at the *Place of the Work*. Information and instructions provided by the *Consultant* to the *Contractor*'s appointed representative shall be deemed to have been received by the *Contractor*, except with respect to Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

### **GC 3.6 SUBCONTRACTORS AND SUPPLIERS**

3.6.1 The *Contractor* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:

- .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
- .2 incorporate the applicable terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
- .3 be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers* and any persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Contractor*.

3.6.2 The *Contractor* shall indicate in writing, if requested by the *Owner*, those *Subcontractors* or *Suppliers* whose bids have been received by the *Contractor* which the *Contractor* would be prepared to accept for the performance of a portion of the *Work*. Should the *Owner* not object before signing the *Contract*, the *Contractor* shall employ those *Subcontractors* or *Suppliers* so identified by the *Contractor* in writing for the performance of that portion of the *Work* to which their bid applies.

3.6.3 The *Owner* may, for reasonable cause, at any time before the *Owner* has signed the *Contract*, object to the use of a proposed *Subcontractor* or *Supplier* and require the *Contractor* to employ one of the other subcontract bidders.

3.6.4 If the *Owner* requires the *Contractor* to change a proposed *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the difference occasioned by such required change.

3.6.5 The *Contractor* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to which the *Contractor* may reasonably object.

3.6.6 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor*'s or *Supplier*'s work which has been certified for payment.

### **GC 3.7 LABOUR AND PRODUCTS**

3.7.1 The *Contractor* shall maintain good order and discipline among the *Contractor*'s employees engaged on the *Work* and employ only workers that are skilled in the tasks assigned.

3.7.2 The *Contractor* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.

3.7.3 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.

### **GC 3.8 SHOP DRAWINGS**

3.8.1 The *Contractor* shall provide *Shop Drawings* as required in the *Contract Documents*.

3.8.2 The *Contractor* shall provide *Shop Drawings* to the *Consultant* to review in accordance with an agreed schedule, or in the absence of an agreed schedule, in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of *Other Contractors* or the *Owner*'s own forces.

- 3.8.3 The *Contractor* shall review all *Shop Drawings* before providing them to the *Consultant*. The *Contractor* represents by this review that:
- .1 the *Contractor* has determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
  - .2 the *Contractor* has checked and co-ordinated each *Shop Drawing* with the requirements of the *Work* and of the *Contract Documents*.
- 3.8.4 The *Consultant's* review is for conformity to the design concept and for general arrangement only.
- 3.8.5 At the time of providing *Shop Drawings*, the *Contractor* shall expressly advise the *Consultant* in writing of any deviations in a *Shop Drawing* from the requirements of the *Contract Documents*. The *Consultant* shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.8.6 The *Consultant's* review shall not relieve the *Contractor* of responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Contract Documents*.
- 3.8.7 The *Consultant* will review and return *Shop Drawings* in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the *Work*.

## **PART 4 ALLOWANCES**

### **GC 4.1 CASH ALLOWANCES**

- 4.1.1 The *Contract Price* includes the cash allowances, if any, stated in the *Contract Documents*. The scope of the *Work* or costs included in such cash allowances shall be as described in the *Contract Documents*.
- 4.1.2 The *Contract Price*, and not the cash allowances, includes the *Contractor's* overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Consultant*.
- 4.1.4 Where the actual cost of the *Work* under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, at the *Consultant's* direction, to cover the shortfall, and, in that case, there shall be no additional amount added to the *Contract Price* for overhead and profit. Only where the actual cost of the *Work* under all cash allowances exceeds the total amount of all cash allowances shall the *Contractor* be compensated for the excess incurred and substantiated, plus an amount for overhead and profit on the excess only, as set out in the *Contract Documents*.
- 4.1.5 The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the *Contract Price* by *Change Order* without any adjustment for the *Contractor's* overhead and profit on such amount.
- 4.1.6 The value of the *Work* performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Contractor* and the *Consultant* shall jointly prepare a schedule that shows when the items called for under cash allowances must be ordered to avoid delaying the progress of the *Work*.

### **GC 4.2 CONTINGENCY ALLOWANCE**

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Contract Documents*.
- 4.2.2 The contingency allowance includes the *Contractor's* overhead and profit in connection with such contingency allowance.
- 4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.

## **PART 5 PAYMENT**

### **GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

- 5.1.1 The *Owner* shall, at the request of the *Contractor*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Contractor* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Contractor Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

## **GC 5.2 APPLICATIONS FOR PAYMENT**

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement – PAYMENT shall be submitted monthly to the *Owner* and the *Consultant* simultaneously as the *Work* progresses.
- 5.2.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period.
- 5.2.4 The *Contractor* shall submit to the *Consultant*, at least 15 calendar days before the first application for payment, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.2.5 The schedule of values shall be made out in such form as specified in the *Contract* and supported by such evidence as the *Consultant* may reasonably require.
- 5.2.6 Applications for payment shall be based on the schedule of values accepted by the *Consultant* and shall comply with the provisions of *Payment Legislation*.
- 5.2.7 Each application for payment shall include evidence of compliance with workers' compensation legislation at the *Place of the Work* and after the first payment, a declaration by the *Contractor* as to the distribution made of the amounts previously received using document CCDC 9A 'Statutory Declaration'.
- 5.2.8 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.

## **GC 5.3 PAYMENT**

- 5.3.1 After receipt by the *Consultant* and the *Owner* of an application for payment submitted by the *Contractor* in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT:
  - .1 The *Consultant* will issue to the *Owner* and copy to the *Contractor*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* certifies a different amount, or rejects the application or part thereof, the *Owner* shall promptly issue a written notice to the *Contractor* giving reasons for the revision or rejection, such written notice to be in compliance with *Payment Legislation*.
  - .2 The *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 28 calendar days after the receipt by the *Owner* and the *Consultant* of the application for payment, and in any event, in compliance with *Payment Legislation*.

## **GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK**

- 5.4.1 The *Consultant* will review the *Work* to certify or verify the validity of the application for *Substantial Performance of the Work* and will promptly, and in any event, no later than 20 calendar days after receipt of the *Contractors* application:
  - .1 advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or
  - .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*.
- 5.4.2 Where the holdback amount required by the applicable lien legislation has not been placed in a separate lien holdback account, the *Owner* shall, no later than 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Contractor*.
- 5.4.3 Subject to the requirements of any *Payment Legislation*, all holdback amount prescribed by the applicable lien legislation for the *Work* shall become due and payable to the *Contractor* no later than 10 *Working Days* following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*.
- 5.4.4 The *Contractor* shall submit an application for payment of the lien holdback amount in accordance with GC 5.3 – PAYMENT.
- 5.4.5 Where legislation permits progressive release of the holdback for a portion of the *Work* and the *Consultant* has certified or verified that the part of the *Work* has been performed prior to *Substantial Performance of the Work*, the *Owner* hereby agrees to release, and shall release, such portion to the *Contractor* in accordance with such legislation.

5.4.6 Notwithstanding any progressive release of the holdback, the *Contractor* shall ensure that such parts of the *Work* are protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when the holdback was released.

#### **GC 5.5 FINAL PAYMENT**

- 5.5.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment.
- 5.5.2 The *Consultant* will, no later than 10 calendar days after the receipt of an application from the *Contractor* for final payment, review the *Work* to verify the validity of the application and when the *Consultant* finds the *Contractor*'s application for final payment valid, the *Consultant* will promptly issue a final certificate for payment to the *Owner*, with a copy to the *Contractor*.
- 5.5.3 If the *Consultant* rejects the application or part thereof, the *Owner* will promptly issue a written notice to the *Contractor* giving reasons for the revision or rejection, such written notice to be in compliance with *Payment Legislation*.
- 5.5.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION, and any legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Contractor* as provided in Article A-5 of the Agreement – PAYMENT and in any event, in compliance with *Payment Legislation*.

#### **GC 5.6 DEFERRED WORK**

- 5.6.1 If because of climatic or other conditions reasonably beyond the control of the *Contractor*, or if the *Owner* and the *Contractor* agree that, there are items of work that must be deferred, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such deferred *Work*.

#### **GC 5.7 NON-CONFORMING WORK**

- 5.7.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

### **PART 6 CHANGES IN THE WORK**

#### **GC 6.1 OWNER'S RIGHT TO MAKE CHANGES**

- 6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make:
- .1 changes in the *Work* consisting of additions, deletions or other revisions to the *Work* by *Change Order* or *Change Directive*, and
  - .2 changes to the *Contract Time* for the *Work*, or any part thereof, by *Change Order*.
- 6.1.2 The *Contractor* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.

#### **GC 6.2 CHANGE ORDER**

- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* will provide the *Contractor* with a written description of the proposed change in the *Work*. The *Contractor* shall promptly present to the *Consultant*, in a form that can be reasonably evaluated, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change in the *Work*.
- 6.2.2 When the *Owner* and the *Contractor* agree to the adjustments in the *Contract Price* and *Contract Time* or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in the applications for progress payment.

#### **GC 6.3 CHANGE DIRECTIVE**

- 6.3.1 If the *Owner* requires the *Contractor* to proceed with a change in the *Work* prior to the *Owner* and the *Contractor* agreeing upon the corresponding adjustment in *Contract Price* and *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.



- 6.3.4 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the change in the *Work*.
- 6.3.5 For the purpose of valuing *Change Directives*, changes in the *Work* that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Contractor's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7 and as follows:
- .1 If the change results in a net increase in the *Contractor's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Contractor's* cost, plus the *Contractor's* percentage fee on such net increase.
  - .2 If the change results in a net decrease in the *Contractor's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Contractor's* cost, without adjustment for the *Contractor's* percentage fee.
  - .3 The *Contractor's* fee shall be as specified in the *Contract Documents* or as otherwise agreed by the parties.
- 6.3.7 The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following in as much as it contributes directly to the implementation of the *Change Directive*:

#### **Labour**

- .1 rates that are listed in the schedule or as agreed by the *Owner* and the *Contractor* including wages, benefits, compensation, contributions, assessments, or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan for:
  - (1) trade labour in the direct employ of the *Contractor*;
  - (2) the *Contractor's* personnel when stationed at the field office;
  - (3) the *Contractor's* personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment; and
  - (4) the *Contractor's* office personnel engaged in a technical capacity, or other personnel identified in Article A-3 of the Agreement – CONTRACT DOCUMENTS for the time spent in the performance of the *Work*;

#### **Products, Construction Equipment and Temporary Work**

- .2 cost of all *Products* including cost of transportation thereof;
- .3 in the absence of agreed rates, cost less salvage value of *Construction Equipment, Temporary Work* and tools, exclusive of hand tools under \$1,000 owned by the *Contractor*;
- .4 rental cost of *Construction Equipment, Temporary Work* and tools, exclusive of hand tools under \$1,000;
- .5 cost of all equipment and services required for the *Contractor's* field office;

#### **Subcontract**

- .6 subcontract amounts of Subcontractor with pricing mechanism approved by the *Owner*;

#### **Others**

- .7 travel and subsistence expenses of the *Contractor's* personnel described in paragraph 6.3.7.1;
- .8 deposits lost provided that they are not caused by negligent acts or omissions of the *Contractor*;
- .9 cost of quality assurance such as independent inspection and testing services;
- .10 charges levied by authorities having jurisdiction at the *Place of the Work*;
- .11 royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefor subject always to the *Contractor's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
- .12 premium for all contract securities and insurance for which the *Contractor* is required, by the *Contract Documents*, to provide, maintain and pay in relation to the performance of the *Work*;
- .13 losses and expenses sustained by the *Contractor* for matters which are the subject of insurance under the policies prescribed in GC 11.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts or within the deductible amounts;
- .14 taxes and duties, other than *Value Added Taxes*, income, capital, or property taxes, relating to the *Work* for which the *Contractor* is liable;
- .15 charges for voice and data communications, courier services, expressage, transmittal and reproduction of documents, and petty cash items;
- .16 cost for removal and disposal of waste products and debris;
- .17 legal costs, incurred by the *Contractor*, in relation to the performance of the *Work* provided that they are not:
  - (1) relating to a dispute between the *Owner* and the *Contractor* unless such costs are part of a settlement or awarded by arbitration or court,
  - (2) the result of the negligent acts or omissions of the *Contractor*, or
  - (3) the result of a breach of this *Contract* by the *Contractor*;
- .18 cost of auditing when requested by the *Owner*; and
- .19 cost of *Project* specific information technology in accordance with the method determined by the parties.

- 6.3.8 Notwithstanding any other provisions contained in the General Conditions of the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Contractor* to exercise reasonable care and diligence in the *Contractor's* attention to the *Work*. Any cost due to failure on the part of the *Contractor* to exercise reasonable care and diligence in the *Contractor's* performance of the *Work* attributable to the *Change Directive* shall be borne by the *Contractor*.
- 6.3.9 The *Contractor* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the *Work* attributable to the *Change Directive* and shall provide the *Consultant* with copies thereof.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Owner* shall be afforded reasonable access to all of the *Contractor's* pertinent documents related to the cost of performing the *Work* attributable to the *Change Directive*.
- 6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the *Work* performed as the result of a *Change Directive* is eligible to be included in progress payments.
- 6.3.12 If the *Owner* and the *Contractor* do not agree on the proposed adjustment in the *Contract Time* attributable to the change in the *Work*, or the method of determining it, the adjustment shall be referred to the *Consultant* for a finding.
- 6.3.13 When the *Owner* and the *Contractor* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order*.

#### **GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

- 6.4.1 If the *Owner* or the *Contractor* discover conditions at the *Place of the Work* which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* and differ materially from those indicated in the *Contract Documents*; or
  - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
- then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Owner*, through the *Consultant*, shall issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* will promptly inform the *Owner* and the *Contractor* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

#### **GC 6.5 DELAYS**

- 6.5.1 If the *Contractor* is delayed in the performance of the *Work* by the *Owner*, the *Consultant*, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.
- 6.5.2 If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, resulting in the failure of the *Contractor* to attain *Ready-for-Takeover* by the date stipulated in Article A-1 of the Agreement – THE WORK, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.
- 6.5.3 If the *Contractor* is delayed in the performance of the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound),
  - .2 fire, unusual delay by common carriers or unavoidable casualties,
  - .3 abnormally adverse weather conditions, or

- 4 any cause beyond the *Contractor's* control other than one resulting from a default or breach of *Contract* by the *Contractor*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, the *Consultant* or anyone employed or engaged by them directly or indirectly.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.2.12 of GC 2.2 – ROLE OF THE CONSULTANT, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

## **GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE**

- 6.6.1 If the *Contractor* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim against the *Contractor* for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party and to the *Consultant*.
- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
- .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
  - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the *Consultant* a detailed account of the amount claimed and the grounds upon which the claim is based and the *Consultant* will make a finding upon such claim.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the *Consultant* may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 The *Consultant's* findings, with respect to a claim made by either party, will be given by *Notice in Writing* to both parties within 30 *Working Days* after receipt of the claim by the *Consultant*, or within such other time period as may be agreed by the parties.
- 6.6.6 If such finding is not acceptable to either party, the claim shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION.

## **PART 7 DEFAULT NOTICE**

### **GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT**

- 7.1.1 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, terminate the *Contractor's* right to continue with the *Work*, by giving the *Contractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.1.2 If the *Contractor* neglects to perform the *Work* properly or otherwise fails to comply with the requirements of the *Contract* to a substantial degree and if the *Consultant* has given a written statement to the *Owner* and *Contractor* which provides the detail of such neglect to perform the *Work* properly or such failure to comply with the requirements of the *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Contractor Notice in Writing*, containing particulars of the default including references to applicable provisions of the *Contract*, 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 in Writing*.
- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Contractor* shall be in compliance with the *Owner's* instructions if the *Contractor*:
- .1 commences the correction of the default within the specified time,
  - .2 provides the *Owner* with an acceptable schedule for such correction, and
  - .3 corrects the default in accordance with the *Contract* terms and with such schedule.

- 7.1.4 If the *Contractor* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may by giving *Notice in Writing*:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Contractor* for the *Work* provided the *Consultant* has certified such cost to the *Owner* and the *Contractor*, or
  - .2 terminate the *Contractor*'s right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Contractor*'s right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall be entitled to:
- .1 take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense,
  - .2 withhold further payment to the *Contractor* until a final certificate for payment is issued,
  - .3 charge the *Contractor* the amount by which the full cost of finishing the *Work* as certified by the *Consultant*, including compensation to the *Consultant* for the *Consultant*'s additional services and a reasonable allowance as determined by the *Consultant* to cover the cost of corrections to work performed by the *Contractor* that may be required under GC 12.3 – WARRANTY, exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference, and
  - .4 on expiry of the warranty period, charge the *Contractor* the amount by which the cost of corrections to the *Contractor*'s work under GC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Contractor* the difference.
- 7.1.6 The *Contractor*'s obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Contractor* up to the time of termination shall continue in force after such termination of the *Contract*.

## **GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

- 7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner*'s insolvency, or if a receiver is appointed because of the *Owner*'s insolvency, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* is suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or of anyone directly or indirectly employed or engaged by the *Contractor*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.
- 7.2.3 The *Contractor* may give *Notice in Writing* to the *Owner*, with a copy to the *Consultant*, that the *Owner* is in default of the *Owner*'s contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Contractor*, reasonable evidence that financial arrangements have been made to fulfill the *Owner*'s obligations under the *Contract*,
  - .2 the *Consultant* fails to issue a certificate as provided in Part 5 of the General Conditions – PAYMENT,
  - .3 the *Owner* fails to pay the *Contractor* when due the amounts certified by the *Consultant* or awarded by adjudication, arbitration or court, or
  - .4 the *Owner* fails to comply with the requirements of the *Contract* to a substantial degree and the *Consultant*, except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, gives a written statement to the *Owner* and the *Contractor* that provides detail of such failure to comply with the requirements of the *Contract* to a substantial degree.
- 7.2.4 The *Contractor*'s *Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, suspend the *Work* or terminate the *Contract*.
- 7.2.5 If the *Contractor* terminates the *Contract* by giving a *Notice in Writing* to the *Owner* under the conditions set out above, the *Contractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the termination of the *Contract*.

## **PART 8 DISPUTE RESOLUTION**

### **GC 8.1 AUTHORITY OF THE CONSULTANT**

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved

in the first instance by findings of the *Consultant* as provided in GC 2.2 – ROLE OF THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.

- 8.1.2 If a dispute arises under the *Contract* in respect of a matter in which the *Consultant* has no authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.3.3 to 8.3.8 of GC 8.3 – NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.4 – RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.
- 8.1.3 If a dispute is not resolved promptly, the *Consultant* will give such instructions as in the *Consultant's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Contractor* costs incurred by the *Contractor* in carrying out such instructions which the *Contractor* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

## GC 8.2 ADJUDICATION

- 8.2.1 Nothing in this *Contract* shall be deemed to affect the rights of the parties to resolve any dispute by adjudication as may be prescribed by applicable legislation.

## GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.3.1 In accordance with the rules for mediation as provided in CCDC 40 'Rules for Mediation and Arbitration of Construction Industry Disputes' in effect at the time of bid closing, the parties shall appoint a Project Mediator
- .1 within 20 *Working Days* after the *Contract* was awarded, or
  - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.3.2 A party shall be conclusively deemed to have accepted a finding of the *Consultant* under GC 2.2 – ROLE OF THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.3.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid, and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.3.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.3.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the rules for mediation as provided in CCDC 40 in effect at the time of bid closing.
- 8.3.5 If the dispute has not been resolved at the mediation or within such further period as is agreed by the parties, the Project Mediator will terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Contractor* and the *Consultant*.
- 8.3.6 By giving a *Notice in Writing* to the other party and the *Consultant*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.3.5, either party may refer the dispute to be finally resolved by arbitration under the rules of arbitration as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.3.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.3.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.3.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.3.8 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.3.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.3.6 shall be:
- .1 held in abeyance until:
    - (1) *Ready-for-Takeover*,
    - (2) the *Contract* has been terminated, or
    - (3) the *Contractor* has abandoned the *Work*,whichever is earlier; and

.2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.3.6.

#### **GC 8.4 RETENTION OF RIGHTS**

- 8.4.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 – AUTHORITY OF THE CONSULTANT.
- 8.4.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.3.6 of GC 8.3 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

### **PART 9 PROTECTION OF PERSONS AND PROPERTY**

#### **GC 9.1 PROTECTION OF WORK AND PROPERTY**

- 9.1.1 The *Contractor* shall protect the *Work*, the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors or omissions in the *Contract Documents*; or
  - .2 acts or omissions by the *Owner*, the *Consultant*, *Other Contractors*, or their agents and employees.
- 9.1.2 Before commencing any work, the *Contractor* shall determine the location of all underground utilities and structures indicated in the *Contract Documents* or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 Should the *Contractor* in the performance of the *Contract* damage the *Work*, the *Owner's* property or property adjacent to the *Place of the Work*, the *Contractor* shall be responsible for making good such damage at the *Contractor's* expense.
- 9.1.4 Should damage occur to the *Work* or the *Owner's* property for which the *Contractor* is not responsible, as provided in paragraph 9.1.1, the *Contractor* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

#### **GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Contractor* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
  - .2 provide the *Consultant* and the *Contractor* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Contractor* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless any toxic or hazardous substance which was present at the *Place of the Work* prior to the *Contractor* commencing the *Work*.
- 9.2.5 If the *Contractor*
- .1 encounters toxic or hazardous substances at the *Place of the Work*, or
  - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Contractor* or anyone for whom the *Contractor* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Contractor* shall
  - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substance exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
  - .4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.

- 9.2.6 If the *Owner* and the *Contractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Contractor*.
- 9.2.7 If the *Owner* and the *Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the *Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
  - .2 reimburse the *Contractor* for the costs of all steps taken pursuant to paragraph 9.2.5;
  - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and the expert referred to in 9.2.6 and reimburse the *Contractor* for reasonable costs incurred as a result of the delay; and
  - .4 indemnify the *Contractor* as required by GC 13.1 – INDEMNIFICATION.
- 9.2.8 If the *Owner* and the *Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the place of the *Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, the *Contractor* shall promptly at the *Contractor's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substances;
  - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the place of the *Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
  - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
  - .4 indemnify the *Owner* as required by GC 13.1 – INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

### GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place or Work* shall, as between the *Owner* and the *Contractor*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Contractor* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Consultant* upon discovery of such items.
- 9.3.3 The *Consultant* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Owner*, through the *Consultant*, shall issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

### GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 The *Contractor* shall be responsible for establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the *Work* in accordance with the applicable health and safety legislation.
- 9.4.2 The *Owner* and the *Contractor* shall comply with all health and safety precautions and programs established at the *Place of the Work*.
- 9.4.3 The *Owner* and the *Contractor* shall comply with the rules, regulations and practices required by the applicable health and safety legislation.
- 9.4.4 The *Owner* shall cause the *Consultant*, *Other Contractors* and the *Owner's* own forces to comply with all health and safety precautions and programs established by the *Contractor* at the *Place of the Work*.
- 9.4.5 Nothing in this *Contract* shall affect the determination of liability under the applicable health and safety legislation.

### GC 9.5 MOULD

- 9.5.1 If the *Contractor* or the *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other party in writing,
  - .2 the *Contractor* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and

- .3 if the *Owner* and the *Contractor* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Contractor*.
- 9.5.2 If the *Owner* and the *Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Contractor's* operations under the *Contract*, the *Contractor* shall promptly, at the *Contractor's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould,
  - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY,
  - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
  - .4 indemnify the *Owner* as required by GC 13.1 – INDEMNIFICATION.
- 9.5.3 If the *Owner* and the *Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Contractor's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould,
  - .2 reimburse the *Contractor* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY,
  - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Contractor* for reasonable costs incurred as a result of the delay, and
  - .4 indemnify the *Contractor* as required by GC 13.1 – INDEMNIFICATION.
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.

## **PART 10 GOVERNING REGULATIONS**

### **GC 10.1 TAXES AND DUTIES**

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Contractor* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Contractor* due to changes in taxes and duties after the time of the bid closing shall increase or decrease the *Contract Price* accordingly.

### **GC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

- 10.2.1 The laws of the *Place of the Work* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the *Contractor*.
- 10.2.3 The *Contractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Contractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Contractor* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will issue the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.



- 10.2.6 If the *Contractor* fails to advise the *Consultant* in writing; fails to obtain direction as required in paragraph 10.2.5; and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes; the *Contractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

### GC 10.3 PATENT FEES

- 10.3.1 The *Contractor* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Contractor* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor*'s performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Contractor* or anyone for whose acts the *Contractor* may be liable.
- 10.3.2 The *Owner* shall hold the *Contractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor*'s performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, the physical model, plan or design of which was supplied to the *Contractor* as part of the *Contract*.

### GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Work*, and again with the *Contractor*'s applications for payment, the *Contractor* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*.

## PART 11 INSURANCE

### GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 13.1 – INDEMNIFICATION, the *Contractor* shall provide, maintain and pay for the following insurance coverages, the requirements of which are specified in CCDC 41 'CCDC Insurance Requirements' in effect at the time of bid closing except as hereinafter provided:
1. General liability insurance in the name of the *Contractor* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner* and the *Consultant* as insureds but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the *Contractor* with regard to the *Work*. General liability insurance shall be maintained from the date of commencement of the *Work* until one year from the date of *Ready-for-Takeover*. Liability coverage shall be provided for completed operations hazards from the date of *Ready-for-Takeover* on an ongoing basis for a period of 6 years following *Ready-for-Takeover*.
  2. Automobile Liability Insurance from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.
  3. Unmanned aerial vehicle aircraft, manned aircraft or watercraft Liability Insurance when owned or non-owned manned or unmanned aircraft or watercraft are used directly or indirectly in the performance of the *Work*.
  4. "Broad form" property insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The "Broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
    - (1) 10 calendar days after the date of *Ready-for-Takeover*;
    - (2) on the commencement of use or occupancy of any part or section of the *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*; and
    - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
  5. Boiler and machinery insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Ready-for-Takeover*.
  6. The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Contractor* as their respective interests may appear. In the event of loss or damage:
    - (1) the *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except

that the *Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Consultant* may recommend in consultation with the *Contractor*;

- (2) the *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Contractor's* interest in the restoration of the *Work*; and
- (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or *Other Contractors*, the *Owner* shall, in accordance with the *Owner's* obligations under the provisions relating to construction by the *Owner* or *Other Contractors*, pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.

- .7 *Contractors' Equipment Insurance* from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.
- .8 *Contractors' Pollution Liability Insurance* from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.

11.1.2 Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*.

11.1.3 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.

11.1.4 If the *Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Contractor* and the *Consultant*. The *Contractor* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from the amount which is due or may become due to the *Contractor*.

11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.

11.1.6 If a revised version of CCDC 41 is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Contractor's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.

11.1.7 If a revised version of CCDC 41 is published, which specifies increased insurance requirements, the *Owner* may request the increased coverage from the *Contractor* by way of a *Change Order*.

11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41.

## **PART 12 OWNER TAKEOVER**

### **GC 12.1 READY-FOR-TAKEOVER**

12.1.1 The prerequisites to attaining *Ready-for-Takeover* of the *Work* are limited to the following:

- .1 The *Consultant* has certified or verified the *Substantial Performance of the Work*.
- .2 Evidence of compliance with the requirements for occupancy or occupancy permit as prescribed by the authorities having jurisdiction.
- .3 Final cleaning and waste removal at the time of applying for *Ready-for-Takeover*, as required by the *Contract Documents*.
- .4 The delivery to the *Owner* of such operations and maintenance documents reasonably necessary for immediate operation and maintenance, as required by the *Contract Documents*.
- .5 Make available a copy of the as-built drawings completed to date on site.
- .6 Startup, testing required for immediate occupancy, as required by the *Contract Documents*.
- .7 Ability to secure access to the *Work* has been provided to the *Owner*, if required by the *Contract Documents*.
- .8 Demonstration and training, as required by the *Contract Documents*, is scheduled by the *Contractor* acting reasonably.

12.1.2 If any prerequisites set forth in paragraphs 12.1.1.3 to 12.1.1.6 must be deferred because of conditions reasonably beyond the control of the *Contractor*, or by agreement between the *Owner* and the *Contractor* to do so, *Ready-for-Takeover* shall not be delayed.

12.1.3 When the *Contractor* considers that the *Work* is *Ready-for-Takeover*, the *Contractor* shall deliver to the *Consultant* and to the *Owner* a comprehensive list of items to be completed or corrected, together with a written application for *Ready-for-Takeover* for review. Failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*.

12.1.4 The *Consultant* will review the *Work* to verify the validity of the application and will promptly, and in any event, no later than 10 calendar days after receipt of the *Contractor's* list and application:

- .1 advise the *Contractor* in writing that the *Work* is not *Ready-for-Takeover* and give reasons why, or
- .2 confirm the date of *Ready-for-Takeover* in writing to each of the *Owner* and the *Contractor*.

12.1.5 Immediately following the confirmation of the date of *Ready-for-Takeover*, the *Contractor*, in consultation with the *Consultant*, shall establish a reasonable date for finishing the *Work*.

12.1.6 The provision of GC 12.1 – READY-FOR-TAKEOVER shall be subject to GC 12.2 – EARLY OCCUPANCY BY THE OWNER.

## **GC 12.2 EARLY OCCUPANCY BY THE OWNER**

12.2.1 The *Owner* may take occupancy of a part or the entirety of the *Work* before *Ready-for-Takeover* has been attained only as agreed by the *Contractor* which agreement shall not be unreasonably withheld.

12.2.2 The *Owner* shall not occupy a part or the entirety of the *Work* without prior approval by authorities having jurisdiction.

12.2.3 If the *Owner* takes occupancy of a part of the *Work* before *Ready-for-Takeover* has been attained:

- .1 The part of the *Work* which is occupied shall be deemed to have been taken over by the *Owner* as from the date on which it is occupied.
- .2 The *Contractor* shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the *Owner*.
- .3 The warranty period specified in paragraph 12.3.1 of GC 12.3 – WARRANTY for that part of the *Work* shall start from the date on which it is occupied.

12.2.4 If the *Owner* takes occupancy of the entirety of the *Work* before all the prerequisites are met as described in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER, the *Work* shall, subject to the requirements of the applicable lien legislation, be deemed to achieve *Ready-for-Takeover*. This shall not relieve the *Contractor*'s responsibility to complete the *Work* in a timely manner.

## **GC 12.3 WARRANTY**

12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under the *Contract* is one year from the date when *Ready-for-Takeover* has been attained.

12.3.2 The *Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.

12.3.3 The *Owner*, through the *Consultant*, shall promptly give the *Contractor Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.

12.3.4 Subject to paragraph 12.3.2, the *Contractor* shall correct promptly, at the *Contractor*'s expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.

12.3.5 The *Contractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.

12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Contractor*'s responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

## **PART 13 INDEMNIFICATION AND WAIVER**

### **GC 13.1 INDEMNIFICATION**

13.1.1 Without restricting the parties' obligation to indemnify respecting toxic and hazardous substances, patent fees and defect in title claims all as described in paragraphs 13.1.4 and 13.1.5, the *Owner* and the *Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:

- .1 caused by:
  - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose negligent acts or omissions that party is liable, or
  - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
- .2 made by *Notice in Writing* within a period of 6 years from the *Ready-for-Takeover* date or within such shorter period as may be prescribed by any limitation statute of the Province or Territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.

- 13.1.2 The obligation of either party to indemnify as set forth in paragraph 13.1.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Contractor* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the minimum liability insurance limit for one occurrence, of the applicable insurance policy, as referred to in CCDC 41 in effect at the time of bid closing.
  - .2 In respect to losses suffered by the *Owner* and the *Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
  - .3 In respect to indemnification by a party against the other with respect to losses suffered by them, such obligation shall be restricted to direct loss and damage, and neither party shall have any liability to the other for indirect, consequential, punitive or exemplary damages.
  - .4 In respect to indemnification respecting claims by third parties, the obligation to indemnify is without limit.
- 13.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 13.1.1 and 13.1.2 shall be inclusive of interest and all legal costs.
- 13.1.4 The *Owner* and the *Contractor* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
- 13.1.5 The *Owner* shall indemnify and hold harmless the *Contractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
- .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
  - .2 arising out of the *Contractor*'s performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.
- 13.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Contractor*:
- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based become known; and
  - .2 should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

## GC 13.2 WAIVER OF CLAIMS

- 13.2.1 Subject to any lien legislation applicable to the *Place of the Work*, 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* under the *Contract*, including, without limitation, 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 *Ready-for-Takeover* date, except as follows:
- .1 claims arising prior to or on the *Ready-for-Takeover* date for which *Notice in Writing* of claim has been received by the *Owner* from the *Contractor* no later than 5 calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work* or 20 calendar days following the *Ready-for-Takeover* date, whichever is later;
  - .2 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*;
  - .3 claims respecting toxic and hazardous substances, patent fees and defect in title matters for which a right of indemnity could be asserted by the *Contractor* pursuant to the provisions of paragraphs 13.1.4 or 13.1.5 of GC 13.1 – INDEMNIFICATION; and
  - .4 claims resulting from acts or omissions which occur after the *Ready-for-Takeover* date.
- 13.2.2 The *Contractor* waives and releases the *Owner* from all claims resulting from acts or omissions which occurred after the *Ready-for-Takeover* date except for:
- .1 indemnification respecting third party claims, and claims respecting toxic and hazardous substances, patent fees and defect in title matters, all as referred in paragraphs 13.2.1.2 and 13.2.1.3; and
  - .2 claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Contractor* within 395 calendar days following the *Ready-for-Takeover* date.
- 13.2.3 Subject to any lien legislation applicable to the *Place of the Work*, the *Owner* waives and releases the *Contractor* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Contractor* under the *Contract*, including, without limitation, 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 *Ready-for-Takeover* date, except as follows:
- .1 claims arising prior to or on the *Ready-for-Takeover* date for which *Notice in Writing* of claim has been received by the *Contractor* from the *Owner* no later than 20 calendar days following the *Ready-for-Takeover* date;

- .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Contractor* pursuant to the provisions of this *Contract*;
  - .3 claims respecting toxic and hazardous substances for which a right of indemnity could be asserted by the *Owner* against the *Contractor* pursuant to the provisions of paragraph 13.1.4 of GC 13.1 – INDEMNIFICATION;
  - .4 damages arising from the *Contractor*'s actions which result in substantial defects or deficiencies in the *Work*. “Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
  - .5 claims arising pursuant to GC 12.3 – WARRANTY; and
  - .6 claims arising from acts or omissions which occur after the *Ready-for-Takeover* date.
- 13.2.4 Respecting claims arising upon substantial defects and deficiencies in the *Work*, as referenced in paragraph 13.2.3.4, and notwithstanding paragraph 13.2.3.5, the *Owner* waives and releases the *Contractor* from all claims except claims for which *Notice in Writing* of claim has been received by the *Contractor* from the *Owner* within a period of six years from the *Ready-for-Takeover* date, provided that any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, the time within which any such claim may be brought shall be such shorter period as may be prescribed by any limitation statute of the Province or Territory of the *Place of the Work*.
- 13.2.5 The *Owner* waives and releases the *Contractor* from all claims arising from acts or omissions which occur after the *Ready-for-Takeover* date, except for:
- .1 indemnification for claims advanced against the *Owner* by third parties, as referenced in paragraph 13.2.3.2;
  - .2 claims respecting toxic and hazardous substances for which a right of indemnity could be asserted by the *Owner* against the *Contractor*, as referenced in paragraph 13.2.3.3;
  - .3 claims arising under GC 12.3 – WARRANTY; and
  - .4 claims for which *Notice in Writing* has been received by the *Contractor* from the *Owner* within 395 calendar days following the *Ready-for-Takeover* date.
- 13.2.6 “*Notice in Writing* of claim” as provided for in GC 13.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 13.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of an intention to claim;
  - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
  - .3 a statement of the estimated quantum of the claim.
- 13.2.7 A claim for lien asserted under the lien legislation prevailing at the *Place of the Work* shall qualify as notice of claim for the purposes of this *Contract*.
- 13.2.8 The party giving the *Notice in Writing* of claim as provided for in GC 13.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 13.2.9 Where the event or series of events giving rise to a claim made under paragraphs 13.2.1 or 13.2.3 has a continuing effect, the detailed account submitted under paragraph 13.2.8 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which such claim is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 13.2.10 Nothing in GC 13.2 – WAIVER OF CLAIMS shall be deemed to affect the rights of the parties under any lien legislation or limitations legislation prevailing at the *Place of the Work*.

**SUPPLEMENTARY CONDITIONS**  
**STANDARD CONSTRUCTION DOCUMENT – CCDC 2 – 2020**

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APPENDIX 1 TO THE SUPPLEMENTARY CONDITIONS AGREEMENT TERM SHEET

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REQUIREMENTS

- Exhibit A To Appendix 2 To The Supplementary Conditions Proper Invoice Template
- Exhibit B To Appendix 2 To The Supplementary Conditions Form Of Final Waiver And Release

APPENDIX 3 TO THE SUPPLEMENTARY CONDITIONS INSURANCE

## AGREEMENT BETWEEN OWNER AND CONTRACTOR

### ARTICLE A-1 THE WORK

SC-1 Delete paragraph 1.3 of Article A-1 and replace it with the following:

“commence the *Work* by the date stipulated by the *Owner* in the *Notice of Award* and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Ready-for-Takeover* and *Completion* in accordance with the *Agreement Term Sheet*.”

SC-2 Add the following new paragraphs 1.4 and 1.5 to Article A-1:

“1.4 The *Contractor* shall diligently perform and complete the *Work* in accordance with the *Standard of Care*, all *Applicable Laws* and all terms and conditions of the *Contract Documents*, including the *Construction Schedule*.

1.5 The *Contractor* represents that in entering into the *Contract* with the *Owner* for the performance of the *Work*, it has either in accordance with the *Standard of Care* inspected the *Place of the Work* and reviewed for itself all information provided by the *Owner*, the character of the *Work* to be done, and all local conditions, including the position of all registered easements, pole lines, conduits, watermains, sewers and other underground and overground utilities and structures, or that, not having so inspected and reviewed, the *Contractor* has assumed and does hereby assume all risk of conditions now existing or arising in the course of the *Work* that might or could make the *Work*, or any items thereof, more expensive in character, or more onerous to fulfil than was contemplated or known as of the *Effective Date*. For certainty, the *Contractor* shall not be liable for conditions which would not have been ascertainable by a diligent review of the *Place of the Work*, all information provided by the *Owner*, the character of the *Work* to be done, and all local conditions in accordance with the *Standard of Care* prior to the *Effective Date*.”

### ARTICLE A-4 CONTRACT PRICE

SC-3 Add new paragraphs 4.6 and 4.7 to Article A-4 as follows:

“4.6 To secure performance of the *Contractor*’s warranty obligations the *Owner* shall retain from each *Proper Invoice* an amount equal to the percentage of the total amount claimed for payment in such *Proper Invoice* (exclusive of *Value Added Taxes*) as stipulated in the *Agreement Term Sheet* (the “**Warranty Security**”).

4.7 For the purposes of paragraph 6.5.7, if the *Contractor* fails to achieve *Ready-for-Takeover* by the *Ready-for-Takeover Date* then the *Contractor* shall be liable to the *Owner* for liquidated damages in the amount per day stipulated in the *Agreement Term Sheet* for each day or part day of delay until *Ready-for-Takeover* is achieved.”



**ARTICLE A-5 PAYMENT**

SC-4 Delete paragraphs 5.1 and 5.2 of Article A-5 in its entirety and replace it with the following:

“5.1 Subject to the provisions of the *Contract Documents* and *Payment Legislation*, including in accordance with statutory regulations respecting holdback percentages, the *Owner* shall:

- .1 make progress payments to the *Contractor* on account of the *Contract Price* (excluding the *Warranty Security*) when due together with such *Value Added Taxes* as may be applicable to such payments,
- .2 upon *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment,
- .3 upon *Completion*, pay to the *Contractor* the unpaid balance of the *Contract Price* (excluding the *Warranty Security* and any unauthorized cash allowances, contingencies and provisional items) when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .4 upon the issuance of the *Proper Invoice* for payment of the *Warranty Security* (less any deductions to such security applied in accordance with this *Contract*) following satisfaction of all requirements set out in paragraph 12.3.8, pay the *Warranty Security* when due together with such *Value Added Taxes* as may be applicable to such payment.

For certainty, all payments made by the *Owner* pursuant to subparagraphs 5.1.1, 5.1.2 and 5.1.3 shall be exclusive of the *Warranty Security*, which amount shall be paid as a milestone payment in accordance with subparagraph 5.1.4.

5.2 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by adjudication, arbitration or court, interest shall also become due and payable at the rates stipulated in the *Payment Legislation*.”

**ARTICLE A-6 RECEIPT AND ADDRESSES FOR NOTICES IN WRITING**

SC-5 Delete paragraph 6.5 of Article A-6 in its entirety and replace it with the following:

“6.5 Contact information for a party may be changed by *Notice in Writing* to the other party setting out the new contact information in accordance with this Article A-6.”

**ARTICLE A-9 RELATIONSHIP OF THE PARTIES**

**ARTICLE A-10 PANDEMIC**

**ARTICLE A-11 INTERPRETATION AND OTHER MATTERS**

SC-6 Add new Articles A-9, A-10 and A-11 as follows:

**“ARTICLE A-9 RELATIONSHIP OF THE PARTIES**

- 9.1 The *Contractor* shall be an independent contractor in performing its obligations under the *Contract*. The *Contract* does not create any agency, partnership, joint venture, fiduciary or other relationship of the *Contractor* with the *Owner* other than the relationship of independent contractor.
- 9.2 No inspection, review, comment, approval, verification, confirmation, certification, acknowledgement or audit pursuant to the provisions of the *Contract* by any *Owner Personnel*, nor any failure of any of them to do so, shall relieve the *Contractor* from performing or fulfilling any of its obligations under the *Contract* or be construed as an acceptance of the *Work* or any part thereof.”

**ARTICLE A-10 PANDEMIC**

- 10.1 The parties acknowledge and agree that as of the *Effective Date*:
- .1 the *Pandemic* is on-going and, as a result, *Governmental Authorities*, including the Government of Canada, the Province of Ontario, The Regional Municipality of Halton and the *Municipality*, have implemented *Governmental Responses*; and
  - .2 it is uncertain how long the *Pandemic* and the related *Governmental Responses* will continue and whether there may be a resurgence of *COVID-19* resulting in a *Pandemic Change in Law*.
- 10.2 Except as expressly provided in this *Contract*, each party shall be solely responsible for costs and expenses incurred in performance of its obligations under the *Contract* related to or arising from the *Pandemic* and compliance with *Governmental Responses*, including in respect of the contraction by or infection of *Contractor Personnel* and *Owner Personnel*, as applicable, with *COVID-19* and neither party assumes responsibility whatsoever with respect to any such loss suffered by the other.
- 10.3 In addition to any *Governmental Responses*, the *Contractor* shall comply with any other *Pandemic*-related protocols and guidelines pertaining to the *Work* or *Place of the Work* that may be communicated to the *Contractor* by the *Owner* in writing.

- 10.4 Notwithstanding any other term of this Contract, the *Owner* and *Contractor* acknowledge and agree that under no circumstance shall any *Contractor Personnel* be obligated to provide or disclose the personal information of any *Contractor Personnel* to the *Owner* or any other third party.
- 10.5 The *Contractor* expressly acknowledges and agrees that the *Contract Price* and *Contract Time* account for and are inclusive of all costs and impacts to the *Work* resultant or arising from *COVID-19*, any *Governmental Response* and the *Pandemic* to the extent such costs and impacts were known as of the *Effective Date*. For certainty, the *Contractor* acknowledges and agrees that the following impacts of *COVID-19*, the *Pandemic* and *Governmental Responses* to performance of the *Work* were known as of the *Effective Date* and, accordingly, are fully accounted for in the *Contract Price* and *Contract Time*:
- .1 the best practices recommended by the Ontario Ministry of Labour for construction site health and safety during the *Pandemic* in effect at the date of the *Contract*;
  - .2 the need to implement physical distancing;
  - .3 the obligation to monitor workers, personnel and visitors to the *Place of the Work* for illness or *COVID-19* symptoms;
  - .4 the potential for loss of *Contractor Personnel* due to illness, *COVID-19* symptoms or exposure to Persons with same;
  - .5 the need to implement procedures for timely reporting (including to the *Owner*) of any illness or *COVID-19* symptoms experienced by workers, personnel or visitors to the *Place of the Work*;
  - .6 the provision of necessary tools, equipment or personal protective equipment to all persons at the *Place of the Work*, including all *Contractor Personnel* and authorized visitors to the *Place of the Work*;
  - .7 the need to install any temporary facilities or structures (such as wash stations); and
  - .8 the need to implement appropriate sanitation and cleaning at the *Place of the Work* and in performance of the *Work*.

- 10.6 The *Owner* reserves the right, in its sole discretion and by *Notice in Writing*, to delay commencement or suspend performance of the *Work*, as applicable, for such time as is reasonably necessary to mitigate or prevent risks to public health and safety resultant from *COVID-19* and the *Pandemic*. Performance of the *Work* by the *Contractor* shall be resumed upon the *Owner*'s provision of fifteen (15) days' written notice to the *Contractor*. The *Contract Time* shall be extended for such reasonable time as agreed by the *Owner* and *Contractor* and any reasonable costs related to the *Work* and directly incurred by the *Contractor* during any such period of delay shall be reimbursed by the *Owner*, except to the extent required or caused by the negligence or breach of this *Contract* by any *Contractor Personnel*. The extension of time shall not be less than the time lost as a result of such delay, unless the *Contractor* agrees to a shorter extension. The parties' agreement regarding such adjustment to the *Contract Time* and reimbursement of reasonable costs shall be set out in a *Change Order*. Otherwise, any dispute in this regard shall be resolved in accordance with PART 8 – DISPUTE RESOLUTION.
- 10.7 Notwithstanding any other provision in the *Contract*, if the *Contractor* is delayed in performing or unable to perform the *Work* as a result of a *Pandemic Change in Law*, then, except to the extent caused by the negligence or breach of this *Contract* by any *Contractor Personnel*, the *Contract Time* shall be extended for such reasonable time as agreed by the *Owner* and *Contractor*. The extension of time shall not be less than the time lost as a result of the *Pandemic Change in Law*, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for any costs incurred as a result of such delays, save and except as expressly provided for in paragraph 10.8 of this Article A-10.
- 10.8 The *Contractor* shall be entitled to payment for the following direct costs it reasonably incurs as a direct result of a *Pandemic Change in Law* provided that such costs have been approved in advance and in writing by the *Owner* and were not required or caused by the negligence or breach of this *Contract* by any *Contractor Personnel*:
- .1 the *Contractor* being required to purchase, use or provide additional safety-related supplies, including personal protective equipment, in connection with its performance of the *Work*;
  - .2 the *Contractor* being required to install additional temporary facilities or structures, including hand washing stations; and
  - .3 the costs incurred by the *Contractor* to reasonably mitigate the effect of any delay to performance of the *Work* resultant from a *Pandemic Change in Law*.
- 10.9 Notwithstanding any other term of this *Contract*:

- .1 the *Contractor* shall not be entitled to any extension of *Contract Time* or to any compensation in respect of any *Pandemic Change in Law* or delay referred to in this Article A-10 to the extent such delay or costs resulted from the *Contractor's* failure to take reasonable steps to mitigate the effect of the delay or *Pandemic Change in Law*, as applicable;
  - .2 in no event shall the *Owner* be liable for any costs or damages incurred by the *Contractor* as a result of any *Pandemic Change in Law* or delay referred to in this Article A-10 except as expressly stipulated in this *Contract*, including no liability for: (i) any costs associated with increased labour or material costs; (ii) any costs associated with supply chain impacts or delays; or (iii) any *Consequential Damages*;
  - .3 there will be no unjust enrichment from a *Pandemic Change in Law*.
- 10.10 In all cases where the *Contractor* considers itself entitled to an extension of the *Contract Time* or compensation as a result of *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*, the *Contractor* shall provide the *Owner* with *Notice in Writing* within five (5) *Working Days* of the date on which the *Contractor* knew that it was so impacted. The *Contractor* shall keep detailed records of all resultant additional costs and schedule impacts and shall provide such records to the *Owner*, including with such *Notice in Writing* to the extent available at such time. Additionally, the *Contractor* shall seek the *Owner's* approval in writing in advance of taking any measures to mitigate the impact of *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*.”

#### **ARTICLE A-11 - INTERPRETATION AND OTHER MATTERS**

- 11.1 In the *Contract Documents* the word “including” means “including without limitation”, and the word “includes” means “includes without limitation”.
- 11.2 If any provision of the *Contract* is determined to be invalid, illegal or unenforceable in whole or in part, such invalidity, illegality or unenforceability will only apply to such provision or part, as the case may be, and any other part and all other provisions of the *Contract* shall remain in full force and effect. Furthermore, the parties shall endeavour to agree on a provision which reflects insofar as reasonably possible the commercial intentions of the invalid, illegal or unenforceable provision or part.
- 11.3 Each party shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out, better evidence or perfect the full intent and meaning of the *Contract*.
- 11.4 The provisions of the *Contract* which by their nature are continuing shall survive termination of the *Contract*.”

## DEFINITIONS

SC-7 Amend the definition of **Consultant** by adding the following to the end:

“Notwithstanding the foregoing, where the *Owner* has not engaged a person or entity to act as the “*Consultant*” such that no person or entity is so identified in the Agreement, the *Owner* shall be deemed to be the *Consultant* under the *Contract*.”

SC-8 Amend the definition of **Contract Price** by adding the following to the end:

“For certainty, the *Contract Price* is inclusive of the *Warranty Security*.”

SC-9 Delete the definition of **Contract Time** and replace it with the following:

***Contract Time***

The *Contract Time* is the time from commencement of the *Work* to the date of *Completion*, including the *Ready-for-Takeover Date* and *Completion Date*.”

SC-10 Amend the definition of **Other Contractor** by adding the following to the end after the word “*Project*”:

“or for other work at the *Place of the Work*”

SC-11 Amend the definition of **Payment Legislation** by adding the following to the end:

“For certainty, where the *Place of the Work* is in Ontario *Payment Legislation* means the *Construction Act*.”

SC-12 Add the following new definitions:

***Abnormally Adverse Weather Condition***

*Abnormally Adverse Weather Condition* means an extreme and unusual climatic condition characterized by wind speed, air temperature, precipitation, or snow fall that is less than or greater than (as applicable) one and a half (1.5) standard deviations from the mean condition determined from the official weather records of Environment and Climate Change Canada (or its successor) for the 10-year period immediately preceding the date of the abnormally adverse weather event.

***Addenda***

*Addenda* means any additions or changes to the tender documents issued by the Owner for the *Work* prior to the time of bid closing, if any.

***Agreement Term Sheet***

*Agreement Term Sheet* means the terms, such as dates and values that form part of the Contract as stipulated in Appendix 1 to the Supplementary Conditions – Agreement Term Sheet.

***Affiliate***

*Affiliate* means, with respect to a *Person*, or *Person* who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such *Person*, and includes any *Person* in like relation to an *Affiliate*. A *Person* shall be deemed to “control” another *Person* if such *Person* possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other *Person*, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning. Without limiting the foregoing, any reference to an *Affiliate* of the *Owner* shall include any *Owner Entity*.

***Applicable Law***

*Applicable Law* means: (a) all laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws which are or become in force during the performance of the *Work* and which relate to the *Project* or the *Work*, including the *Construction Act*, the *Environmental Protection Act*, the *OHSA* and the *WSIA*; (b) all judgments, orders, writs, injunctions, decisions, awards and directives of any *Governmental Authority* applicable to the *Project* or the *Work*; and (c) all policies, standards, guidelines, notices and protocols of any *Governmental Authority* applicable to the *Project* or the *Work*. For greater certainty, *Applicable Law* includes any restrictive covenants registered on title to the *Place of the Work*, the terms and conditions of any permit, authorization, certificate or approval issued by a *Governmental Authority* for the *Project* or the *Work*, and the terms and conditions of any official plan, zoning by-law, development agreement or site plan agreement related to the *Project* or the *Work*.

***Arbitration Act***

*Arbitration Act* means the *Arbitration Act*, 1991, SO 1991, c. 17, as amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Background Reports***

*Background Reports* means all reports, information and other documentation prepared by *Owner*, *Consultant*, and third parties referenced in the *Contract Documents* and made available to the Contractor regarding conditions at the *Place of the Work* and/or for performance of the *Work*.

***Claims***

*Claims* means any and all claims, liabilities, expenses, demands, losses, damages, actions, costs (including legal costs), interest, fines, suits, or proceedings of every nature and kind whatsoever.

***Completion***

*Completion* means when the price of completion of the *Work*, including correction of any known defects, is not more than the lesser of (i) one (1%) percent of the *Contract Price*; and (ii) \$5,000, as certified by the *Consultant* in accordance with this *Contract* and the *Payment Legislation*.

***Completion Date***

*Completion Date* means the date set out for achievement of *Completion* in the *Agreement Term Sheet*, as such date may be adjusted in accordance with the *Contract*.

***Confidential Information***

*Confidential Information* means this *Contract* and all information or material of the *Owner Entities* that is of a proprietary or confidential nature, whether it is identified as proprietary or confidential or not and whether in written, documentary, graphic, oral, electronic, computer readable and/or any other form whatsoever. *Confidential Information* includes:

- .1 any information concerning or related to this *Contract* or the business or affairs of any *Owner Entities*;
- .2 the prior and future discussions between *Contractor Personnel* and *Owner Entities* regarding any business transactions between them;
- .3 information concerning intellectual property, financial information, budgets, engineering and technical reports and information, environmental reports, *Project* design information, marketing plans and sales information, know-how, cost, *Deliverables*, architectural information, contractual arrangements including, terms of agreements with *Owner Entities*, all proprietary business information or personal information; and
- .4 information in any way derived by or generated by or which comes to the knowledge of the *Contractor Personnel* from such *Confidential Information*.

The following shall not be considered to be *Confidential Information*:

- .5 information that is or becomes publicly known through no wrongful act of the *Contractor* or *Contractor Personnel*;
- .6 information that the *Contractor* obtains from a third party that has the right to disclose it;
- .7 information that the *Contractor* can establish, by documentary evidence, was already known by the *Contractor* at the time of the initial disclosure of the *Confidential Information* by the *Owner* or *Consultant*; and
- .8 information that the *Contractor* can establish, by documentary evidence, was independently developed by or on behalf of the *Contractor* without reference to the *Confidential Information*.



***Consequential Damages***

*Consequential Damages* means (i) any consequential, incidental, special, punitive, exemplary or indirect damages, and (ii) damages of any kind, however caused or characterized, for loss of actual or anticipated revenue or profits, business interruption, loss of reputation, loss of use, loss of business opportunity, increased capital or operating costs, or increased financing costs.

***Construction Act***

*Construction Act* means the *Construction Act*, RSO 1990, c. C.30, as amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Contractor IP***

*Contractor IP* means all designs, processes, ideas, concepts, products, recommendations, suggestions, know-how, technical expertise, methods and all *Intellectual Property Rights* owned or developed by the *Contractor Personnel*.

***Construction Schedule***

The *Construction Schedule* means the schedule provided by the *Contractor* and approved by the *Consultant* pursuant to subparagraph 3.4.1.1.

***Contractor Personnel***

*Contractor Personnel* means the *Contractor* and all *Subcontractors* and *Suppliers* and any other *Persons* engaged by them to perform or supply any part of the *Work* or the *Contractor's* obligations under this *Contract*, including any employees, partners, officers, directors, agents, subcontractors, subconsultants, and other *Persons* for whom they are responsible at law.

***COVID-19***

*COVID-19* means the SARS-CoV-2 novel coronavirus that causes the disease known as COVID-19 and includes any mutation or variant of such coronavirus.

***Deliverables***

*Deliverables* means all plans, sketches, designs, drawings, graphic representations, *Submittals*, specifications, notes, data, samples, materials, studies, reports, computer models, scale models, mock-ups, samples, reproducible and other documents and electronic data collected, developed or produced by the *Contractor Personnel* in performance of the *Work*, including all *Intellectual Property Rights* relating thereto, if any.

***Effective Date***

*Effective Date* means the date of this *Contract* as identified on the first page of the *Agreement*.

***Environmental Consultant***

*Environmental Consultant* means the professional consultant retained by the *Owner* that meets the qualifications of a "qualified person" as defined under the *Soil Regulations*.

***Environmental Protection Act***

*Environmental Protection Act* means the *Environmental Protection Act*, RSO 1990, c. E.19, as may be amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Excess Soil***

*Excess Soil* shall have the meaning given in the Soils Regulations.

***Force Majeure Event***

*Force Majeure Event* means any cause or event (other than bankruptcy, insolvency or lack of funds) which prevents performance by the *Contractor* of any of its obligations under the *Contract* in whole or in part and which further meets each of the following criteria: (a) the cause or event and its effects are beyond the *Contractor*'s reasonable control; (b) the *Contractor* could not reasonably have prevented, overcome, mitigated or removed the cause or event and its effects by commercially reasonable efforts and due diligence; and (c) the cause or event and its effects do not result from (i) the *Contractor*'s bankruptcy, insolvency, lack of funds or impecuniosity, (ii) act, omission or negligence of any *Contractor Personnel*, or (iii) breach of the *Contractor*'s obligations under this *Contract*. For certainty, a *Force Majeure Event* shall in no circumstance include (i) *COVID-19*, the *Pandemic* or a *Pandemic Change in Law* (including a *Governmental Response*), (ii) climatic or weather conditions other than *Abnormally Adverse Weather Conditions*, or (iii) economic, financial or market conditions or events.

***Governmental Authority***

*Governmental Authority* means (a) any federal, provincial, county, municipal, local or other governmental or public department, court, minister, governor-in-council, cabinet, commission, board, bureau, agency, commissioner, tribunal or instrumentality, (b) any subdivision or authority of any of the foregoing, and (c) any quasi-governmental or private body exercising any regulatory authority under or for the account of any of the foregoing. For certainty, *Governmental Authority* includes The Regional Municipality of Halton and the Municipality.

***Governmental Response***

*Governmental Response* means legislative amendments, controls, orders, requests and requirements imposed by *Governmental Authorities* in respect of or in response to *COVID-19* or the *Pandemic*. For certainty, *Governmental Response* includes a *Pandemic Change in Law* and the best practices recommended by the Ontario Ministry of Labour for construction site health and safety during the *Pandemic*.

***Intellectual Property Rights***

*Intellectual Property Rights* means all intellectual property rights (including rights in the nature of any copyright, trade mark, trade secret, service mark, design, drawing, patent, know-how, secret process and other similar proprietary rights, whether or not registered) and the rights to the registration of those rights and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these rights (and every renewal or extension of those rights) conferred under statute or common law or equity in any country.

***MFIPPA***

*MFIPPA* means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Municipality***

*Municipality* means the lower-tier municipality of the *Place of the Work*.

***Net Actual Cost***

*Net Actual Cost* means the total cost of all labour and materials identified in paragraph 6.3.7, excluding *Value Added Taxes*, but including all other eligible taxes, and is the amount prior to the application of any mark-up or additional payment rate when determining the cost of the subject work.

***Notice of Award***

*Notice of Award* means *Notice in Writing* issued by the *Owner* to the *Contractor* directing them to commence performance of the *Work*.

***OHSA***

*OHSA* means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Overhead***

*Overhead* includes: (i) costs for all items in Division 01 of the *Specifications*; (ii) all site and head office overheads of all *Contractor Personnel*; (iii) financing costs; (iv) the salaries of superintendents, engineers, timekeepers, accountants, clerks, watch persons and all other site supervision staff above foreperson employed directly for the subject *Work*; (v) coordination with other trades affected; (vi) use of temporary offices, sheds and other general temporary site support facilities and all utilities used therein; and (vii) licences and permits other than those specific to a particular item of the *Work*. For certainty, *Overhead* includes all costs not expressly included in valuation of a change in paragraph 6.3.7.

***Owner's Agent***

*Owner's Agent* means the person or entity identified as such in the *Agreement Term Sheet*, if any.

***Owner Entities***

*Owner Entities* means the *Owner*, the *Owner's Agent* and the *Municipality*, including any employees, partners, officers, directors, agents, Members of Regional Council, and other Persons for whom they are responsible at law.

***Owner Personnel***

*Owner Personnel* means the *Owner*, the *Owner's Agent*, the *Consultant*, all *Other Contractors* and any other *Persons* engaged by them in respect of the *Work*, the *Project* or the *Owner's* obligations under this *Contract*, including any employees, partners, officers, directors, agents, subcontractors, subconsultants, and other *Persons* for whom they are responsible at law.

***Pandemic***

*Pandemic* means the *COVID-19* pandemic declared by the World Health Organization to be a pandemic on March 11, 2020, and shall include such continuing or resurgent effects of *COVID-19* upon public health as may persist notwithstanding that it may no longer constitute a declared pandemic or other public health emergency as of the *Effective Date*.

***Pandemic Change in Law***

*Pandemic Change in Law* means any change, amendment, modification, repeal or replacement in *Applicable Law* or a *Governmental Response* that: (i) came into effect after the *Effective Date*; (ii) is directly resultant from or related to the *Pandemic* or the occurrence, control or spread of *COVID-19*; and (iii) directly affects performance of the *Work*, including the *Contract Time* or the *Contract Price*. For certainty, a *Pandemic Change in Law* includes any obligation to delay commencement or suspend performance of the *Work* due to a *Governmental Response* coming into effect after the *Effective Date*.

***Person***

*Person* includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a *Governmental Authority*, and the executors, administrators or other legal representatives of an individual in such capacity.

***Phase of the Work***

*Phase of the Work* has the meaning given in paragraph 5.4.7.

***Proper Invoice***

*Proper Invoice* means an application for payment that includes each of the elements listed in Appendix 2 to the Supplementary Conditions – Proper Invoice Requirements.

***Ready-for-Takeover Date***

*Ready-for-Takeover Date* means the date set out for achievement of *Ready-for-Takeover* in the *Agreement Term Sheet*, as such date may be adjusted in accordance with the *Contract*.

***Soil Regulations***

*Soil Regulations* means Ontario Regulation 406/19 – On-Site and Excess Soil Management as made under the *Environmental Protection Act*, as may be amended from time to time, or its successor regulation.

***Submittals***

*Submittals* are documents or items required by the *Contract Documents* to be provided by the *Contractor*, including *Shop Drawings*, samples, models, mock-ups, as-built drawings and operation and maintenance manuals.

***Standard of Care***

*Standard of Care* means the standard of care, competence, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar work and services for a project of similar size, scope, complexity, quality and prestige as the Project and in the same or similar locality as the Project.

***Warranty Period***

*Warranty Period* has the meaning given in paragraph 12.3.1.

***Warranty Security***

*Warranty Security* has the meaning given in paragraph 4.6 of Article A-4.

***WSIA***

*WSIA* means the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A, as amended from time to time, or its successor legislation, and shall include all regulations enacted thereunder.

***WSIB***

*WSIB* means the Workplace Safety & Insurance Board of Ontario, which operates under the authority of the *WSIA*.”

**GENERAL CONDITIONS**

**GC 1.1 CONTRACT DOCUMENTS**

SC-13 Delete paragraphs 1.1.3 and 1.1.4 in their entirety and replace them with the following:

“1.1.3 The *Contractor* shall in accordance with the *Standard of Care* review the *Contract Documents* for the purpose of facilitating co-ordination and execution of the *Work* by the *Contractor*. The *Contractor* shall report promptly to the *Consultant* any ambiguities, design issues or other matters requiring clarification made known to the *Contractor* or that the *Contractor* may discover from such a review.

1.1.4 Except for its obligation to review the *Contract Documents* and report the result pursuant to paragraph 1.1.3, the *Contractor* is not responsible for ambiguities, design issues or other matters requiring clarification in the *Contract Documents* and does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. Without limiting the foregoing, the *Contractor* shall not be liable for any damages or costs resulting from any ambiguities, design issues or other matters requiring clarification in the *Contract Documents* which the *Contractor* could not reasonably have discovered from such a review in accordance with the *Standard of Care*. If the *Contractor* does discover any ambiguities, design issues or other matters requiring clarification in the *Contract Documents*, the *Contractor* shall notify the *Owner* and *Consultant* in writing and not proceed with the work affected until the *Contractor* has received modified or additional information from the *Consultant* or *Owner* in writing. The impacts of any ambiguities, design issues or other matters requiring clarification in the *Contract Documents*, including to the *Contract Price* and *Contract Time*, shall be addressed by the parties in accordance with Part 6 – CHANGES.”

SC-14 Delete subparagraph 1.1.5.1 in its entirety and replace it with the following:

“.1 the order of priority of documents, from highest to lowest, shall be:

- Appendix 1 to the Supplementary Conditions – *Agreement Term Sheet*
- *Addenda*
- the Agreement between *Owner* and *Contractor*, as amended by the Supplementary Conditions
- the Definitions, as amended by the Supplementary Conditions
- the General Conditions, as amended by the Supplementary Conditions
- Appendix 2 to the Supplementary Conditions – Proper Invoice Requirements
- Appendix 3 to the Supplementary Conditions – Insurance
- Division 01 of the *Specifications*
- technical *Specifications*
- material and finishing schedules
- the *Drawings*
- *Background Reports*”

SC-15 Add the following to the end of subparagraph 1.1.6.2 after the words “the *Work*”:

“, except to the extent the *Consultant* is indemnified as a third party beneficiary as provided in subparagraphs 9.2.7.4 and 9.5.3.4 and in paragraph 13.1.1.”

SC-16 Add new paragraph 1.1.12 as follows:

“1.1.2 The parties acknowledge and agree that this *Contract* represents the entire agreement between the parties in respect of the *Work* and the *Project* and no document shall form part of the *Contract Document* unless expressly identified in Article A-3. For certainty, no letter of intent, purchase order or work order issued by the *Owner* in respect of any of the *Contract*, the *Work* or the *Project* shall form part of the *Contract Documents* and no terms or conditions therein, if any, shall be of any force and effect.”

#### **GC 1.4 ASSIGNMENT**

SC-17 Delete paragraph 1.4.1 in its entirety and replace it with the following:

“1.4.1 The *Contractor* shall not assign, transfer or novate all or any part of the *Contract* without the written consent of the *Owner*, which consent may be withheld in the *Owner*'s sole and absolute discretion. The *Owner* may assign, transfer or novate all or a portion of this *Contract* or any right, benefit or interest in all or any portion of this *Contract*, to any *Affiliate* or to any purchaser of all or part of the *Place of the Work* or *Project* in its sole discretion. The *Owner* shall otherwise not assign, transfer or novate all or any portion of the *Contract* without the written consent of the *Contractor*, which consent shall not be unreasonably withheld.”

#### **GC 2.2 ROLE OF THE CONSULTANT**

SC-18 Delete the second sentence in paragraph 2.2.3 in its entirety and replace it with the following:

“The duties, responsibilities and limitations of authority of such project representatives shall be those of the *Consultant* as described in the *Contract Documents*.”

SC-19 In the first line of paragraph 2.2.6, delete the words “Except with respect to GC 5.1 – Financing Information Required by the *Owner*,”.

SC-20 In paragraph 2.2.8:

(1) in both the first and second sentences add the words “, written statements” after the word “interpretations”; and

(2) add the following to the end:

“The *Owner* and the *Contractor* shall waive any claims against the *Consultant* arising out of its making of any interpretations, written statements or findings in accordance with paragraphs 2.2.6, 2.2.7, 2.2.8, and 7.1.2, but only to the extent that any such interpretations, written statements, and findings are made by the *Consultant* in an unbiased manner and in accordance with the *Consultant*'s professional standard of care at law.”

SC-21 In paragraph 2.2.18 delete the word “immediately” and add the following to the end “Notwithstanding the foregoing, while the *Owner* will consider any reasonable objections of the *Contractor*, the *Owner* shall have absolute discretion in its appointment of a new *Consultant*.”

### **GC 2.3 REVIEW AND INSPECTION OF THE WORK**

SC-22 In the second sentence of paragraph 2.3.1 add the words “and the *Owner*” immediately following the words “the *Consultant*”.

### **GC 2.4 DEFECTIVE WORK**

SC-23 Delete paragraph 2.4.1 in its entirety and replace it with the following:

“2.4.1 The *Contractor* shall promptly correct at its expense and in a manner acceptable to the *Owner* and *Consultant* defective work that has been rejected by the *Consultant* or *Owner* as failing to conform to the *Contract Documents* whether or not specifically identified by the *Consultant* or *Owner* and whether or not the defective work was incorporated in the *Work* or the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Contractor*. The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day-to-day operations of the *Owner*, including as required by paragraph 12.3.4, and shall otherwise prioritize the correction of defective work as required so as not to interfere with, or derogate from, the *Construction Schedule*. Subject to paragraph 2.4.3 and without prejudice to any other right or remedy under this *Contract* or at law and without affecting the warranty period, if the *Contractor* fails to correct such defective work within a reasonable amount of time as determined by the *Consultant*, the *Owner* may have such defective work corrected by its own forces or *Other Contractors* at the *Contractor*’s expense. Any testing (including retesting by the *Owner*) to ensure that the defective work has been corrected and complies with the *Contract Documents* shall also be carried out at the *Contractor*’s expense. The *Contractor* shall not be entitled to any adjustment of the *Contract Time* for correction of defective work and the *Owner* may deduct any expenses incurred pursuant to this paragraph 2.4.1 from any amounts due and owing to the *Contractor* under this *Contract*.”

### **GC 2.5 OWNER’S AGENT**

SC-24 Add new GC 2.5 – OWNER’S AGENT as follows:

“GC 2.5 OWNER’S AGENT

2.5.1 The *Owner’s Agent* shall have the authority to exercise all rights and obligations of the *Owner* under this *Contract*.



- 2.5.2 Subject to any notified limitations in authority, the *Contractor* may rely upon any written instructions or directions provided by the *Owner's Agent*. Neither the authority of the *Owner's Agent* to act, nor any decision to exercise or not exercise such authority, shall give rise to any duty or responsibility of the *Owner's Agent* to any *Contractor Personnel*.”

### **GC 3.1 CONTROL OF THE WORK**

SC-25 Add new paragraphs 3.1.3 to 3.1.6 as follows:

- “3.1.3 Prior to commencing individual fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where such verification is not possible prior to fabrication or construction within the *Contract Time*, or dimensions are not included or contradictions exist, or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected work.
- 3.1.4 To the extent applicable, the *Contractor* shall in consultation with the *Owner* schedule, coordinate and perform the *Work* as required to prevent or, where prevention is not possible, to minimize, any impacts to the *Owner's* continuing business operations.
- 3.1.5 The *Contractor* and its *Subcontractors* shall attend meetings with respect to the *Work* as may be directed by the *Consultant* or *Owner*. The *Contractor* shall not claim any extra compensation for attendance at these meetings. The *Contractor* and its *Subcontractors* shall provide competent representatives to attend such meetings who are authorized to make undertakings on their behalves.
- 3.1.6 Prior to commencement of the *Work* the *Contractor* shall provide to the *Owner* certificates of insurance evidencing coverage as required by this *Contract*, a clearance certificate from the *WSIB* stating that all amounts owed to date have been paid in full.”

## **GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

SC-26 In paragraph 3.2.1 add the words “or for other work at the *Place of the Work*” after the words “the *Project*”.

SC-27 Delete subparagraph 3.2.2.1 in its entirety and replace it with the following:

- “.1 cause such *Other Contractors* and *Owner’s* own forces to comply with the instructions of the *Contractor* relating to coordination and scheduling of the activities and work of such *Other Contractors* and the *Owner’s* own forces at the *Place of the Work* with the *Work of the Contract*.”

## **GC 3.4 CONSTRUCTION SCHEDULE**

SC-28 Delete paragraph 3.4.1 in its entirety and replace it with the following:

“3.4.1 The *Contractor* shall:

- .1 prepare and submit to the *Owner* and the *Consultant* ten (10) *Working Days* after receipt of the *Notice of Award* a construction schedule that meets all requirements of the *Contract Documents* and that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their interrelationship to demonstrate the *Work* will be performed in conformity with the *Contract Time*. Upon the *Consultant’s* acceptance of such schedule in writing, in consultation with the *Owner*, it shall become the *Construction Schedule*;
- .2 make the native form of the *Construction Schedule* available to the *Owner* and *Consultant* upon request;
- .3 complete the *Work* in accordance with the *Construction Schedule* and provide the expertise and resources, including manpower and *Construction Equipment*, as necessary to maintain progress under the *Construction Schedule*;
- .4 monitor the progress of the *Work* on a bi-weekly basis relative to the *Construction Schedule* and advise the *Consultant* and the *Owner* bi-weekly in writing of any variation from or slippage in performance of the *Work* in accordance with the *Construction Schedule*, together with a detailed explanation of any delays and a plan to mitigate the delay;
- .5 advise the *Consultant* of any revisions required to the *Construction Schedule* as the result of extensions of the *Contract Time* as provided in Article A-10 and Part 6 – CHANGES IN THE WORK;

- .6 update and submit to the *Consultant* and *Owner* an electronic copy of an updated *Construction Schedule* on a monthly basis and upon request by the *Consultant* or *Owner*, which submission shall include a comparison of the updated *Construction Schedule* to the accepted *Construction Schedule*, a summary of actual and forecast progress of the *Work* relative to the *Construction Schedule*, and a description of the basis of and logic for any changes made to the *Construction Schedule* in conformance to requirements of the *Contract Documents*; and
- .7 subject to Article A-10 and Part 6 – CHANGES IN THE WORK, provide overtime work without adjustment to the *Contract Price* if such work is deemed necessary to mitigate delay and/or recoup lost time in order to meet the *Construction Schedule*.”

SC-29 Add new paragraph 3.4.2 as follows:

“3.4.2 At the time of commencement of the *Work*, the *Contractor* shall prepare for the review and acceptance of the *Owner* and the *Consultant* a schedule indicating the times within the *Construction Schedule* that *Products* specified to be purchased by the *Owner* and installed or connected by the *Contractor* are required to be delivered to the *Place of the Work* to allow for performance of the *Work* within the *Contract Time* and avoid delaying the progress of the *Work*.”

### **GC 3.6 SUBCONTRACTORS AND SUPPLIERS**

SC-30 Add the following to paragraph 3.6.2:

“The *Contractor* agrees not to change any such *Subcontractors* without the prior written consent of the *Owner*, such consent not to be unreasonably withheld.”

SC-31 Add the following new paragraph 3.6.7 to 3.6.8:

“3.6.7 Ten (10) *Working Days* after receipt of the *Notice of Award* the *Contractor* shall submit to the *Owner* a list of all *Subcontractors* proposed to perform the *Work* and the names of all senior staff of the *Contractor* that will perform, supervise and coordinate the *Work*.

3.6.8 Notwithstanding any other term in this *Contract*, under no circumstance shall the *Contractor* employ as a *Subcontractor* or *Supplier* any *Person* identified on the *Owner’s* list of suspended subcontractors and suppliers which list is available online here: [<https://www.halton.ca/The-Region/Finance-and-Transparency/Doing-Business-with-the-Region>]. The *Contractor* shall not be entitled to adjustment of the *Contract Price* or *Contract Time* where it is required to change a proposed *Subcontractor* or *Supplier* due to their inclusion on such list. The *Contractor* shall also prohibit its *Subcontractors* and *Suppliers* from employing for the *Project* any such *Persons*.”

## GC 3.7 LABOUR AND PRODUCTS

SC-32 Add the following to the end of paragraph 3.7.1:

“The *Contractor* represents that it has sufficient skilled employees to replace, subject to the *Owner*’s approval, acting reasonably, its designated supervisor and project manager in the event of death, incapacity, removal or resignation.”

SC-33 Add paragraphs 3.7.4 to 3.7.9 as follows:

“3.7.4 Ten (10) *Working Days* after receipt of the *Notice of Award* the *Contractor* shall submit to the *Owner* and *Consultant* an itemized list of *Suppliers* and manufacturers for *Products* that are to be supplied for the *Work* as specified in the *Contract Documents*. The *Contractor* shall provide the specification section reference, description of the *Product*, manufacturer, *Supplier* and any other information requested by the *Owner* or *Consultant*. Upon acceptance of such list by the *Owner* the *Contractor* agrees to use the *Products* specified in such approved itemized list.

3.7.5 All products and materials existing at the *Place of the Work* as of the *Effective Date* shall remain the property of the *Owner*. All *Products* to be incorporated in the *Work* shall become the property of the *Owner* at the earlier of: (i) incorporation of the *Product* into the *Work*; and (ii) payment in whole or in part for the *Product* by the *Owner*. Notwithstanding transfer of title and ownership to the *Owner*, the *Contractor* shall remain responsible for any loss or damage to *Products* until *Ready-for-Takeover* has been achieved.

3.7.6 All *Products* which are specified in the *Contract Documents* by their proprietary names or by part or catalogue numbers, are to form the basis for the specifications of such *Products*. No substitute for any such *Products* may be used without the *Consultant*’s written approval, acting reasonably. Substitutes for *Products* specified in the *Contract Documents* or approved by the *Owner* pursuant to paragraph 3.7.4 will be permitted only when: (i) request for the substitution is submitted in sufficient time to permit proper investigation and written approval by the *Consultant*, acting reasonably; and (ii) the specified *Product* has been discontinued, is unavailable or, due to such *Product*’s delivery being on the critical path it cannot be delivered within the time required for performance of the *Work* within the *Contract Time*. When requesting approval for the use of substitutes, the *Contractor* shall include in its submission sufficient details regarding the subject *Product*’s discontinuance, availability or impact on the critical path, as applicable, together with a description of any effect (increase or decrease) that the substitution may have on the *Contract Price* and, if applicable, written approval from all *Governmental Authorities*. No adjustment to the *Contract Time* shall result from the use of substitutes by the *Contractor*.

- 3.7.7 Where the *Contractor* is of the reasonable opinion that advanced payment for a *Product* is required to secure such *Product*'s timely supply and delivery to the *Place of the Work* in compliance with the *Construction Schedule* and *Contract Time*, the *Contractor* may seek consent from the *Owner* to include application for payment for such *Product* in a *Proper Invoice* prior to its incorporation into the *Work* by *Notice in Writing* to the *Owner* and *Consultant*, which *Notice in Writing* shall include a description of the circumstances giving rise to the need for such advanced payment and identifying whether the stockpiling or storage of such *Products* at the *Place of the Work* will be required pursuant to paragraph 3.7.8. With any *Proper Invoice* seeking advanced payment (as approved by the *Owner* pursuant to this paragraph 3.7.7), the *Contractor* shall include a receipt with proof of payment for the *Product* or such other documentation as reasonably required by the *Owner* to confirm payment by the *Contractor* for such *Product*. The *Owner* may approve or refuse any request for advanced payment for *Products* in its sole and absolute discretion.
- 3.7.8 No *Products* shall be stockpiled or stored at the *Place of the Work* before their anticipated incorporation into the *Work* unless, in the reasonable opinion of the *Consultant* and the *Owner*, the stockpiling or storage of such *Products* at the *Place of the Work* is feasible and necessary or desirable, including because of advanced payment for such *Products* as approved by the *Owner* pursuant to paragraph 3.7.6, then the *Contractor* shall obtain the prior written approval of the *Owner* for stock piling or storage of *Products* at the *Place of the Work*. The *Contractor* acknowledges and accepts that the *Owner* may not have space for storage of *Products* at the *Place of the Work* and, as such, the *Contractor* agrees that the *Owner* shall not have any obligation to permit the stockpiling or storage of *Products* at the *Place of the Work*. Where the *Owner* does not approve storage of *Products* at the *Place of the Work*, the *Contractor* may elect at its sole cost to store such *Products* at an alternate location. The *Contractor* shall remove all surplus or rejected *Products* from the *Place of the Work*.
- 3.7.9 Where the *Owner* has made payment to the *Contractor* for *Products* prior to their delivery to the *Place of the Work*, at no additional cost to the *Owner*, the *Contractor* shall:
- .1 provide the *Owner* with an executed receipt clearly identifying the *Owner* as the owner of the subject *Products* together with any available identifying information for such *Products*, such as serial numbers;
  - .2 ensure that the *Products* are clearly marked, identified or labelled as being the property of the *Owner* during any storage or transport of such *Products*;

- .3 ensure that when such *Products* are stored at a location other than the *Place of the Work* they are kept in a segregated location and not intermingled or co-mingled with the property of the *Contractor* or any other person;
- .4 ensure that the *Owner* and *Consultant* have the right to access, examine and inspect such *Products*; and
- .5 ensure that such *Products* are not subject to any landlord distress rights, security interest or other encumbrance by any person.”

### **GC 3.8 SHOP DRAWINGS**

SC-34 Add the words “AND OTHER SUBMITTALS” to the title of GC 3.8 after the words “SHOP DRAWINGS”.

SC-35 Add the words “and other *Submittals*” after the words “*Shop Drawings*” in paragraphs 3.8.1, 3.8.2, 3.8.3, 3.8.3.2, 3.8.5, 3.8.6, and 3.8.7.

### **GC 3.9 CLEAN-UP**

### **GC 3.10 DOCUMENTS AT THE SITE**

### **GC 3.11 USE OF THE WORK**

### **GC 3.12 CUTTING AND REMEDIAL WORK**

### **GC 3.13 EXCESS SOILS**

SC-36 Add the following new GC 3.9 CLEAN-UP, GC 3.10 DOCUMENTS AT THE SITE; GC 3.11 USE OF THE WORK, GC 3.12 CUTTING AND REMEDIAL WORK and GC 3.13 EXCESS SOILS:

#### **“GC 3.9 CLEAN-UP**

- 3.9.1 The *Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner Personnel*, *Other Contractors* or their employees.”
- 3.9.2 Before applying for *Substantial Performance* as provided in GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK, the *Contractor* shall remove waste products and debris, other than that resulting from the work of *Owner Personnel*, *Other Contractors* or their employees and shall leave the *Place of the Work* clean and suitable for use and occupancy by the *Owner*. The *Contractor* shall remove materials, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining work.

- 3.9.3 Prior to submitting its *Proper Invoice* for final payment, the *Contractor* shall remove any remaining materials, tools, *Construction Equipment*, *Temporary Work*, and waste products and debris, other than those resulting from the work of *Owner Personnel*, *Other Contractors* or their employees.
- 3.9.4 All debris and waste resulting from the *Work* shall be removed from the *Place of the Work* expeditiously and shall be disposed of in accordance with the *Contract Documents* and *Applicable Law*. Salvage or materials from the *Work* shall not be sold at or near the *Place of the Work*.
- 3.9.5 In the event that the *Owner* or any *Governmental Authority* orders, instructs or requests that the *Owner* or *Contractor* clean-up the *Place of the Work* or any property adjacent to or in proximity to the *Place of the Work*, the *Contractor* shall be responsible for the prompt completion of such clean-up activities at its sole cost, provided that the requirement for such clean-up is related to or arises from the *Work* and except to the extent such clean-up is required due to the work of *Owner Personnel*, *Other Contractors* or their employees.
- 3.9.6 The *Owner* shall have the right to back charge the costs of cleaning required to be performed by the *Contractor* pursuant to this GC 3.9 if not done by the *Contractor* within forty eight (48) hours of receipt of written notice from the *Owner* or *Consultant*.”

### **GC 3.10 DOCUMENTS AT THE SITE**

- 3.10.1 The *Contractor* shall keep one copy of current *Contract Documents*, submittals, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and the *Consultant*.

### **GC 3.11 USE OF THE WORK**

- 3.11.1 The *Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of *Contractor Personnel* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.

### **GC 3.12 CUTTING AND REMEDIAL WORK**

- 3.12.1 The *Contractor* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.
- 3.12.2 The *Contractor* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

### **GC 3.13 EXCESS SOILS**

3.13 The *Contractor* expressly acknowledges that, where the *Project* involves *Excess Soil*, *Applicable Law* shall include the *Soil Regulations*. In such case, notwithstanding that the *Owner* may be a “Project Leader” as defined under the *Soil Regulations*, the *Contractor* expressly agrees and acknowledges that the *Work* includes assumption, performance, and fulfillment of all liabilities, responsibilities and obligations of the Project Leader applicable to *Excess Soil* as set out in the *Contract Documents*. Without limiting the foregoing, in performance of the *Work* and its obligations under this *Contract* the *Contractor* shall coordinate and consult with the *Owner*, *Consultant* and *Environmental Consultant* as required to ensure compliance of the *Project* with the *Soil Regulations*.”

### **GC 4.1 CASH ALLOWANCES PAYMENT**

SC-37 Delete paragraph 4.1.7 in its entirety and replace it with the following:

“4.1.7 At the commencement of the *Work*, the *Contractor* shall prepare for the review and acceptance of the *Owner* and the *Consultant* a schedule indicating the times within the *Construction Schedule* that items called for under cash allowances are required to be delivered to the *Place of the Work* to avoid delaying the progress of the *Work*.”

SC-38 Add new paragraph 4.1.8 in as follows:

“4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work* to be paid for from cash allowances.”

### **GC 4.2 CONTINGENCY ALLOWANCE**

SC-39 Add the following to the end of paragraph 4.2.4:

“For certainty, prior to *Contractor*’s submission of its *Proper Invoice* for final payment the *Contract Price* shall be reduced by the amount of any contingency allowance not authorized for expenditure under paragraph 4.2.3.”

SC-40 Add new GC 4.3 PROVISIONAL ITEMS ALLOWANCE as follows:

#### **“GC 4.3 PROVISIONAL ITEMS ALLOWANCE**

4.3.1 The *Contract Price* includes the amount of the provisional items allowance, if any, stated in the *Contract Documents*.

4.3.2 The provisional item allowance includes the *Contractor*’s overhead and profit in connection with such provisional items.



- 4.3.3 Expenditures under the provisional items allowance shall be authorized and valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.3.3 and the amount of the provisional items allowance. For certainty, prior to *Contractor’s* submission of its *Proper Invoice* for final payment the *Contract Price* shall be reduced by the amount of any provisional items allowance not authorized for expenditure under paragraph 4.3.3.”

## **GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

SC-41 Delete GC 5.1 in its entirety and replace it with the following:

### **“GC 5.1 – DRAFT APPLICATIONS FOR PAYMENT**

- 5.1.1 Except as stipulated in paragraph 5.1.2, on a monthly basis and no earlier than five (5) *Working Days* after the end of the applicable monthly payment period, the *Contractor* shall submit to the *Consultant* and the *Owner* a draft application for payment for the value of the *Work* performed up to the end of the subject monthly payment period. The draft application for payment shall be in the form of the *Proper Invoice Template*. The draft application for payment must contain all information and documentation required for a *Proper Invoice* as stipulated in Appendix 2 – Proper Invoice Requirements.
- 5.1.2 The *Contractor* shall not submit a draft application for payment between December 24 and January 2 inclusive or on any day that is not a *Working Day*.
- 5.1.3 The *Contractor* shall be available upon request of the *Owner* or *Consultant* to meet and review the draft application for payment prior to *Contractor’s* submission of the corresponding *Proper Invoice*.
- 5.1.4 All draft applications for payment and *Proper Invoices* shall be submitted by email to the *Owner* and *Consultant* at the email addresses stipulated in the *Agreement Term Sheet* and all such email messages shall include:
- .1 the sender’s name, address, telephone number, fax number, if any, and e-mail address;
  - .2 the date and time of transmission; and
  - .3 the name and telephone number of a person to contact in the event of a transmission problem.

- 5.1.5 Where a draft application for payment or *Proper Invoice* is given by email between 4:00 p.m. and midnight, it shall be deemed to have been given on the following day.”

## **GC 5.2 APPLICATIONS FOR PAYMENT**

SC-42 Delete paragraph 5.2.1 in its entirety and replace it with the following:

“5.2.1 A minimum of five (5) Working Days following the Contractor’s submission of a draft application for payment pursuant to GC 5.1 the Contractor shall submit a Proper Invoice to the Consultant and the Owner on account as provided in Article A-5 of the Agreement which Proper Invoice shall be for Work for the value of the Work performed up to the end of the subject monthly payment period. All Proper Invoices shall be submitted in accordance with paragraphs 5.1.4 and 5.1.5. Notwithstanding any other term of the Contract, including paragraph 5.1.2, the Contractor shall not submit a Proper Invoice between November 22 and January 2 inclusive or on any day that is not a *Working Day*. For certainty, application for payment in respect of the *Warranty Security* shall only be made upon satisfaction of all stipulated requirements for this milestone as set out in paragraph 12.3.8.”

SC-43 Delete paragraph 5.2.2 in its entirety.

SC-44 In paragraph 5.2.3 add the words “in a *Proper Invoice*” after the words “The amount claimed” and add the following to the end:

“The amount applied for in the *Proper Invoice* for payment of the *Warranty Security* upon satisfaction of all requirements set out in paragraph 12.3.8 shall be comprised of the amount of the *Warranty Security* less any deductions to such security applied in accordance with this *Contract*.”

SC-45 Delete paragraph 5.2.4 in its entirety and replace it with the following:

“5.2.4 At least 15 calendar days before submission of its first *Proper Invoice* the Contractor shall submit to the Consultant, in a form acceptable to the Owner and Consultant, acting reasonably, a schedule of values for the parts of the Work, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of *Proper Invoices*.”

SC-46 Amend paragraph 5.2.6 by replacing the words “Applications for payment” with the words “*Proper Invoices*”.

SC-47 Delete paragraph 5.2.7 in its entirety.

## **GC 5.3 PAYMENT**

SC-48 In paragraph 5.3.1 replace the words “an application for payment” with “a *Proper Invoice*”.

- SC-49 Delete subparagraph 5.3.1.1 in its entirety and replace it with the following:
- “.1 If the *Consultant*, in consultation with the *Owner*, determines that an amount different than that applied for is properly due, the *Owner* or *Consultant* shall issue a “Notice of Non-Payment” pursuant to the *Construction Act* on behalf of the *Owner*.”
- SC-50 Delete subparagraph 5.3.1.2 in its entirety and replace it with the following:
- “.2 Subject to any “Notice of Non-Payment” issued pursuant to the *Construction Act* on behalf of the *Owner*, the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than twenty-eight (28) calendar days from the date of receipt of such *Proper Invoice* and, in any event, in compliance with the *Payment Legislation*.”
- SC-51 Add new paragraphs 5.3.2 to 5.3.5 as follows:
- “5.3.2 If the *Contractor* fails to provide any element of a *Proper Invoice*, including a statutory declaration or the workers’ compensation clearance certificate, the application for payment will not constitute a *Proper Invoice* and the *Owner* shall not be required to make payment to the *Contractor* until a complete *Proper Invoice* is submitted.
- 5.3.3 The *Contractor* shall have no entitlement to payment and no *Proper Invoice* may be submitted for changes in the *Work* without a written *Change Order* issued by the *Owner*.
- 5.3.4 The *Owner* may withhold from payment amounts as determined by the *Owner* or *Consultant*, acting reasonably, to ensure correction of defective work and may also provide for the retention of amounts in addition to the statutory holdback provided for in the *Contract* sufficient to protect the *Owner* against all liens of which the *Owner* has notice.
- 5.3.5 Following receipt by the *Contractor* of statutory declarations from *Suppliers* or *Subcontractors* of any tier, the *Contractor* shall promptly provide the *Owner* and *Consultant* with copies of such statutory declarations.”

## **GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK**

SC-52 Delete all paragraphs of GC 5.4 in their entirety and replace them with the following:

- “5.4.1 When the *Contractor* considers that *Substantial Performance of the Work* has been achieved, or if permitted by the *Payment Legislation* a designated portion of the *Work* which the *Owner* agrees to accept separately is substantially performed, the *Contractor* shall, within five (5) *Working Days*, deliver to the *Consultant* and to the *Owner* a written application for a review by the *Consultant* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*, which application shall include the following:
- a. A comprehensive list of work to be completed or corrected including all deficient or defective work identified by the *Owner* and *Consultant* and the cost for completion and correction of such work,
  - b. A list of work which cannot be performed for reasons beyond the control of the *Contractor* including the proposed date for completion of such work and the cost for completion of such work,
  - c. A declaration to the effect that:
    - i. the *Contract* is substantially performed,
    - ii. the performance of the balance of the *Contract* is in progress, and
    - iii. where the balance of the *Contract*, or a part or parts thereof cannot be performed forthwith, but must be deferred for reasons beyond the control of the *Contractor*, the balance of the *Contract* shall be completed by a fixed date,
  - d. All documentation required pursuant to GC 10.4 – WORKERS’ COMPENSATION, including a clearance certificate from the *WSIB* stating that all amounts owed to the date of *Substantial Performance of the Work* have been paid in full,
  - e. A statutory declaration using the latest CCDC 9A form of “Statutory Declaration of Progress Payment Distribution by Contractor”,
  - f. A list of all outstanding or potential *Claims* of the *Contractor* under the *Contract* as of the date of its application for *Substantial Performance of the Work*. For certainty, the provision of this list shall in no way relieve the *Contractor* of its notice obligations under the *Contract* for any *Claim*,

- g. A statement identifying the value of *Work* done to the proposed date of *Substantial Performance of the Work* together with all documentation reasonably required by the *Owner* and *Consultant* to determine the value of same, and
- h. A statement showing the amount of holdback monies due for release and payment when all liens that may be claimed against such holdback have expired or been satisfied, discharged or otherwise provided for under the *Payment Legislation*.

Failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*.

5.4.2 The *Consultant* will review the *Work* to certify or verify the validity of the application and shall promptly, and in any event, no later than 15 *Working Days* after receipt of the *Contractor's* application:

- .1 advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or
- .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*.

For certainty, the *Contract Price* to be used in determining achievement of *Substantial Performance of the Work* shall be the *Contract Price* as amended by any *Change Orders* issued as of the date such determination is being made and shall not include any anticipated changes to the *Contract Price* not yet confirmed by *Change Order*, including in respect of any cash allowances or contingencies.

5.4.3 Within no more than 7 calendar days following receipt of the certificate from the *Consultant* pursuant to paragraph 5.4.2, the *Contractor* shall cause such certificate to be published in accordance with the requirements of the *Payment Legislation* and the *Contractor* shall issue to the *Owner* and *Consultant* an application for release of the holdback. The *Contractor's* application for release of the holdback application shall include:

- .1 a copy of the advertisement containing the certificate of *Substantial Performance of the Work* placed by the *Contractor* in the appropriate construction trade newspaper;
- .2 a declaration that no written notices of lien have been received by the *Contractor*;

- .3 all documentation required pursuant to GC 10.4 – WORKERS’ COMPENSATION, including a clearance certificate from the *WSIB* stating that all amounts owed to the date of *Substantial Performance of the Work* have been paid in full; and
- .4 a statutory declaration using the latest CCDC 9A form of “Statutory Declaration of Progress Payment Distribution by Contractor”.

Except to the extent required by *Payment Legislation*, such application for release of the holdback shall not constitute an application for payment that is subject to *Proper Invoice* requirements. All holdback amounts prescribed by the *Payment Legislation* shall become due and payable to the *Contractor* following expiration of the holdback period stipulated in the *Payment Legislation* provided that all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for as required by the *Payment Legislation*.

5.4.4 There shall be no progressive release of holdback for a portion of the *Work* pursuant to any applicable *Payment Legislation*.

5.4.5 The *Owner* may refuse to pay some or all of the lien holdback amount provided that the *Owner* complies with any applicable requirements of the *Payment Legislation*.

**5.4.6 Annual Release of Holdback**

- .1 Accrued lien holdback the *Owner* is required to retain under the *Payment Legislation* shall be released on an annual basis in relation to *Work* performed during the applicable annual period provided that:
  - i. the *Construction Schedule* is longer than one year in duration;
  - ii. the *Contract Price* exceeds ten million dollars (\$10,000,000);
  - iii. the *Owner* has elected in the *Agreement Term Sheet* to release holdback on an annual basis;
  - iv. the *Contractor* submits to the *Owner* and *Consultant* an application for release of such holdback on an annual basis for the applicable annual period that includes a copy of the notice proposed to be given under subparagraph 5.4.6.1(v) and a statutory declaration using the latest CCDC 9A form of “Statutory Declaration of Progress Payment Distribution by Contractor”; and

- v. 60 calendar days after the date of the *Contractor's* application for release of the holdback on an annual basis and the giving of written notice in a form acceptable to the *Owner*, acting reasonably, by the *Contractor* to all *Contractor Personnel* of such application (including by posting of such notice in a visible location at the *Place of the Work*), there are no preserved or perfected liens in respect of the *Contract*, or all liens in respect of the *Contract* have been satisfied, discharged or otherwise provided for under the *Payment Legislation*.
- .2 For the purposes of this paragraph 5.4.6 the applicable annual period shall be each calendar year occurring during the term of the *Contract*.

#### 5.4.7 **Phased Release of Holdback**

- .1 Accrued lien holdback the *Owner* is required to retain under the *Payment Legislation* shall be released on upon completion of each of phase of the *Work* expressly identified and described in the *Contract Documents* (each a "***Phase of the Work***") provided that:
  - i. the *Consultant* has certified that the subject *Phase of the Work* has been completed as required by the *Contract Documents*;
  - ii. the *Contract Price* exceeds ten million dollars (\$10,000,000);
  - iii. the *Owner* has elected in the *Agreement Term Sheet* to release holdback on a phased basis;
  - iv. the *Contractor* submits to the *Owner* and *Consultant* an application for release of such holdback on a phased basis for the completed *Phase of the Work* that includes a copy of the notice proposed to be given under subparagraph 5.4.7.1(v) and a statutory declaration using the latest CCDC 9A form of "Statutory Declaration of Progress Payment Distribution by Contractor"; and
  - v. 60 calendar days after the date of the *Contractor's* application for release of the holdback on a phased basis and the giving of written notice in a form acceptable to the *Owner*, acting reasonably, by the *Contractor* to all *Contractor Personnel* of such application (including by posting of such notice in a visible location at the *Place of the Work*), there are no preserved or perfected liens in respect of the *Contract*, or all liens in respect of the *Contract* have been satisfied, discharged or otherwise provided for under the *Payment Legislation*.

- 5.4.8 Subject to paragraph 5.4.5, when releasing holdback pursuant to paragraph 5.4.6 or paragraph 5.4.7 the *Owner* may retain out of such accrued lien holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the *Payment Legislation*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.
- 5.4.9 The *Owner's* payment of the accrued lien holdback on an annual basis or phased basis shall not limit, waive or diminish the *Contractor's* obligations, responsibilities, duties or liabilities under the *Contract* nor shall it constitute the *Owner's* acceptance of the *Work*. Further, no payment of holdback shall be made unless and until any liens have been satisfied, discharged or otherwise provided for under the *Payment Legislation*. Notwithstanding any such payment, the *Contractor* shall ensure that all *Work* and *Products* are protected pending *Completion* and be responsible for the correction of defects or *Work* not performed regardless of whether or not such was apparent when such payment was made. The *Contractor* shall indemnify and hold harmless the *Owner Entities* from all *Claims* resultant from the *Owner's* release of holdback pursuant to paragraphs 5.4.6 and 5.4.7 or *Contractor's* breach of its obligations under paragraphs 5.4.6 and 5.4.7.
- 5.4.10 For certainty, notwithstanding any provision of the *Agreement Term Sheet* or other *Contract Documents*, neither paragraph 5.4.6 nor paragraph 5.4.7 shall apply where the *Contract Price* as of the *Effective Date* does not meet or exceed the minimum contract price for release of holdback on an annual or phased basis established under the *Construction Act*."

## **GC 5.5 FINAL PAYMENT**

SC-53 Delete paragraphs 5.5.1 to 5.5.4 in their entirety and replace them with the following:

- "5.5.1 When the *Contractor* considers that *Completion* has been achieved, the *Contractor* shall submit a draft application for final payment within no more than five (5) *Working Days* of the claimed *Completion* date and shall submit a *Proper Invoice* to the *Owner* and *Consultant* for final payment no earlier than five (5) *Working Days* after submission of such draft application for final payment.
- 5.5.2 The *Consultant* will review the *Work* to certify or verify achievement of *Completion* and shall promptly, and in any event, no later than ten (10) calendar days after receipt of the *Contractor's Proper Invoice* for final payment:
- .1 advise the *Contractor* in writing that *Completion* has not been achieved and give reasons why, or
  - .2 state the date of *Completion* (as determined by the *Consultant*) in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*.



- 5.5.3 Payment of a *Proper Invoice* for final payment shall be made by the *Owner* in accordance with paragraph 5.3.1.2. All holdback amounts for finishing work prescribed by the *Payment Legislation* shall become due and payable to the *Contractor* following expiration of the holdback period stipulated in the *Payment Legislation* provided that all liens that may be claimed against such holdback have expired or been satisfied, discharged or otherwise provided for as required by the *Payment Legislation*.
- 5.5.4 For certainty, all references in the *Contract Documents* to final payment or a *Proper Invoice* for final payment shall refer to the *Proper Invoice* submitted by the *Contractor* and payment to be made by the *Owner* under the *Contract* following achievement of *Completion* or following the date of termination of the *Contract* or the *Contractor's* right to continue with the *Work* notwithstanding that payment of the *Warranty Security* (less any deductions to such security applied in accordance with this *Contract*) will not be made until satisfaction of all requirements set out in paragraph 12.3.8.”

## **GC 5.8 SET-OFF**

SC-54 Add new GC 5.8 SET-OFF as follows:

### **“GC 5.8 SET-OFF**

- 5.8.1 Notwithstanding any other provision in the *Contract* and subject to the provisions of the *Payment Legislation*, if the *Owner* has made an overpayment on any previous *Proper Invoice*, if the *Contractor* is in default under the *Contract* (including any failure to correct deficiencies as required by the *Contract*), if any amount is due and owing by the *Contractor* to the *Owner* under this *Contract*, or if the *Contractor* has not paid undisputed amounts due to *Contractor Personnel*, then without prejudice to any other right or remedy, the *Owner* may withhold or set-off payment from the *Contractor* of the amount reasonably necessary to protect the *Owner* from loss or damage arising from such event.”

## GC 6.2 CHANGE ORDER

SC-55 Add new paragraph 6.2.1A as follows:

“6.2.1A If the *Contractor* is of the opinion that any direction or instruction received from the *Consultant* or the *Owner*, including any *Supplemental Instruction*, constitutes a proposed change in the *Work*, it shall give the *Consultant* and *Owner Notice in Writing* of such change within 5 *Working Days*, which notice shall include a written description of the alleged change in the *Work*, including a description of the anticipated impact to the *Contract Price* and *Contract Time* and all available supporting documentation. The *Consultant* will promptly investigate such alleged change in the *Work* and make a finding. If the finding is that such direction or instruction does constitute a change for which adjustment of the *Contract Price* and *Contract Time* is justified under the *Contract*, then, if the *Owner* does not dispute such finding within the time stipulated in Part 8 – DISPUTE RESOLUTION, the *Consultant* will issue appropriate instructions for a change in the *Work* as provided in paragraph 6.2.1. If the finding is that the direction or instruction does not constitute a change for which adjustment of the *Contract Price* or *Contract Time* is justified under the *Contract*, the *Consultant* shall provide its reasons for such finding in writing to the *Owner* and *Contractor* and the *Contractor* shall proceed with the affected *Work*, including implementation of the subject direction or instruction, and may dispute the finding of the *Consultant* under this paragraph 6.2.1A in accordance with PART 8 – DISPUTE RESOLUTION. For certainty, the *Contractor* shall not delay in its implementation of the subject direction or instruction or performance of any affected *Work* while the *Consultant* investigates the alleged change and makes a finding pursuant to this paragraph 6.2.1A.”

SC-56 Add new paragraphs 6.2.3 to 6.2.6 as follows:

“6.2.3 The *Contractor* shall prepare and submit to the *Consultant* and the *Owner* all details and supporting documentation regarding impacts of a proposed change to the *Contract Price* and *Contract Time* within ten (10) *Working Days* after notice of the proposed change is given to the *Contractor* under paragraph 6.2.1 and otherwise within five (5) *Working Days* of such details and supporting documentation becoming known or available, as applicable.

6.2.4 Unless otherwise agreed by the parties, the adjustment in the *Contract Price* for any change shall be determined in accordance with paragraphs 6.3.6 and 6.3.7.

- 6.2.5 For valuation of changes to the *Work*, including in respect of any contemplated *Change Order* or request for a *Change Order* by the *Contractor*, the *Contractor* shall provide the *Owner* and *Consultant* with a detailed breakdown of all expenditures itemized in paragraph 6.3.7 anticipated to be incurred in respect of the change and such other documentation as reasonably required by the *Owner* and *Consultant* to determine the anticipated expenditures to be incurred by the *Contractor* attributable to the change. The foregoing detailed breakdown shall include a breakdown of the price quotation that includes the following to the extent applicable, with appropriate supporting documentation: (i) estimated labour costs, including hours and applicable hourly rates; (ii) estimated *Product* costs, including *Supplier* quotations, estimated quantities and unit prices; (iii) estimated *Construction Equipment* costs; (iv) enumeration of all other estimated costs included in the price quotation; (v) estimated credit amounts for labour and *Products* not required on account of the proposed change; (vi) *Subcontractor* quotations, including a detailed breakdown of all of the foregoing and (vii) estimated *Contractor's* percentage fee for profit and *Overhead* as per paragraph 6.3.6. For certainty, for all changes the *Contractor's* percentage fee shall be as stipulated in paragraph 6.3.6.
- 6.2.6 A *Change Order* shall be a final determination and adjustment to the *Contract Time*, and *Contract Price* in respect of the subject change and there shall be no further adjustments to the *Contract Time* or *Contract Price* or compensation or payment of any kind whatsoever based on the aggregate number, scope or value of changes in the *Work* whether resulting from *Change Orders* or *Change Directives*.

**GC 6.3 CHANGE DIRECTIVE**

SC-57 Delete subparagraph 6.3.6.3 in its entirety and replace it with the following:

“.3 Subject to subparagraph 6.3.6.4, in respect of the *Contractor’s* percentage fee, the *Contractor* shall be entitled to apply mark-ups as follows to the actual costs of performing the work attributable to the change as determined in accordance with paragraph 6.3.7 (exclusive of *Value Added Taxes*), which mark-ups include the *Contractor’s* fee for profit and *Overhead* (including profit and *Overhead* of all *Contractor Personnel*):

- i. for *Contractor’s* own work: a mark-up in an amount of no more than 15% of the *Net Actual Cost* of the *Contractor’s* own work
- ii. for *Subcontractor’s* own work: a mark-up in an amount of no more than 15% of the *Net Actual Cost* of the *Subcontractor’s* own work; and
- iii. *Contractor’s* mark-up on *Subcontractor’s* own work: a mark-up in an amount of not more than 10% of the *Net Actual Cost* of the *Subcontractor’s* own work.

For certainty, no further mark-up shall be applied to any costs attributable to the change, including in respect of profit and *Overhead* for *Contractor Personnel*, and regardless of the extent to which the subject work is assigned or sublet to others. If *Work* is assigned or sublet to an associate, as defined by the *Securities Act*, RSO 1990, c. S.5, as amended, no mark-up whatsoever shall be applied.”

SC-58 Add new subparagraphs 6.3.6.4 and 6.3.6.5 as follows:

“.4 In no event shall the maximum aggregate mark-up applied by all levels of contract for overhead and profit pursuant to subparagraph 6.3.6.3 exceed 30% of the total *Net Actual Cost* of approved change.

.5 Where the *Owner* and *Contractor* agree in writing to a rate and pricing schedule, to the extent applicable such rate and pricing schedule will be used to determine the cost of the *Contractor’s* actual expenditures and savings under paragraph 6.3.7.”

SC-59 Delete subparagraph 6.3.7.1(2) in its entirety.

SC-60 In subparagraph 6.3.7.6 add the following to the end:

“For certainty, in determining the cost of performing the work attributable to the change no mark-up shall be applied to the actual expenditures incurred by a *Subcontractor* attributable to the change, which expenditures shall be itemized as required pursuant to paragraph 6.3.15. All profit and *Overhead* of the *Subcontractor* is included in the *Contractor*’s percentage fee to be applied pursuant to subparagraph 6.3.6.3.”

SC-61 Delete paragraph 6.3.11 in its entirety and replace it with the following:

“Subject to paragraph 6.3.14, any undisputed value of *Work* performed as the result of a *Change Directive* shall be confirmed by way of one or more *Change Orders* and upon issuance of any such *Change Order* these amounts may be included in progress payments.”

SC-62 Add new paragraphs 6.3.14 and 6.3.15 as follows:

“6.3.14 Where a *Change Directive* stipulates a maximum amount that may be incurred in respect of such *Change Directive*, the *Contractor* shall give the *Owner* written notice at least 2 *Working Days* prior to incurring any costs in excess of such stipulated maximum and may not include in any *Proper Invoice* any amount in excess of such stipulated maximum without the prior written approval of the *Owner* in the form of a further or amended *Change Directive*. For certainty, stipulation of a maximum amount that may be incurred in respect of a *Change Directive* does not constitute the *Owner*’s agreement to the quantum of costs that may be attributable to the *Change Directive* and shall not obligate the *Owner* to issue a *Change Order* in respect of any claimed amount for the value of the *Work* performed as the result of the *Change Directive* that remains under dispute.

6.3.15 Without limiting the *Contractor*’s obligations under this GC 6.3, for valuation of any *Change Directive* the *Contractor* shall provide the *Owner* and *Consultant* with detailed itemized breakdowns of all actual expenditures itemized in 6.3.7 and incurred in respect of the change, including detailed, substantiated time sheets, purchase orders, receipts or cost vouchers from *Subcontractors* and *Suppliers* and such other documentation as reasonably required by the *Owner* and *Consultant* to determine the actual expenditures incurred by the *Contractor* attributable to the change.”

**GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

SC-63 Amend subparagraphs 6.4.1.1 and 6.4.1.2 by adding the following after the words “*Contract Documents*” in each subparagraph:

“and which would not have been readily apparent prior to the *Contractor’s* commencement of the performance of the *Work* from review of the *Contract Documents* and *Place of the Work* by the *Contractor* as required by the *Contract Documents*, including pursuant to paragraph 1.5 of Article A-5 and paragraph 1.1.3 of GC 1.1”

**GC 6.5 DELAYS**

SC-64 Add the following to the end of paragraph 6.5.2:

“Notwithstanding the foregoing, (i) where the stop work order was issued as a result of or due to a *Force Majeure Event* this paragraph 6.5.2 shall not apply and the *Contractor’s* entitlement to adjustment of the *Contract Time* or *Contract Price* shall be governed by paragraph 6.5.3, and (ii) where the stop work order was issued as a result of or due to *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*, including a *Governmental Response*, and was not the result of an act or fault of any *Contractor Personnel*, directly or indirectly, this paragraph 6.5.2 shall not apply and the *Contractor’s* entitlement to adjustment of the *Contract Time* or *Contract Price* shall be governed by the provisions of Article A-10 hereof.”

SC-65 Delete paragraph 6.5.3 in its entirety and replace it with the following:

“6.5.3 If the *Contractor* is delayed in the performance of the *Work* by a *Force Majeure Event*, including:

- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors’ association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound),
- .2 fire, unusual delay by common carriers or unavoidable casualties, or

.3 *Abnormally Adverse Weather Conditions,*

then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. Except to the extent such delays result from actions by *Owner Personnel*, the *Contractor* shall only be entitled to payment for costs directly incurred with the *Owner's* written approval to protect the *Work* and secure the *Place of the Work* during the period of such delay and to mitigate the impacts of such delay to performance of the *Work* within the *Contract Time*. For certainty, in the event of delay caused by or resultant from *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*, including a *Governmental Response*, this paragraph 6.5.3 shall not apply and the *Contractor's* entitlement to adjustment of the *Contract Time* or *Contract Price* shall be governed by the provisions of Article A-10 hereof.”

SC-66 Delete paragraph 6.5.4 in its entirety and replace it with the following:

“6.5.4 Upon the occurrence of any event that may cause delay to performance of the *Work* the *Contractor* shall promptly give the *Owner* verbal notice of such delay event. No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Consultant* and *Owner* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.”

SC-67 Delete paragraph 6.5.5 in its entirety and replace it with the following:

“6.5.5 No adjustment to the *Contract Time* shall be made because of failure of the *Consultant* to furnish instructions unless the *Consultant* has failed to furnish such instructions within the time stipulated in any schedule agreed-to by the parties for submission and return of *Shop Drawings* and *Submittals* and the *Contractor* has given at least two (2) *Working Days' Notice in Writing* to the *Consultant* and *Owner* of the date for upon which such instructions are required.”

SC-68 Add new paragraphs 6.5.6 and 6.5.7 as follows:

“6.5.6 Any adjustment to the *Contract Time* under this *Contract* shall be determined based on the direct impacts of the subject change or delay to the critical path for performance of the *Work* as of the date of the change or delay.

6.5.7 The *Contractor* acknowledges that the *Owner* will suffer real and significant losses if the *Contractor* fails to attain *Ready-for-Takeover* by the *Ready-for-Takeover Date*.

.1 Where the *Owner* has stipulated an amount for liquidated damages in the *Agreement Term Sheet*, then if the *Contractor* fails to achieve *Ready-for-Takeover* by the *Ready-for-Takeover Date* then the *Contractor* shall be liable to the *Owner* for liquidated damages in accordance with paragraph 4.7 of Article A-4 for each day or part day of delay until *Ready-for-Takeover* is achieved as confirmed by the *Consultant* in accordance with GC 12.1. The parties agree that such liquidated damages are not a penalty and represent a reasonable, fair and genuine pre-estimate of losses to the *Owner* anticipated to result from the *Contractor's* delay in achieving *Ready-for-Takeover* by the *Ready-for-Takeover Date*.

.2 Where the *Owner* has not stipulated an amount for liquidated damages in the *Agreement Term Sheet*, then subparagraph 6.5.7.1 shall not apply and the *Contractor* shall be liable for and shall indemnify and hold harmless the *Owner* from all *Claims* resultant from or caused by failure to achieve *Ready-for-Takeover* by the *Ready-for-Takeover Date* and/or *Completion* by the *Completion Date*, including costs incurred for the *Consultant*, any *Claims* arising under any lease agreements for the *Project* (if applicable), and any *Claims* relating to financing of the *Project*.”

## **GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE**

SC-69 Delete paragraph 6.6.1 in its entirety and replace it with the following:

“6.6.1 If the *Contractor* intends to make a claim for an increase to the *Contract Price* the *Contractor* shall give *Notice in Writing* of intent to claim to the *Owner* and to the *Consultant* within five (5) *Working Days* of commencement of the event or series of events giving rise to such claim. Notwithstanding the foregoing, any claim for adjustment to the *Contract Price* resultant from *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*, including a *Governmental Response*, shall be governed by the provisions of Article A-10 and this GC 6.6 shall not apply.”



SC-70 Delete paragraphs 6.6.3 and 6.6.4 in their entirety and replace them with the following:

“6.6.3 The party making a claim pursuant to this GC 6.6 shall prepare and submit to the *Consultant* and other party in writing all available details and supporting documentation regarding the claim not later than ten (10) *Working Days* after commencement of the event or series of events giving rise to such claim and shall thereafter submit all such details and supporting documentation within five (5) *Working Days* of such details and supporting documentation becoming known or available, as applicable. For certainty, the supporting documentation to be submitted shall include all evidence reasonably required by the *Consultant* to make a finding and all such supporting documentation shall be prepared at the applicable party’s own cost.

6.6.4 Without limiting paragraph 6.6.3, where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, weekly or bi-weekly as the *Consultant* may reasonably require, submit further written interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account within five (5) *Working Days* of the end of the effects resulting from the event or series of events.”

SC-71 Add new paragraph 6.6.7 as follows:

“6.6.7 Where the party making a claim fails to provide notice or details and supporting documentation within the time stipulated in this GC 6.6 and such failure prevents the *Consultant* or other party from mitigating or minimizing *Claims* resultant from the event or series of events giving rise to such claim or otherwise causes the other party loss or damage, then the party making the claim shall be barred from bringing the subject claim.”

**GC 7.1 OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK, OR TERMINATE THE CONTRACT**

SC-72 Delete subparagraph 7.1.5.1 in its entirety and replace it with the following:

“.1 take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* and *Temporary Work* at the *Place of the Work*; require the *Contractor* to transfer, novate or assign all agreements with *Subcontractors* and *Suppliers* in respect of the *Work* to the *Owner* or other contractors designated by the *Owner*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense,”

SC-73 In subparagraph 7.1.5.4 delete the words “warranty period” and replace them with the words “*Warranty Period*”.

SC-74 Add a new subparagraph 7.1.5.5 as follows:

“.5 set-off against any amount payable to the *Contractor* under the *Contract* all amounts payable by the *Contractor* to the *Owner*.”

SC-75 Add a new paragraphs 7.1.7 and 7.1.8 as follows:

“7.1.7 The *Owner* shall not be liable to the *Contractor* for any *Consequential Damages* arising from termination pursuant to this GC 7.1.

7.1.8 The *Contractor* shall submit to the *Owner* and *Consultant* a *Proper Invoice* for final payment no later than 45 calendar days after the date of termination.”

## **GC 7.2 CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

SC-76 Delete paragraph 7.2.2 in its entirety.

SC-77 Delete subparagraphs 7.2.3.1 and 7.2.3.2 in their entirety.

SC-78 In subparagraph 7.2.3.4 delete the words “except for GC 5.1 FINANCIAL INFORMATION REQUIRED OF THE OWNER.”

SC-79 In paragraph 7.2.4, delete “5 *Working Days*” from the second line and replace with “fifteen (15) *Working Days*”, and add the following to the end of the paragraph:

“The *Owner* shall be deemed not to be in default of its obligations under the *Contract* if it is taking active steps to remedy the default but cannot reasonably do so within the said fifteen (15) *Working Day* period.”

SC-80 In paragraph 7.2.5, delete the words “including reasonable profit” and replace them with the words “to the date of termination” and add the words “, but shall not be entitled to compensation for any *Consequential Damages*” after the words “termination of the *Contract*”.

SC-81 Add new paragraph 7.2.6 as follows:

“7.2.6 The *Contractor*’s claim for compensation under this GC 7.2 shall be submitted to the *Owner* and *Consultant* in the form of a *Proper Invoice* for final payment no later than 45 calendar days after the date of termination.”

## **GC 7.3 TERMINATION FOR CONVENIENCE**

SC-82 Add new GC 7.3 TERMINATION FOR CONVENIENCE as follows:

### **“GC 7.3 TERMINATION FOR CONVENIENCE**

- 7.3.1 The *Owner* may in its sole discretion terminate the *Contractor*’s right to continue with the *Work* in whole or in part or this *Contract* for any reason, including without cause or for convenience, at any time by giving at least 30 calendar days’ *Notice in Writing* of such termination to the *Contractor* specifying the date of termination.
- 7.3.2 In the event of termination pursuant to paragraph 7.3.1, the *Contractor* shall be entitled to be paid for all work performed to the date of termination, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a direct result of such termination, but shall not be entitled to compensation for any *Consequential Damages*. The *Contractor*’s claim for such compensation shall be submitted to the *Owner* and *Consultant* in the form of a *Proper Invoice* for final payment no later than 45 calendar days after the date of termination.”

### **GC 8.1 AUTHORITY OF THE CONSULTANT**

SC-83 In paragraph 8.1.2 delete the words “paragraph 8.1.3 and paragraphs 8.3.3 to 8.3.8 of”.

SC-84 In paragraph 8.1.3, add the following after the first sentence:

“The *Contractor* shall continue performance of the *Work* notwithstanding any such dispute and shall ensure all other *Contractor Personnel* also do so.”

### **GC 8.2 ADJUDICATION**

SC-85 Delete paragraph 8.2.1 in its entirety and replace it with the following:

“8.2.1 Nothing in this *Contract* shall be deemed to affect the rights of the parties to resolve any dispute by adjudication as may be provided for by applicable legislation. Further, in addition to the matters that may be referred to adjudication pursuant to the *Payment Legislation*, the parties agree that any dispute relating to costs resultant from termination of the *Contract* or of the *Contractor*’s right to continue with the *Work* or payments due and owing in the event of or following any such termination may be referred by either party to adjudication. For certainty, no dispute regarding the validity of any such termination may be referred to adjudication and any such dispute shall be resolved in accordance with GC 8.3.”

SC-86 Add new paragraph 8.2.2 as follows:

“8.2.2 To the extent permitted by the *Construction Act* and except as required for performance of the parties’ obligations under this *Contract* or exercise of their rights under the *Construction Act*, any adjudication in respect of the *Contract* and *Project*, including all documentation and materials exchanged and any resultant award or order issued by an adjudicator, shall be confidential as between the parties.”

### **GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION**

SC-87 Delete paragraph 8.3.1 in its entirety.

SC-88 Delete paragraph 8.3.2 in its entirety and replace it with the following:

“8.3.2 For any finding of the *Consultant* under GC 2.2 – ROLE OF THE CONSULTANT that is clearly identified as a finding for the purposes of this paragraph 8.3.2 of the *Contract*, a party shall be conclusively deemed to have accepted such finding and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*.”

SC-89 Delete paragraphs 8.3.4, 8.3.5 and 8.3.6 in their entirety and replace them with the following:

“8.3.4 Following receipt of a responding party’s *Notice in Writing* of reply under paragraph 8.3.2, the parties may elect to engage in mediated negotiations to assist the parties in reaching agreement on any unresolved dispute.

8.3.5 If the dispute is not resolved at a mediation or if the parties do not agree to mediate the dispute, either party may terminate the mediation by giving *Notice in Writing* to other party and the *Consultant*.

8.3.6 Upon termination of the mediation pursuant to paragraph 8.3.5 the dispute shall be finally resolved by arbitration which may be commenced by either party by *Notice in Writing* to the other party. The arbitration shall be conducted in the jurisdiction of the *Place of the Work* and the parties agree that the arbitral award shall be final and binding and may only be appealed to the court on a question of law subject to the leave of such court as may be granted in accordance with subsection 45(1) of the *Arbitration Act*. For certainty, there shall be no appeal of the arbitral award on a question of fact or mixed fact and law.”

SC-90 Delete paragraph 8.3.7 in its entirety.

SC-91 In paragraph 8.3.8 delete the words “*Notice in Writing* requesting arbitration in paragraph 8.3.6” and replace them with the words “termination of the mediation pursuant to paragraph 8.3.5”.

SC-92 Add the following new paragraphs 8.3.9 to 8.3.13:

“8.3.9 Within five *Working Days* of the termination of the mediation pursuant to paragraph 8.3.5, the *Owner* and the *Contractor* shall give the *Consultant* a written notice containing:

- .1 a copy of supplementary conditions 8.3.9 to 8.3.14 of this *Contract*, and;
- .2 a description of any claims or issues which the *Contractor* or the *Owner*, as the case may be, wishes to raise in relation to the *Consultant* arising out of the issues in dispute in the arbitration.

8.3.10 The *Owner* and the *Contractor* agree that the *Consultant* may elect to become a full party to the arbitration under paragraph 8.3.6 if the *Consultant*:

- .1 has a vested or contingent financial interest in the outcome of the arbitration;
- .2 gives the notice of election to the *Owner* and the *Contractor* within ten (10) *Working Days* of receipt of the notice under paragraph 8.3.9;
- .3 agrees to be a party to the arbitration within the meaning of the rules referred to in paragraph 8.3.6, and,
- .4 agrees to be bound by the arbitral award made in the arbitration.

8.3.11 Without limiting and subject to the *Owner* and *Contractor*’s rights under paragraph 8.3.12 to challenge whether the *Consultant* has satisfied the requirements of paragraph 8.3.10, if an election is made under paragraph 8.3.10:

- .1 the *Owner* or *Contractor* may request particulars and evidence of the *Consultant*’s vested or contingent financial interest in the outcome of the arbitration;
- .2 the *Consultant* shall participate in the appointment of the arbitrator; and,
- .3 notwithstanding the rules referred to in paragraph 8.3.6, the time period for reaching agreement on the appointment of the arbitrator shall begin to run from the date the respondent receives a copy of the notice of arbitration.

8.3.12 The arbitrator in the arbitration in which the *Consultant* has elected under paragraph 8.3.10 to become a full party may:

- .1 on application of the *Owner* or the *Contractor*, determine whether the *Consultant* has satisfied the requirements of paragraph 8.3.10, and;
- .2 make any procedural order considered necessary to facilitate the addition of the *Consultant* as a party to the arbitration.

8.3.13 The provisions of paragraph 8.3.9 shall apply (with all appropriate changes being made) to written notice to be given by the *Consultant* to any sub-consultant.”

## **GC 9.1 PROTECTION OF WORK AND PROPERTY**

SC-93 Amend subparagraph 9.1.1.1 by adding the following to the end:

“which the *Contractor* could not have discovered from review as required by the *Contract Documents*, including paragraph 1.1.3 of GC 1.1”

SC-94 Delete paragraph 9.1.1.2 in its entirety and replace it with the following:

“.2 negligent acts or omissions of any *Owner Personnel*.”

SC-95 Delete paragraph 9.1.2 in its entirety and replace it with the following:

“9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground utilities and structures indicated in the *Contract Documents*, or that are reasonably discoverable from inspection of the *Place of the Work* as required by the *Contract Documents*, including paragraph 1.5 of Article A-1.”

SC-96 Add new paragraphs 9.1.5 and 9.1.6 as follows:

“9.1.5 The *Contractor* shall cooperate in all respects, at no cost to the *Owner*, to provide accommodation and safe access to the *Place of the Work* or portions thereof as the *Owner Personnel* may require from time to time and as may be required by utility providers with equipment or operations located at the *Place of the Work*.

9.1.6 No *Owner Personnel* or *Owner Entities* shall have any liability for the safeguarding or protection of, or for the loss, theft, damage, destruction, or disappearance of, any *Construction Equipment, Products, Temporary Work* or other tangible property or materials located at the *Place of the Work*, except to the extent caused by their own negligence.”

## **GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

SC-97 In paragraph 9.2.3 delete the first word “The” and replace it with the following:

“Without limiting any of the *Contractor’s* obligations under this *Contract*, including for overall health and safety at the *Place of the Work*, the”

SC-98 Add the following words to paragraph 9.2.6 after the word “responsible”:

“or whether any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with *Applicable Laws*) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment or material damage to the property of the *Owner* or others,”

SC-99 Add the words “and the *Consultant*” after the word “*Contractor*” in subparagraph 9.2.7.4.

SC-100 Add the following words to paragraph 9.2.8 after the word “responsible”:

“or that any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with *Applicable Laws*) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment or material damage to the property of the *Owner* or others,”

## **GC 9.4 CONSTRUCTION SAFETY**

SC-101 Delete paragraph 9.4.1 in its entirety and replace it with the following:

“9.4.1 The *Contractor* shall be solely responsible for: (i) construction health and safety at the *Place of the Work*, including all responsibilities of the “constructor” under the *OHSA*; (ii) compliance with the rules, regulations, and practices required by *Applicable Laws*, including the *OHSA*; and (iii) initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*. The *Contractor* shall file the requisite “notice of project” and list itself as the “constructor” with respect to the *Project*.”

SC-102 Delete paragraph 9.4.4 in its entirety and replace it with the following:

“9.4.4 The *Owner* shall cause the *Owner Personnel* to comply with all health and safety precautions and programs established by the *Contractor* at the *Place of the Work*, including by requiring such compliance in any contracts with *Owner Personnel*.”

SC-103 Add the following new paragraphs 9.4.6 to 9.4.11:

- “9.4.6 The *Contractor* shall provide appropriate health and safety instruction and training to all *Contractor Personnel* (to the extent same have access to the *Place of the Work*) before the *Work* is commenced.
- 9.4.7 The *Contractor* and each *Subcontractor* having an accident or incident at the *Place of the Work*, as prescribed under the *OHSA*, shall promptly notify the *Owner* and the *Consultant*.
- 9.4.8 Prior to commencement of the *Work*, and again at any time upon request by the *Owner*, the *Contractor* shall provide the *Owner* with information and evidence regarding compliance with its obligations relating to health and safety under this *Contract* (including compliance with paragraph 3.1.6, GC 9.4 and paragraph 10.2.4), which evidence shall include: (i) a copy of the *Contractor*’s “notice of project” identifying the *Contractor* as the “constructor” with respect to the *Project* under the *OHSA*; (ii) a copy of all “Form 1000s” obtained by the *Contractor* from *Contractor Personnel* as required by the *OHSA*; (iii) a copy of all health and safety plans and programs prepared by the *Contractor* in respect of the *Place of the Work* and/or performance of the *Work*; (iv) a copy of the *Contractor*’s subcontracts with *Contractor Personnel*; (v) copies of training logs and meeting minutes relating to health and safety at the *Place of the Work* and/or in performance of the *Work*; (vi) copies of any and all documentation filed by or submitted to any *Governmental Authority* by any *Contractor Personnel* in respect of the *Project*, the *Work* or the *Place of the Work*, including any accident or incident reports; and (vii) any other documentation relating to the *Contractor*’s health and safety obligations under this *Contract* as may be reasonably requested by the *Owner*.
- 9.4.9 The *Contractor* represents that it has the experience, knowledge and expertise in respect of construction health and safety necessary for performance of the *Work* and all obligations under this *Contract* in accordance with all *Applicable Laws*, including as necessary to undertake all obligations of the “constructor” under the *OHSA* and to provide for compliance with all requirements of the *OHSA* applicable to the *Place of the Work* and performance of the *Work*. The *Contractor* further acknowledges that the *Owner Entities* do not have such knowledge, experience and expertise and are accordingly relying upon the *Contractor* in this respect.
- 9.4.10 The *Contractor* shall indemnify and save harmless all *Owner Personnel* and *Owner Entities* from and against any and all *Claims* arising out of any safety infractions committed by any *Contractor Personnel* or resulting from any failure by the *Contractor* to fulfill its obligations under paragraph 3.1.6, paragraph 10.2.4 and/or this PART 9 – PROTECTION OF PERSONS AND PROPERTY.



9.4.11 The provisions of this GC 9.4 shall survive the completion of the *Work* or the termination of the *Contract* for any reason whatsoever.”

## **GC 9.5 MOULD**

SC-104 Add the words “and the *Consultant*” after the word “*Contractor*” in subparagraph 9.5.3.4.

## **GC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

SC-105 Replace all reference to “laws” and “applicable laws” in GC 10.2 with “*Applicable Laws*”.

SC-106 Delete paragraph 10.2.5 in its entirety and replace it with the following:

“10.2.5 Subject to compliance with its obligations under paragraph 1.5 of Article A-5 and paragraph 1.1.3 of GC 1.1, the *Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with *Applicable Laws*. If the *Contract Documents* are at variance therewith, or if, subsequent to the *Effective Date*, changes are made to *Applicable Laws* which require modification to the *Contract Documents*, the *Contractor* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will issue the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.”

SC-107 Delete paragraph 10.2.7 in its entirety and replace it with the following:

“10.2.7 If, subsequent to the *Effective Date*, changes are made to *Applicable Laws* which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE. Notwithstanding the foregoing, any claim for adjustment to the *Contract Price* resultant from *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*, including a *Governmental Response*, shall be governed by the provisions of Article A-10 and this paragraph 10.2.7 and GC 6.6 shall not apply.”

## **GC 10.4 WORKERS’ COMPENSATION**

SC-108 In paragraph 10.4.1, replace the word “applications for payment” with the words “*Proper Invoices*”.

SC-109 Add new paragraphs 10.4.2 and 10.4.3 as follows:

“10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.

10.4.3 The *Contractor* shall indemnify and hold harmless the *Owner* and its directors, officers and employees from and against all *Claims* by any *Contractor Personnel* with respect to workers' compensation insurance claims. This indemnity shall survive the completion of the *Work* or the termination of the *Contract* for any reason whatsoever."

## GC 11.1 INSURANCE

SC-110 Revise paragraph 11.1.1 as follows:

- (1) **Where the original *Contract Price* stipulated in the Agreement is equal to or less than \$5,000,000:** Delete paragraph 11.1.1 and replace it with the following:

"11.1.1 Without restricting the generality of GC 13.1 – INDEMNIFICATION, the *Contractor* shall provide, maintain and pay for the following insurance coverages, the requirements of which are specified in Appendix 3 to the Supplementary Conditions – Insurance in effect at the time of bid closing except as hereinafter provided:

- .1 Commercial General liability insurance in the name of the *Contractor* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner* and the *Consultant* as additional insureds but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the *Contractor* with regard to the *Work*. Commercial General liability insurance shall be maintained from the date of commencement of the *Work* until one year from the date of *Ready-for-Takeover*. Liability coverage shall be provided for completed operations hazards from the date of *Ready-for-Takeover*, as set out in the certificate of *Ready-for-Takeover*, on an ongoing basis for a period of 6 years following *Ready-for-Takeover*.
- .2 Automobile Liability Insurance from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.
- .3 Unmanned aerial vehicle aircraft, manned aircraft or watercraft Liability Insurance when owned or non-owned manned or unmanned aircraft or watercraft are used directly or indirectly in the performance of the *Work*.

- .4 “Broad form Builders Risk” property insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The “Broad form” property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
- (1) 10 calendar days after the date of *Ready-for-Takeover*;
  - (2) on the commencement of use or occupancy of any part or section of the *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*; and
  - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- .5 Boiler and machinery insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. Such coverage can be included as part of the Broad Form Builders Risk policy. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Ready-for-Takeover*.

- .6 The “Broad form Builders Risk” property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Contractor* as their respective interests may appear. In the event of loss or damage:
- (1) the *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Consultant* may recommend in consultation with the *Contractor*;
  - (2) the *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner*’s interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Contractor*’s interest in the restoration of the *Work*; and
  - (3) to the *Work* arising from the work of the *Owner*, the *Owner*’s own forces or *Other Contractors*, the *Owner* shall, in accordance with the *Owner*’s obligations under the provisions relating to construction by the *Owner* or *Other Contractors*, pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.
- .7 Contractors’ Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.
- .8 Contractors’ Pollution Liability Insurance from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.”

- (2) **Where the original *Contract Price* stipulated in the Agreement is greater than \$5,000,000 and equal to or less than \$25,000,000:** Delete paragraph 11.1.1 and replace it with the following:

“11.1.1 Without restricting the generality of GC 13.1 – INDEMNIFICATION, the *Contractor* shall provide, maintain and pay for the following insurance coverages, the requirements of which are specified in Appendix 3 to the Supplementary Conditions – Insurance in effect at the time of bid closing except as hereinafter provided:

- .1 Wrap-up liability insurance in the name of the *Contractor* and including all *Owners, Contractors, Subcontractors* and the *Consultants engaged in the work* as insureds. Wrap-up liability insurance shall be maintained from the date of commencement of the *Work* until one year from the date of *Ready-for-Takeover*. Liability coverage shall be provided for completed operations hazards from the date of *Ready-for-Takeover*, as set out in the certificate of *Ready-for-Takeover*, on an ongoing basis for a period of 6 years following *Ready-for-Takeover*.
- .2 Automobile Liability Insurance from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.
- .3 Unmanned aerial vehicle aircraft, manned aircraft or watercraft Liability Insurance when owned or non-owned manned or unmanned aircraft or watercraft are used directly or indirectly in the performance of the *Work*.
- .4 “Broad form Builders Risk” property insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The “Broad form” property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
  - (1) 10 calendar days after the date of *Ready-for-Takeover*;

- (2) on the commencement of use or occupancy of any part or section of the *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*; and
  - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- .5 Boiler and machinery insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. Such coverage can be included as part of the Broad Form Builders Risk policy. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Ready-for-Takeover*.
- .6 The “Broad form Builders Risk” property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Contractor* as their respective interests may appear. In the event of loss or damage:
  - (1) the *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Consultant* may recommend in consultation with the *Contractor*;

- (2) the *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Contractor's* interest in the restoration of the *Work*; and
- (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or *Other Contractors*, the *Owner* shall, in accordance with the *Owner's* obligations under the provisions relating to construction by the *Owner* or *Other Contractors*, pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.

- .7 Contractors' Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.
- .8 Project Specific Contractors' Pollution Liability Insurance from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.
- .9 Commercial General liability insurance in the name of the *Contractor* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner* and the *Consultant* as additional insureds but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the *Contractor* with regard to the *Work*. Commercial General liability insurance shall be maintained from the date of commencement of the *Work* until one year from the date of *Ready-for-Takeover*. Liability coverage shall be provided for completed operations hazards from the date of *Ready-for-Takeover*, as set out in the certificate of *Ready-for-Takeover*, on an ongoing basis for a period of 6 years following *Ready-for-Takeover*."

- (3) **Where the original *Contract Price* stipulated in the Agreement is greater than \$25,000,000:** Delete paragraph 11.1.1 and replace it with the following:

“11.1.1 The *Contractor* shall provide, maintain and pay for insurance coverages as stipulated by the *Owner* in writing prior to commencement of the *Work*. Where no written direction in respect of insurance coverages is provided by the *Owner* prior to commencement of the *Work* then the insurance requirements for projects with an original *Contract Price* greater than \$5,000,000 and equal to or less than \$25,000,000 shall apply notwithstanding that the *Contact Price* is greater than \$25,000,000.”

SC-111 In all instances and for all *Contract Prices*, delete paragraphs 11.1.6, 11.1.7 and 11.1.8 in their entirety.

## **GC 11.2 CONTRACT SECURITY**

SC-112 Add new GC 11.2 CONTRACT SECURITY as follows:

### **“GC 11.2 CONTRACT SECURITY**

11.2.1 *Contractor* shall provide security and bonding if and as stipulated in the *Contract Documents*. Without limiting the foregoing, where the *Contract Price* as of the *Effective Date* is \$500,000 or more, bonds will be provided by the *Contractor* as required by the *Construction Act*, the coverage limit of which shall include *Value Added Taxes* as stipulated in paragraph 4.2 of Article A-4.”

## **GC 12.1 READY-FOR-TAKEOVER**

SC-113 Amend subparagraph 12.1.1.2 by adding the following to the end:

“and, where possible, evidence of certification by all permit-issuing authorities, indicating approval of all permitted installations.”

SC-114 Amend subparagraph 12.1.1.3 by adding the words “has been completed by the *Contractor*” at the end.

SC-115 Amend subparagraph 12.1.1.4 by deleting the word “immediate”.

SC-116 Amend subparagraph 12.1.1.6 by adding the words “and commissioning” after the word “testing”.

SC-117 In subparagraph 12.1.1.8 delete the word “scheduled” and replace it with the word “completed” and delete the words “, acting reasonably”.

SC-118 In paragraph 12.1.4 delete the words “10 calendar days” and replace them with the words “10 *Working Days*”.



## GC 12.2 EARLY OCCUPANCY BY THE OWNER

SC-119 Delete subparagraphs 12.2.3.2 and 12.2.3.3 in their entirety and replace them as follows:

- “.2 The *Owner* shall, at any and all times, have the right to enter, occupy and use the *Work* in whole or in part before completion of the *Contract*. Such entry, occupation or use shall not be considered as acceptance of the *Work* nor in any way relieve or limit the responsibilities and liabilities of the *Contractor* under the *Contract* nor affect the warranty period.
- .3 For certainty, and notwithstanding occupancy by the *Owner* of a part or entirety of the *Work* before *Ready-for-Takeover* has been attained:
  - .1 the *Contractor* shall continue to be liable for the care of such part or entirety of the *Work* except that the *Owner* shall become responsible for preventative maintenance and shall be liable for any loss or damage caused by its negligence or fault; and
  - .2 the warranty period shall be as set out in paragraph 12.3.1 of GC 12.3 – WARRANTY.”

SC-120 Delete paragraph 12.2.4 in its entirety and replace it with the following:

- “12.2.4 Without limiting paragraph 12.2.3, the *Contractor* shall not unreasonably interfere with such use or operation of the *Work* and *Project* by the *Owner*. The *Contractor*, in completing its obligations under the *Contract*, shall, at its own cost, take all reasonable measures to minimize the effect thereof on such use or operation.”

## GC 12.3 WARRANTY

SC-121 Delete paragraph 12.3.1 and replace it with the following:

- “12.3.1 The warranty period under the *Contract* is:
  - .1 one year from the date when *Ready-for-Takeover* has been achieved or the date of termination of the *Contract* or the *Contractor*'s right to continue with the *Work*; or
  - .2 such longer warranty period established in the *Contract Documents* for extended warranties,(the “*Warranty Period*”).”

SC-122 Amend paragraphs 12.3.3 and 12.3.6 by deleting the words “one year warranty period” wherever they appear and replace them with the words “*Warranty Period*”.

SC-123 Delete paragraph 12.3.4 in its entirety and replace with the following:

“12.3.4 Subject to paragraph 12.3.2, within 15 *Working Days* of receipt of *Notice in Writing* pursuant to paragraph 12.3.3 (or within such other reasonable time as determined by the *Consultant*) the *Contractor* shall correct, at the *Contractor*’s expense, any defects or deficiencies in the *Work* which appear prior to and during the *Warranty Period* and shall complete such correction as expeditiously as possible, except that where the deficiency prevents maintaining security at the *Place of the Work* or prevents continued operation or functionality of systems essential to the ongoing business or operations of any *Owner Entities* as determined at the sole discretion of the *Owner*, all necessary corrections and/or installations of temporary replacements shall be carried out immediately as an emergency service. Should the *Contractor* fail to provide this emergency service within 48 hours of a request being made during the normal business hours of the *Contractor*, the *Owner* shall be authorized to carry out all necessary repairs or replacements at the *Contractor*’s expense and deduct all costs of so doing from the *Warranty Security* and, if required, otherwise recover all costs of so doing as a debt due and payable by the *Contractor* upon demand. No such action by the *Owner* shall waive or release the *Contractor* of its obligations under this *Contract*, including any warranty obligations.”

SC-124 Delete paragraph 12.3.5 and replace it with the following:

“12.3.5 The *Contractor* shall correct or pay for damage resulting from corrections made under the requirements of this GC 12.3. If the *Contractor* fails to correct defects or deficiencies in the *Work* or other damage resulting from such corrections within 15 *Working Days* after receiving written notification of the defect or deficiency or damage from the *Owner* or the *Consultant*, the *Owner* may (whether itself or through others) make such corrections at the *Contractor*’s expense and deduct all costs of so doing from the *Warranty Security* and, if required, otherwise recover all costs of so doing as a debt due and payable by the *Contractor* upon demand.”

SC-125 Add new paragraphs 12.3.7 to 12.3.9 as follows:

“12.3.7 Where manufacturers offer, as a general policy, extended warranties on their *Products* or other greater benefits than those called for in the specifications, the *Contractor* shall obtain the benefit of such extended warranties for the *Owner*. The *Contractor* shall ensure that all warranties, guarantees or other obligations for *Work* or *Products* performed or supplied by any *Contractor Personnel* in connection with the *Work* are obtained and available for the direct benefit of the *Owner*. In the alternative, the *Contractor* shall assign to the *Owner* all warranties, guarantees or other obligations for *Work* or *Products* performed or supplied by any *Contractor Personnel* and such assignment shall be with the consent of the assigning party, where required by law, or by the terms of that *Person’s* contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the *Owner* under the *Contract Documents*.

12.3.8 To ensure performance of the *Contractor’s* obligations as set out in GC 12.3 – WARRANTY, the *Owner* shall not make payment to the *Contractor* of the *Warranty Security* until the following has occurred, as confirmed by the *Consultant* in writing:

- .1 expiry of the *Warranty Period*; and
- .2 correction by the *Contractor* of all defects and deficiencies in the *Work* which occurred or arose prior to and during the *Warranty Period*.

12.3.9 Specified warranty periods shall not be construed as limiting the provisions of GC 13.1 –INDEMNIFICATION. Payment of holdback amounts and final payment shall not relieve the *Contractor’s* responsibility for correction of any other deficiencies or incomplete items, at no additional cost to the *Owner* pursuant to this GC12.3 – WARRANTY.”

### **GC 13.1 INDEMNIFICATION**

SC-126 Delete paragraph 13.1.1 and replace it with the following :

“13.1.1 The *Contractor* shall indemnify and save harmless the *Owner Entities* from and against any and all *Claims* arising out of the negligence, errors, omissions, fraud or willful misconduct of the *Contractor Personnel* attributable to or connected with the *Contractor’s* performance or non-performance of its obligations pursuant to this *Contract* except to the extent that such *Claims* are attributable or caused by the negligence of the *Owner Entities* or any of them. This indemnity shall survive the expiration or earlier termination of this *Contract* and continue in full force and effect.”

SC-127 In paragraph 13.1.2 delete the words “The obligation of either party to indemnify as set forth in paragraph 13.1.1” and replace them with the words “The liability of either party under this *Contract*”.

SC-128 In subparagraph 13.1.2.1 delete the words “the minimum liability insurance limit for one occurrence, of the applicable insurance policy, as referred to in CCDC 41 in effect at the time of bid closing” and replace them with the words “the amount of the minimum insurance limit for one occurrence, of the applicable insurance policy, as set forth in Appendix 3 to the Supplementary Conditions for each policy of insurance required to be provided by such party”.

SC-129 Add the following to the end of subparagraph 13.1.2.1:

“For certainty, each party’s liability for losses suffered by the other party for which insurance is to be provided by them pursuant to GC 11.1 – INSURANCE (as modified by the Supplementary Conditions) shall not be less in the aggregate than the total amounts of the minimum insurance limits for one occurrence for each policy of insurance as stipulated in GC 11.1 – INSURANCE (as modified by the Supplementary Conditions) as is applicable to the subject *Claims*.”

SC-130 In subparagraph 13.1.2.3 delete the words “and neither party shall have any liability to the other for indirect, consequential, punitive or exemplary damages”.

SC-131 Add new paragraphs 13.1.7 to 13.1.11 as follows:

“13.1.7 The *Owner Entities* shall have no liability under this *Contract* or in respect of the *Work* or the *Project* for any *Consequential Damages*.

13.1.8 Without limiting the foregoing, within 10 calendar days of the *Contractor* receiving notice or otherwise becoming aware of a *Claim* initiated by a third party against an *Owner Entity* and/or the *Contractor* in respect of a matter for which the *Contractor* has indemnified the *Owner Entities* under this *Contract* and where such *Claim* has been referred to a legal proceeding or other dispute resolution proceeding, the *Contractor* shall retain legal representation and confirm in writing to the *Owner* that it shall assume the *Owner Entities*’ defence in accordance with the indemnification provisions outlined in this *Contract*, including this GC 13.1 – INDEMNIFICATION. For certainty, for the purposes of this GC 13.1 – INDEMNIFICATION “third party” shall not include any *Subcontractor*, *Supplier*, *Other Contractor* or other person or entity engaged for the *Project*.

- 13.1.9 Where the *Contractor* receives notice or otherwise becomes aware of a *Claim* initiated by a third party against an *Owner Entity* and/or the *Contractor* in respect of a matter for which the *Contractor* has indemnified the *Owner Entities* under this *Contract* and where such *Claim* has not been referred to a legal proceeding or other dispute resolution proceeding, if the *Contractor* denies liability and does not assume responsibility for payment of such *Claim* the *Contractor* will notify the *Owner* and third party claimant in writing of its decision within 20 calendar days of receiving notice or otherwise becoming aware of the *Claim*, and the *Owner* reserves the right to assign the *Claim* to an independent insurance adjuster for investigation and determination. The *Owner* and *Contractor* shall fully cooperate with the adjuster to achieve timely resolution of such *Claim*. The *Contractor* and the *Owner* shall provide the adjuster with access to any and all records or documentation in relation to the *Work* and obligations performed under the *Contract* as required for the adjuster's determination. The *Owner* and the *Contractor* acknowledge that all *Claims* will be investigated and responded to by the adjuster within 45 calendar days of receipt of the *Claim* or within such other time as may be agreed by the parties.
- 13.1.10 The *Owner* and the *Contractor* shall be bound by the final decision of the independent adjuster who shall notify the claimant in writing of the final decision with respect to the adjustment of the *Claim*. The *Owner* shall reserve the right to communicate to the third party claimant the final decision with respect to the adjustment of the *Claim*. Where liability is found on the part of the *Contractor*, the adjuster shall handle settlement negotiations and all pertaining financial and legal transactions on behalf of the *Owner* and the *Contractor*, including but not limited to securing a full and final release and issuing the settlement funds to the third party claimant.
- 13.1.11 To the extent the adjuster determines the *Contractor* to be liable for the *Claim* under this *Contract* or at law, all costs for adjuster fees, claim administration and settlement costs will be borne by the *Contractor*. To the extent the *Contractor* is found not to be liable for the *Claim* under this *Contract* or at law, the *Owner* will bear all costs for adjuster fees, claim administration and settlement costs.
- 13.1.12 For certainty, where any *Claim* has been referred to a legal proceeding or other dispute resolution proceeding paragraphs 13.1.8 will apply (and paragraphs 13.1.9 to 13.1.11 shall not apply) and the *Contractor* may advance any denial of liability in the normal course of such proceedings.”

#### **GC 14.1 CONSTRUCTION LIENS**

#### **GC 15.1 OWNERSHIP AND CONFIDENTIALITY**

#### **GC 16.1 FREEDOM OF INFORMATION**

SC-132 Add the following new GC 14.1 CONSTRUCTION LIENS, GC 15.1 OWNERSHIP AND CONFIDENTIALITY and GC 16.1 FREEDOM OF INFORMATION:

**“GC 14.1 CONSTRUCTION LIENS**

- 14.1.1 In the event that a lien arising from the performance of the *Work* is registered against the *Place of the Work* or *Project* or the *Owner Entities’* interest in the *Place of the Work* or *Project*, the *Contractor* shall, within seven (7) calendar days, at its sole expense, vacate or discharge the lien from title to the *Place of the Work*. If the lien is merely vacated, the *Contractor* shall, if requested, undertake the *Owner Entities’* defence of any subsequent lawsuit commenced in respect of the lien at the *Contractor’s* sole expense. The *Owner Entities* shall have the right to be represented by advisory counsel and other professionals, at its own expense, and shall be kept fully informed by the *Contractor* of the proceeding at all stages thereof whether or not so represented.
- 14.1.2 If the *Contractor* fails or refuses to vacate or discharge a construction lien within the time prescribed above, the *Owner* shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by the *Owner Entities* in so doing (including legal fees on a solicitor and client basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of the *Contractor*, and the *Owner* may deduct such amounts from any amounts otherwise due or owing to the *Contractor*. If the *Owner* vacates the lien, it shall be entitled to retain all amounts it would be required to retain pursuant to the *Payment Legislation* if the lien had not been vacated.
- 14.1.3 Without limiting the generality of the foregoing, the *Contractor* shall indemnify the *Owner Entities* for all costs (including legal fees on a solicitor and client basis) they may occur in connection with the claim of lien or subsequent lawsuit brought in connection with the lien, or in connection with any other claim or lawsuit brought against the *Owner Entities* by any *Contractor Personnel*.
- 14.1.4 This GC 14.1 – CONSTRUCTION LIENS does not apply to liens filed by *Contractor Personnel* that are claimed as a result of any default by the *Owner* to make payments to the *Contractor* in accordance with the terms of the *Contract*.

**GC 15.1 OWNERSHIP AND CONFIDENTIALITY**

- 15.1.1 Subject to and without limiting paragraph 3.7.5, all *Work*, including all *Products* and all portions thereof, shall be the property of the *Owner*.

- 15.1.2 The *Contractor* grants to the *Owner* an irrevocable, perpetual, worldwide, and exclusive royalty-free license to use the *Deliverables*, including all *Contractor IP* therein, for the *Project*, including: (i) for completion of the *Project* and *Work* in the event of early termination of the *Contract*; and (ii) for the future repair, use, occupancy, expansion, operation, maintenance, and/or modification to the *Project* and *Work*. The licence shall be assignable and transferable by the *Owner* to any *Affiliate* and to any purchaser of all or part of the *Place of the Work* or *Project* provided that such *Person* assumes and agrees in writing to all limitations of use set out herein. The *Owner* may use the *Deliverables* for the purposes provided in this paragraph 15.1.2 whether or not this *Contract* is terminated, provided only that the *Owner* pays the compensation due and owing to the *Contractor* pursuant to this *Contract*. The *Deliverables* may not be reproduced for use for other projects by either party without the express written permission of the other party. The *Contractor* shall ensure that all moral rights to the *Deliverables* have been waived, including by all *Contractor Personnel*. Copies of all *Deliverables* shall be handed over by the *Contractor* to the *Owner* upon the earlier of termination of this *Contract* and submission of the *Contractor's Proper Invoice* for final payment. The *Contractor* agrees to obtain such rights from all *Contractor Personnel* as required so that the *Contractor* can grant the above-noted license.
- 15.1.3 The *Contractor* shall not, without the *Owner's* prior written consent, release or disclose any *Confidential Information* to anyone except as necessary to perform the *Work* and its obligations under this *Contract*, and then, only where the *Person* receiving such information is bound by an obligation of confidentiality consistent with this *Contract*. If any *Contractor Personnel* is required to disclose Confidential Information under a valid order of a *Governmental Authority*, the *Contractor* shall: (i) provide the *Owner* with immediate written notice of any request for disclosure; (ii) cooperate with the *Owner* in its efforts to resist or minimize the *Confidential Information* required to be disclosed; and (iii) take such steps as are reasonably necessary and available to maintain the confidentiality of the information by the *Contractor*.
- 15.1.4 The *Contractor* acknowledges that disclosure or use of the *Confidential Information* in violation of this *Contract* could cause irreparable harm to the *Owner* for which monetary damages may be difficult to ascertain or be an inadequate remedy. The *Contractor* therefore agrees that the *Owner* shall have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of its confidentiality obligations under this GC 15.1 – OWNERSHIP AND CONFIDENTIALITY.
- 15.1.5 This GC 15.1 – OWNERSHIP AND CONFIDENTIALITY shall survive the completion of the *Work* or the termination of the *Contract* for any reason whatsoever.

## **GC 16.1 FREEDOM OF INFORMATION & DISCLOSURE**

16.1.1 Without limiting the foregoing, the *Owner* represents to *Contractor*, and *Contractor* acknowledges, that the *Owner Entities* are bound by *MFIPPA* and that the law might compel the *Owner Entities* to disclose certain *Confidential Information*. The *Owner Entities* are not required to take steps to oppose or prevent, or assist the *Contractor* in opposing or preventing, any disclosure of information, including *Confidential Information*, which, in the opinion of the *Owner Entities'* counsel, is legally required to be disclosed. *Contractor* shall assist and comply with any notice provided under *MFIPPA* respecting an access request that the *Owner* has received, including providing records and information to the *Owner* that the *Owner* deems to be within its control for the purposes of this *Contract*. If *Contractor* is legally compelled to disclose *Confidential Information*, for example through court order, warrant, or under applicable legislation, *Contractor* shall promptly notify the *Owner* prior to disclosure of any such *Confidential Information* so that the *Owner Entities* have an opportunity, in their sole discretion, to oppose disclosure through any available processes.”

***[END OF SUPPLEMENTARY CONDITIONS. APPENDICES FOLLOW.]***



**APPENDIX 1 TO THE SUPPLEMENTARY CONDITIONS  
AGREEMENT TERM SHEET**

<b>Supplementary Condition</b>	<b>Contract Clause</b>	<b>Description</b>	<b>Term</b>
SC-1	Paragraph 1.3 of Article A-1	<i>Ready-for-Takeover Date</i>	
SC-1	Paragraph 1.3 of Article A-1	<i>Completion Date</i>	
SC-3	Paragraph 4.6 of Article A-4	Percentage of the total amount claimed in each <i>Proper Invoice</i> to be retained by <i>Owner</i> as <i>Warranty Security</i>	
SC-3	Paragraph 4.7 of Article A-4	Amount of liquidated damages per day for each day or part day of delay until <i>Ready-for-Takeover</i> is achieved	
SC-12	Definitions	<i>Owner's Agent</i>	
SC-41	Paragraph 5.1.4 of GC 5.1	Email address(es) for submission of all draft applications for payment and <i>Proper Invoices</i> to <i>Owner</i> and <i>Consultant</i>	
SC-52	Paragraph 5.4.6	Owner election to release holdback on an annual basis	
SC-52	Paragraph 5.4.7	Owner election to release holdback on phased basis	
N/A	N/A	Where <i>Contract Price</i> is less than \$250K, does <i>Owner</i> elect not to take the statutory 10% holdback?	

## **APPENDIX 2 TO THE SUPPLEMENTARY CONDITIONS PROPER INVOICE REQUIREMENTS**

Each *Proper Invoice* submitted by the *Contractor* shall be in the form set out in Exhibit A to this Appendix 2 include the following:

- The *Contractor's* name and address;
- The date of the *Proper Invoice*;
- The period during which the services, products or materials were supplied;
- Identification of the *Contract* and any applicable *Change Order* (being the authority under which the subject work, services, products or materials were supplied);
- A description of the subject work, services, products or materials supplied (including quantity where appropriate);
- The amount payable for the subject work, services, products or materials supplied and the payment terms;
- The name, title, telephone number and mailing address of the person to whom payment is to be sent;
- A statement based on the schedule of values submitted pursuant to paragraph 5.2.4;
- A copy of the current *Construction Schedule* and of any look-ahead schedule required by the *Contract Documents*;
- A copy of the *Contractor's* current and up-to-date certificate of insurance evidencing compliance with GC 11.1.
- Where payment is requested for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work*, evidence as reasonably required by the *Consultant* to establish the value and delivery of such *Products*;
- Where payment for *Products* prior to their delivery to the *Place of the Work* is approved by the Owner pursuant to paragraph 3.7.7, evidence as the *Consultant* and *Owner* may reasonably require to establish (i) the value of such *Products*; (ii) compliance with paragraph 3.7.8; and (iii) that such *Products* have been ordered by the *Contractor* for the *Project* and are being manufactured, transported or stored prior to their delivery to the *Place of the Work*;
- All documentation required pursuant to GC 10.4 – WORKERS' COMPENSATION, including a clearance certificate from the *WSIB* stating that all amounts owed to date have been paid in full;

- For each *Proper Invoice* submitted after the first, a statutory declaration using the latest CCDC 9A form of “Statutory Declaration of Progress Payment Distribution by Contractor”;
- For a *Proper Invoice* submitted in respect of final payment:
  - copies of all *Deliverables*, including as-built drawings, and copies of all warranties, guarantees and operation and maintenance manuals related to the *Work*, in hard copy and electronic format as requested by the *Owner*; and
  - an executed final waiver and release in the form attached as Exhibit B to this Appendix 2.
- Any other supporting documents required by the *Contract Documents*.

**[Exhibits A and B to this Appendix 2 follow]**

**EXHIBIT A TO APPENDIX 2 TO THE SUPPLEMENTARY CONDITIONS  
PROPER INVOICE TEMPLATE**

See attached.

**EXHIBIT A  
PROPER INVOICE TEMPLATE**

**INVOICE TEMPLATE**

**Draft Invoice**  **Date:** *Insert date draft invoice sent to owner*  
**Proper Invoice**  **Date:** *Insert date proper invoice sent to owner*  
**Payment due Date** *Insert date payment due to the contractor*

**Owner** *Insert owner's name*  
**Address** *Insert owner's address*  
**Project Manager** *Insert owner's project manager's name*

**Contract Title** *Insert title*  
**Contract Number** *Insert number*  
**Purchase Order Number** *Insert number*  
**Payment Certificate No.** *Insert number*  
**Work Completed From** *Insert period start date*  
**To** *Insert period end date*

**Contractor** *Insert contractor's legal name*  
**Contractor's Address** *Insert contractor's address*  
**Remit Payment To Address** *Insert remittance address if different from contractor's address*  
**Project Manager** *Insert contractor's project manager's name*  
**Contact Info** *Insert phone number and email*  
**HST Registration No.** *Insert number*

**Consultant** *Insert consultant's name*  
**Contract Administrator** *Insert consultant's contract administrator's name*

**Contract Value (excl. HST) (1)** *Insert current contract value including contingency*  
**Contingency Allowance (2)** *Insert current contingency allowance*  
**Approved Change Orders (3)** *Insert value of total approved change orders*  
**Revised Total Contract Value (4)** *(1) - (2) + (3)*  
**Estimated %age of Work Performed** *(Gross payment to date) / (4)*  
**Contingency Unallocated** *(2) - (3)*

	<u>To Date</u>		<u>Previous</u>		<u>Current</u>
Value of Work Performed (excl. Change Orders)	\$ -		\$ -		\$ -
Value of Change Orders Performed	-		-		-
Gross Payment	\$ -		\$ -		\$ -
Less Statutory Holdback (10%)	-		-		-
Release of Statutory Holdback (10%)	-		-		-
Less Finishing Holdback (10%)	-		-		-
Release of Finishing Holdback (10%)	-		-		-
Less Warranty Security	-		-		-
Release of Warranty Security	-		-		-
Less Other Retainers	-		-		-
Release of Other Retainers	-		-		-
Total Net Payment	\$ -		\$ -		\$ -
HST (13%)					-
Less Liquidated Damages	-		-		-
<b>Total Recommended Payment</b>					<u>\$ -</u>

**Attachments submitted with this invoice**  Statutory Declaration  
 Progress and Look Ahead Work Schedules per Contract  
 WSIB  
 Certificate of Insurance  
 Tender Price Breakdown/Schedule of Values  
 Other \_\_\_\_\_

**Approved by Contractor**

**Print Name** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**EXHIBIT B TO APPENDIX 2 TO THE SUPPLEMENTARY CONDITIONS  
FORM OF FINAL WAIVER AND RELEASE**

TO: [OWNER NAME AND ADDRESS] (“*Owner*”)  
FROM: [CONTRACTOR NAME AND ADDRESS] (“*Contractor*”)  
DATE OF APPLICATION  
FOR FINAL PAYMENT: [●]  
RE: CCDC 2 – 2020 Stipulated Price Contract dated [●] (the “**Contract**”)

Except for *Claims* for which *Notice in Writing* has been received by the *Owner* from the *Contractor* prior to the date of the *Contractor*'s application for final payment under the *Contract* (including all such *Claims* listed herein) or *Claims* which the *Contractor* could not reasonably have knowledge of on such date (including the *Contractor*'s claim for any amounts expressly held back by the *Owner* under the *Contract*, including in respect of any unpaid *Warranty Security*), the *Contractor* acknowledges and agrees that:

1. the *Contractor* does not have and will not make any *Claim* for additional compensation under the *Contract*, including without limitation for extras, changes or delays, or any other *Claim* whatsoever against the *Owner Entities* in connection with the *Contract*, the *Project*, or the *Work*;
2. the final payment made by the *Owner* shall be received by the *Contractor* in full and final settlement of the balance due to the *Contractor* under the *Contract* and of any and all *Claims* of the *Contractor* in connection with the *Contract* (except only for the *Contractor*'s claim for any amounts expressly held back by the *Owner* under the *Contract*, including in respect of any unpaid *Warranty Security*); and
3. the *Contractor* gives receipt of full discharge and waives its rights to any and all *Claims* not submitted as of the date of its application for final payment under the *Contract*.

As of the date of this Waiver and Release the *Contractor* has given the *Owner Notice in Writing* of the following *Claims*:

1. [LIST TO BE COMPLETED BY CONTRACTOR]

For certainty, all terms not defined herein shall have the meaning given in the *Contract*.

[CONTRACTOR NAME]

\_\_\_\_\_  
*I/we have authority to bind the company*

\_\_\_\_\_  
*I/we have authority to bind the company*

### APPENDIX 3 TO THE SUPPLEMENTARY CONDITIONS INSURANCE

**Where the original *Contract Price* stipulated in the Agreement is equal to or less than \$5,000,000 the following shall apply:**

1. Commercial General liability insurance shall be with limits of not less than \$5,000,000 per occurrence, an aggregate limit of not less than \$5,000,000 within any policy year with respect to completed operations, and a deductible not exceeding \$10,000. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.
2. Automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy, shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death and damage to property, covering all vehicles owned or leased by the *Contractor*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Contractor* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Contractor*.
3. Manned Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft (if used directly or indirectly in the performance of the *Work*), including use of additional premises, shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than \$10,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the *Owner*.
4. Unmanned aerial vehicle liability insurance with respect to owned or non-owned aircraft (if used directly or indirectly in the performance of the *Work*), shall have limits of not less than \$5,000,000 per occurrence or accident for bodily injury, death and damage to property or such amounts as required by any applicable law or regulation.
5. “Broad form Builders Risk” property insurance shall have limits of not less than the sum of 1.1 times *Contract Price* and the full value, as stated in the *Contract*, of *Products* and design services that are specified to be provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$10,000. The insurance coverage shall not be less than the insurance provided by IBC Forms 4042 and 4047 or their equivalent replacement. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.
6. Boiler and machinery insurance shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the *Work*. The insurance coverage shall not be less than the insurance

provided by a comprehensive boiler and machinery policy including hot testing and commissioning.

7. Contractors' equipment insurance coverage written on an "all risks" basis covering *Construction* Equipment used by the *Contractor* for the performance of the *Work*, shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* may agree to waive the equipment insurance requirement.
8. Contractors' Pollution liability insurance shall have limits of not less than \$5,000,000 per occurrence for bodily injury, death and damage to property, with a deductible not exceeding \$25,000.

**Where the original *Contract Price* stipulated in the Agreement is greater than \$5,000,000 and equal to or less than \$25,000,000 the following shall apply:**

1. Commercial General liability insurance shall be with limits of not less than \$10,000,000 per occurrence, an aggregate limit of not less than \$10,000,000 within any policy year with respect to completed operations, and a deductible not exceeding \$10,000. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.
2. Wrap-up liability insurance shall be with limits of not less than \$10,000,000 per occurrence, an aggregate limit of not less than \$10,000,000 within any policy year with respect to completed operations, and a deductible not exceeding \$100,000. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.
3. Automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy, shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death and damage to property, covering all vehicles owned or leased by the *Contractor*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Contractor* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Contractor*.
4. Manned Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft (if used directly or indirectly in the performance of the *Work*), including use of additional premises, shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of



use thereof and limits of not less than \$10,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the *Owner*.

5. Unmanned aerial vehicle liability insurance with respect to owned or non-owned aircraft (if used directly or indirectly in the performance of the *Work*), shall have limits of not less than \$5,000,000 per occurrence or accident for bodily injury, death and damage to property or such amounts as required by any applicable law or regulation.
6. “Broad form Builders Risk” property insurance shall have limits of not less than the sum of 1.1 times *Contract Price* and the full value, as stated in the *Contract*, of *Products* and design services that are specified to be provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$100,000. The insurance coverage shall not be less than the insurance provided by IBC Forms 4042 and 4047 or their equivalent replacement. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.
7. Boiler and machinery insurance shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the *Work*. The insurance coverage shall not be less than the insurance provided by a comprehensive boiler and machinery policy including hot testing and commissioning.
8. Contractors’ equipment insurance coverage written on an “all risks” basis covering *Construction Equipment* used by the *Contractor* for the performance of the *Work*, shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* may agree to waive the equipment insurance requirement.
9. Project Specific Contractors’ Pollution liability insurance shall have limits of not less than \$10,000,000 per occurrence for bodily injury, death and damage to property, with a deductible not exceeding \$25,000.

[*End of Appendix 3*]