



OAKVILLE



Request for Tenders Town Hall Finance Space B Renovation RFT-53-2024

Contact

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Obtain documents online

<https://oakville.bidsandtenders.ca>

Closing date

On or before 2:00 p.m.
September 4th, 2024

Closing location

<https://oakville.bidsandtenders.ca>
(the Bidding System)

Electronic bid submission only

The Town of Oakville (the town) invites tenders for construction services described as:

The Town of Oakville (the Town) is seeking the services of a qualified General contractor to renovate the existing Finance/ Tax department to introduce a new boardroom, file room and an open office space to accommodate all Tax department staff at 1225 Trafalgar Road Oakville, ON L6H 0H3.

As Further described in Section 4 Scope of Work and Specifications.

To Obtain Documents Online please visit: <https://oakville.bidsandtenders.ca>

If you subscribe to bids&tenders™ you can login into your account to download the bid document(s) without the preview watermark. You may also opt to purchase a one-time download for this opportunity. **Documents are not provided in any other manner.**

All bidders shall have a Bidding System vendor account and be registered as a Plan Taker for this bid opportunity, which will enable the bidder to download the Request for Tender without the watermark preview, to receive addenda email notifications, download addenda and to submit their bid electronically through the Bidding System.

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 in an “internet traffic jam” due to file transfer size, transmission speed, etc. It is a bidder’s responsibility to deliver its bid to the proper place at the proper time, and to transmit their bid sufficiently in advance of the time set for receipt of bids to allow for timely receipt by the town.

For the above reasons, the town recommends that bidders allow sufficient time to upload their bid submission and attachment(s) (if applicable) and to resolve any issues that may arise. The closing time and date shall be determined by the town’s Bidding System web clock.

The town also recommends that bidders take advantage of the Bidding System feature that allows bidders to view their uploaded documents prior to submission of their bid. By doing so, a bidder may avoid an error that could occur by uploading an incorrect or unreadable file, which would render their submission non-compliant.

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 to support@bidsandtenders.ca. Late Bids will not be accepted.

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 vendor account and register as a Plan Taker for the bid opportunity at <https://oakville.bidsandtenders.ca>.

All inquiries must be submitted through the bidding system by utilizing the Submit Question button.

The town’s Procurement Policy By-law forms part of all competitive bid documents. The By-law can be found on the Town of Oakville website at: oakville.ca/business/quotes-quotes.html

Leanne Dacosta
Manager of Purchasing

NOTICE

Further to the recent amendment to the Construction Act, Construction Act, R.S.O. 1990, c. C.30, the provisions of the Act, are incorporated in the tender document by this reference, except as otherwise provided in the tender document and the CCDC form of contract.

If any provision contained in the tender document and or the contract including the supplementary conditions, conflict with or is inconsistent with the Construction Act, the Act shall govern and control.

TABLE OF CONTENTS

SECTION 1 INSTRUCTIONS TO BIDDERS

SECTION 2 GENERAL CONDITIONS

SECTION 3 LIABILITY AND INSURANCE REQUIREMENTS

SECTION 4 SCOPE OF WORK AND SPECIFICATIONS
REFER TO APPENDIX B,C,D

SECTION 5 SCHEDULES - **TO BE COMPLETED AND/OR UPLOADED ONLINE ONLY**

SECTION 6 APPENDICES

APPENDIX A SUPPLEMENTARY CONDITIONS TO CCDC 2008
STIPULATED PRICE CONTRACT **Updated April 1, 2019.**

**APPENDIX B, C, & D ARE UPLOADED TO THE ONLINE BIDDING SYSTEM
AS A SEPARATE DOWNLOAD IN THE ONLINE BIDDING SYSTEM AND
FORM PART OF THIS TENDER.**

APPENDIX B-RFT-53-FINANCE SPACE B-RENO-IFT DRAWINGS
APPENDIX C-RFT-53-FINANCE SPACE B-RENO-IFT SPECIFICATIONS
APPENDIX D-RFT-53-FINANCE SPACE B-RENO- DSS REPORT

SCHEDULE OF EVENTS

THESE DATES ARE APPROXIMATE AND SUBJECT TO CHANGE

Release of RFT	August 13th, 2024
Mandatory Site Visit - Mandatory	10:00 a.m., August 20th, 2024
Close of Question Period	2:00 p.m., August 27th, 2024
RFT Closing Date	2:00 p.m., September 4, 2024

Mandatory Site Visit:

Date and Time:	Tuesday August 20th, 2024, at 10:00 a.m.
Location:	Oakville Town Hall, 1225 Trafalgar Road, Oakville, ON L6H 0H3 Bidders to meet outside the main entrance door of the Oakville Town Hall building to sign-in with the Purchasing representative.
Other Instructions:	Bidders to park in the visitors parking lot only. Bidders should wear hi-visibility safety vests. We strongly recommend for any applicable sub-contractors to attend

	this site visit as it is not possible to schedule subsequent site visit(s).
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**The Corporation of the Town of Oakville
REQUEST FOR TENDER # RFT-7-2024
Town Hall Cafeteria into Flexible Office Space Renovations**

The Town of Oakville (the Town) is seeking the services of a qualified General contractor to renovate the existing Finance/ Tax department to introduce a new boardroom, file room and an open office space to accommodate all Tax department staff at 1225 Trafalgar Road Oakville, ON L6H 0H3.

1.1 Instructions to Bidders

1.1.1 **Electronic bid submissions only, shall be received by the Bidding System, on or before 2:00 p.m. (14:00 hours) local Oakville time, on September 4th, 2024.**

1.1.2 Should the town receive a bid that is subsequently found to be from a bidder that is not registered with bids&tenders™, and the bidder did not obtain their bid document from <https://Oakville.bidsandtenders.ca>, the town reserves the right to remove the bid from further consideration. Bids submitted by any other method will not be accepted.

1.1.3 It is the sole responsibility of each bidder to make sure that its bid is delivered and be received by the Bidding System, on or before 2:00 p.m. (14:00 hours) local time. Tenders received after the specified closing date and time will not be accepted by the Bidding System.

1.1.4 There will not be a public opening for this tender. When tenders are opened the total tendered price(s) "As Read" bid results will be posted to the town's Bidding System at <https://oakville.bidsandtenders.ca> and are typically available within 24 hours of the tender closing.

Bid results will not be provided in any other manner.

1.1.5 Following the opening, all bids will be reviewed for compliance with the tender terms and conditions. Once the determination of compliance is complete, bid results will be updated on the town's Bidding System at <https://oakville.bidsandtenders.ca> if required.

1.1.6 The town shall not be liable for any costs, expenses, loss or damage incurred by any bidder in the preparation and submission of a tender, the tender process, including the evaluation and interview process (if any), in the negotiation, preparation and execution of the award, or the acceptance or non-acceptance by the town of any tender, and by submitting a bid each bidder shall be deemed to have agreed that it has no claim. The town shall not be liable for any costs, expenses, loss or damage resulting from any technical difficulty with the Bidding System, including, without limitation, a power failure or a bidder's inability to upload a bid submission.

1.1.7 The working language of the town is English and all responses to this Request for Tender must be in English.

1.2 Site Meeting - Mandatory

1.2.1 Where a site meeting is mandatory, bidders must sign in prior to start of meeting. Once the meeting begins, the sign-in sheet will be removed. No late sign-in will be permitted. Bids will only be accepted from bidders who are signed in and in attendance for the entire meeting.

- 1.2.2 In the event that no potential bidders or only one potential bidder attends the mandatory site meeting, the town reserves the right in its absolute discretion to re-schedule a second meeting to ensure competitive bid submissions are received in accordance with the town's Procurement Policy By-law.
- 1.2.3 Before submitting a tender, bidders shall carefully examine drawings, specifications and site conditions, fully inform themselves of all existing conditions and limitations and shall include in the tender, sums to cover the cost of all work included in the tender document. The bidder shall accept sole responsibility for any error or neglect in respect to this requirement and no allowance shall be made by the town for the bidder's failure to do so.

1.3 Clarification

- 1.3.1 If a bidder finds discrepancies in or omissions from the tender documents, or if a bidder is in doubt as to their meaning, questions must be submitted through the Bidding System portal by clicking on the "Submit Question" button on the bid details page for the applicable opportunity. Questions received after the deadline or via any other method are not guaranteed a response.
- 1.3.2 The town shall not be bound by any oral instruction, amendment, clarification, information, advice or suggestion from any town staff or consultant to the town.
- 1.3.3 Correspondence sent to persons other than the designated purchasing contact, including other potential bidders, with respect to the tender, may be grounds for disqualification, and the town may, in its discretion, and in addition to any other rights or remedies available at law, reject any potential or actual tender by that bidder.

1.4 Addenda

- 1.4.1 The town reserves the right at any time prior to the closing time:
- to withdraw or cancel the Request for Tender;
 - to extend the time for the submission of bids; or
 - to modify these instructions, the schedule of prices, the specifications, or the description of the project, work or supply;

By the publication of an addendum or other notice, and the town shall not be liable for any expense, cost, loss or damage incurred or suffered by any bidder (or any other person) as a result of its so doing.

- 1.4.2 Bidders shall acknowledge receipt of any addenda when submitting their bid through the Bidding System. Bidders shall check the appropriate box for each addenda and any applicable attachments that have been issued. This must be done before a bidder can submit their bid submission. Addenda shall become part of the tender documents and will be considered in determining the bid price(s).
- 1.4.3 Addenda will be issued through the Bidding System, typically forty-eight (48) hours prior to the closing date and time, unless otherwise approved. It is the responsibility of the bidder to have received all addendum/addenda that have been issued. Bidders should check online at <https://oakville.bidsandtenders.ca> prior to submitting their bid and up until bid closing date and time in the event additional addenda are issued.

- 1.4.4 If a bid has been submitted prior to an addendum/addenda being issued by the town, the Bidding System shall automatically **retract** the bid submission. The bid submission status will be changed to an **incomplete status** (NOT accepted by the town). The retracted bid can be viewed by the bidder in the **“MY BIDS”** section of the Bidding System. The bidder becomes solely responsible for the following actions:
- i) make any required adjustments to their bid; and
 - ii) acknowledge the addendum/addenda; and
 - iii) Ensure the re-submitted Bid is successfully **received** by the Bidding System on or before 2:00 p.m. (14:00 hours) local Oakville time, on the bid closing date.

SPECIAL NOTES:

It is strongly recommended that bidders have one or more “invited” company contacts in your Bidding System vendor account with their own unique login to the Bidding System. This will permit these contacts to manage (register, submit, resubmit, edit and withdraw) bids for which your company is a Registered Plan Taker. In the event the original contact becomes unavailable, these additional contacts may act on your company’s behalf and have the authority to receive addendum notifications from the Bidding System; submit bids electronically through the Bidding System; and/or withdraw, edit, acknowledge addendum/addenda or resubmit, etc. on your behalf.

Do **not** invite any additional contacts that you do not want to have access to view, edit, submit, resubmit and/or withdraw or who may be in direct competition, for example a company may have two divisions that could compete for the same bid opportunity.

If you are an invited company contact, it is imperative that you create your login from the link contained in the email invitation. Do NOT go directly to the website and create a separate vendor account.

1.5 Withdrawal of Bids / Irrevocable

- 1.5.1 Bidders may edit or withdraw their bid submission online through the Bidding System prior to the closing date and time. However, the bidder is solely responsible to:
- i) make any required changes to their bid (if applicable); and
 - ii) in the case where the bidders wishes to re-submit a bid, it is **received** by the Bidding System before the specified bid closing date and time.
- 1.5.2 Requests to withdraw bids received by the Bidding System will not be considered after the closing date and time.
- 1.5.3 A bid shall be irrevocable (i.e. open for acceptance by the town) for a period of sixty (60) days following the closing date for the tender.

1.6 Confidentiality/Non-Disclosure of Information

- 1.6.1 It is town practice to disclose the name of the successful bidder(s) and the total contract price. The town shall make every effort to safeguard the confidentiality of other information included in each submission; however, all submissions are subject to the provisions of the Municipal Freedom of Information and Privacy Act (MFIPPA and the Personal Information Protection and Electronic Documents Act.

- 1.6.2 The personal data provided by the town to the successful bidder (or collected on behalf of the town by the successful bidder) shall be used in compliance with Section 31 of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

The successful bidder agrees that during and after the effective period of the contract, all information provided to the successful bidder by the town shall be treated as privileged and confidential and shall not be used by the successful bidder for any other purpose nor divulged to any third party for any reason whatsoever without the written permission of the town, and which is specifically authorized by MFIPPA.

- 1.6.3 The Town of Oakville logo should not be used by the bidder without express permission from the town, as the Logo is a registered trademark belonging to the Town of Oakville.

1.7 Schedule of Prices (Bid Form)

- 1.7.1 The amounts stipulated on the bid form is intended to cover the cost of the complete work as described in this tender.
- 1.7.2 All prices to be tendered in Canadian Funds, FOB Destination (town locations). HST will be extra and should not be included in bid prices.
- 1.7.3 The bid form may include a "Contingency" amount that has been identified for unforeseen work that may arise. Payment from this amount will be for work requested and/or approved by the town.
- 1.7.4 Pricing for any requests under the heading Optional Prices will not to be included in the summary table. Optional items may or may not be selected and added to the total contract amount at the sole discretion of the town.
- 1.7.5 Pricing for any requests under the heading Provisional Prices will be included in the summary table. Provisional items may be cancelled by the Project Manager at any time during the contract. The Contractor shall have no claim for delay and loss of overhead or profit should the Project Manager decide to delete any or all Provisional Items.
- 1.7.6 The person submitting the bid on behalf of the bidder shall have authority to bind the bidder.
- 1.7.7 All information required on forms shall be completed in full including references and subcontractors that it proposes to use for work described.

The town will also review the bidder's prior performance on other contracts with the town or conduct on previous contracts with the Town or other institutions.

- 1.7.8 All price(s) submitted shall be a reasonable price for each particular item as determined by the purchasing agent and under no condition will an unbalanced tender be considered. Submissions containing prices which appear to be so unbalanced as to likely affect the interests of the town adversely will be clarified and may be rejected.

1.8 Bid Bond / Agreement to Bond

- 1.8.1 Each Tender must be accompanied by a 10% Bid Bond.

- 1.8.2 Bonds shall be from a Surety Company authorized by law to carry on business in the Province of Ontario, in favour of the Town of Oakville. Bonds must be irrevocable and open for bid acceptance for at least sixty (60) days from the date of bid closing.
- 1.8.3 Each submission must be accompanied by both a digital Bid Bond **and** a digital Agreement to Bond. The town will only accept submissions that include both the Bid Bond and Agreement to Bond in an electronically verifiable/enforceable (e-Bond) format. For more information regarding e-Bonds bidders are encouraged to contact their surety company or visit the Surety Association of Canada at the following link:
<https://www.surety-canada.com/en/ebonding/index.html>
Information at this site includes;
- A list of third parties that provide online surety digital bond services such as Mobile Bonds or Xenex. The town does not endorse or promote any third party digital bond service provider.
 - An Industry Checklist which Digital Bonds provided should meet.
- 1.8.4 All instruction details for accessing authentication should be included with the uploaded Bond.
Note: A scanned pdf copy of a Bid Bond or an Agreement to Bond are not acceptable.
- 1.8.5 Where a surety provides the Bid Bond and Agreement to Bond in a single zipped file download, bidders shall upload this file to the town's Bidding System, in the bid submission file labelled "Bid Bond and Agreement to Bond". Bidders are cautioned not to alter the file in any way prior to uploading as this could affect the electronically verifiable/enforceable format.
- 1.8.6 Where a surety provides the Bid Bond and Agreement to Bond separately, bidders shall create a **single zip file** (see Bidding System instructions on how to create a zip file) containing **both** the Bid Bond and Agreement to Bond and upload the zipped file to the file labelled "Bid Bond and Agreement to Bond". **Do not merge electronic bond files manually.**
- 1.8.7 Any costs associated with e-Bonds are the responsibility and cost of the bidder. No interest will be paid on any bid deposit.

1.9 Performance Bond & Labour and Material Bond

- 1.9.1 Upon award, the successful bidder shall provide a **50% Performance Bond and a 50% Labour and Materials Bond**, in an original form, issued by a reputable bonding company, licensed to carry on business in Ontario, payable to the Town of Oakville. Bonds **must** be in original form, completed, duly signed and executed, and submitted to the town when requested.
- 1.9.2 If the successful bidder fails to provide a performance bond and labour and materials bond when requested, the town shall declare the bid deposit forfeited and the bidder will be held responsible for any increased costs or damages incurred by the town. Any bidder who fails to provide all required documents within the timelines provided, or otherwise fails to enter into an agreement with the town upon notice of being the successful bidder may be subject to suspension by the town and prohibited from bidding for a period of up the three (3) years.

1.9.3 Performance surety shall guarantee all conditions as set out in the contract, including proper execution of the work and for all matters for which the successful bidder is responsible for throughout the one-year period of maintenance and warranty.

1.9.4 Any costs associated with performance surety are the responsibility and cost of the bidder.

1.10 Brand Names

1.10.1 Any reference to the trade name, brand name or catalogue number of a particular manufacturer shall be understood to have been made solely for the purpose of establishing and describing general performance and quality levels of the item to be supplied and shall not be construed to restrict bidders to that manufacturer. Where substitutes are not being accepted the Specifications and/or the Bid Form shall indicate “No Substitutes”. It should be noted that in some cases specified products may be town Standards and may not be considered for substitution.

1.10.2 Where approved equivalents are permitted, approval must be obtained from the town, in writing, prior to acceptance. Requests must be submitted through the online system using the “submit a question” button for consideration during the open question period, prior to cut off.

Include brand name and model number of the substitute manufacturer. It is not necessary to submit samples unless requested, although it is the bidder's responsibility to demonstrate that the product bid meets the specifications. Contractor or Supplier shall be responsible for all costs associated with the use of the “approved equal”. The onus is on the Contractor or Supplier to provide all pertinent information in the request so the town can review and make a determination as to acceptability of the proposed substitute. Once a decision has been rendered it will not be reexamined.

The town shall be the sole judge (in its absolute discretion) as to whether an equivalent meets its specifications.

If no substitution is indicated, it will be assumed the price is for the product specified and the town will not accept substitutes after closing of the bid.

1.11 Guidelines Regarding Bid Irregularities

1.11.1 A bid irregularity is a variance between the requirements (terms, conditions, specifications, special instructions) of a bid request and the information provided by the bidder in a bid response.

1.11.2 Examples below represent the general types of bid irregularities and the resulting action. This list is not inclusive and for irregularities not listed the Manager of Purchasing shall determine the resulting action. The town shall have the right to accept or reject any or all bids, to waive minor irregularities at its sole discretion, or request a bidder rectify any deviation at the town’s sole discretion.

Late Bid	Bid received after the closing date and time specified in the bid documents.	Bidding System does not accept late bids
Site Meeting	Bidder did not attend a mandatory site meeting.	Bid not accepted by the Bidding System

Method of Delivery	Where the bid has been submitted via any other method other than as allowed for in the bid documents.	Bid Declared Non-Compliant
Format	Bid not on the form supplied by the town or not in the format specified by the town.	Bid Declared Non-Compliant
Bid Bond	Amount less than the amount indicated in the bid document.	Bid Declared Non-Compliant
Bid Bond / Agreement to Bond	Bond is missing, not an electronically verifiable/enforceable (e-Bond), or bonding company not licensed to conduct business in Ontario.	Bid Declared Non-Compliant
Qualified Bid	Where the bid has been qualified by changes to specification or major requirements and acceptance would allow an unfair advantage over competitors.	Bid Declared Non-Compliant
Failure to Execute	Fails to execute a contract or supply supplementary documents after Intent to Award letter has been issued.	Bid Set Aside

1.12 Reserved Privileges of the Owner

1.12.1 Without limiting or restricting any other right or privileges, the town shall have the following reserved rights and privileges, which may be exercised or waived in its absolute discretion to:

- a. reject any or all bids and the lowest tender will not necessarily be accepted;
- b. reject any bid where the bidder has failed to execute a Contract or provide performance surety for any awarded Contract for the town in the past;
- c. reject any tender where the bidder has defaulted or failed to satisfactorily complete other work for the town in the past;
- d. reject any tender that contains qualifying conditions or otherwise fails to conform to these tender documents;
- e. reject any tender submitted by a company which in the opinion of the town or its professional advisors, does not possess the experience, or financial, technical, personnel or other resources that may reasonably be expected to be necessary in order to carry out the obligations that the bidder proposes to assume under the terms of its tender;
- f. not accept a tender from any person or corporation which includes any non-arms length corporation who, or which, has a claim or instituted a legal proceeding against the Town of Oakville, or against whom the Town of Oakville has a claim or instituted a legal proceeding with respect to any previous contracts, bid submissions or business transactions who is listed as either the proposed general contractor or subcontractor and/or vendor within the submitted responses; and/or

- g. reject any tender submitted by a bidder or cancel the Contract awarded to that bidder without penalty, where any information provided by the bidder in its tender or as part of any pre-qualification procedure is determined to be false or otherwise misleading in any material respect.
 - h. In cases where the town is required to obtain permits from governing authorities and those permits are not able to be obtained in a timely manner, the town reserves the right not to award the bid.
- 1.12.2 Where only one tender has been received or the lowest priced compliant tender submission exceeds the town's budgeted or estimated costs, the town may, but is not obligated to:
- a. cancel the Request for Tender;
 - b. re-issue the Request for Tender and accept new tenders based on revised documents; or
 - c. enter into negotiations with the bidder with the lowest priced and compliant tender submission provided that the requirements of the tender documentation are not substantially modified, and no other bidder shall have any right to object that its tender would have been lower had the negotiated amendments been included in the original Request for Tender.

1.13 Bribery and Collusion

- 1.13.1 Bidders including any of their agents are prohibited from engaging in any form of political or other lobbying of any kind whatsoever to influence the outcome of the tender process and the town shall be at liberty to reject the bidder's submission or cancel any contract in contravention of this requirement.
- 1.13.2 The bidder further acknowledges that its bid is made without any connection, knowledge, comparison of figures or arrangements with any other firm or person making a bid for the same work and is in all respects fair and without collusion or fraud.

1.14 Conflict of Interest

- 1.14.1 No employee of the town, advisors or members of Council of the town shall personally sell goods or services to the town, nor have a direct or indirect interest in a company that sells goods or services to the town, other than a de minimus passive investment in a publicly issued entity. The town may reject any bid submitted, or cancel any Contract awarded, in contravention of this requirement.
- 1.14.2 The successful bidder shall refrain from acting in any case where there may be any conflict of interest between it (or any of its directors, officers, or employees) and the town, and the successful bidder shall notify the town immediately of any actual or potential conflict of interest that may arise during the performance of the Contract.
- 1.14.3 It is imperative that any real or perceived conflict that is evident or suspected be declared and adjudicated in order to preserve the integrity of the bid process. If the town discovers a bidder's failure to disclose a conflict of interest, the town may disqualify the bidder or terminate any contract pursuant to this tender process.

1.15 Award Process

- 1.15.1 Following written notification from the town to the successful bidder, the executed Contract, performance surety and all other required documentation will be provided by the successful bidder within ten (10) calendar days or sooner if possible. The form of contract used for this tender shall be CCDC-2 2008 Stipulated Price Contract (Refer to Appendix A for Supplementary Conditions to the CCDC-2-2008 Stipulated Price Contract. A purchase order will be issued with the award and the purchase order number must be included in all requests for payment.
- 1.15.2 Award of the tender will be made by the town as soon as practical. Award may be subject to budget approval and will occur on approval by town officials as designated in the By-law. Once approvals are received from designated officials the award is deemed to have been made by the town.
- 1.15.3 Where quantities are noted as approximate, the town may, at its discretion, purchase more or less of the commodity based on the unit price bid.
- 1.15.4 Only contractors that the town deems as fully qualified will be considered for award of this tender. It is the bidder's responsibility to provide satisfactory references that are relevant to the current project in scope and value. The town will also review the bidder's prior performance on other contracts with the town and when relying on the services of a Consultant in the conduct of the project, the knowledge of that Consultant will also be considered.
- 1.15.5 In the event the successful bidder fails to execute the Contract as prescribed or fails to provide performance surety as applicable within ten (10) calendar days following written notification from the town to the successful bidder, the town may grant additional time to fulfill the necessary requirements, if in the opinion of town staff the extension does not compromise the interests of the town.
- 1.15.6 Where the successful bidder fails to execute the Contract or provide performance surety as set out in Section 1.9, the town shall declare the bid deposit forfeited and the bidder will be held responsible for any increased costs or damages incurred by the town, such amounts being a fair and reasonable estimate of foreseeable losses. The town may then make a recommendation to:
- a. award the contract to the next lowest compliant bidder, or
 - b. cancel the Request for Tenders.

Any bidder who fails to provide all required documents within the timelines provided, or otherwise fails to enter into an agreement with the town upon notice of being the successful bidder may be subject to suspension by the town and prohibited from bidding for a period of up to three (3) years.

1.16 Bid Review Procedures

- 1.16.1 To maintain the integrity of the process, a bidder who believes there has been a breach of the requirements of the Canadian Free Trade Agreement (CFTA), shall take the following steps:

- a. A request by a bidder for a bid review must be received by the Manager of Purchasing within ten (10) business days from the time when the basis of the dispute became known or reasonably should have become known. The request must provide sufficient detail including reference to the specific Article in the CFTA the bidder believes was breached.
- b. An adhoc review committee consisting of the Manager of Purchasing, the departmental director and the town solicitor or their approved designates shall review such dispute.
- c. Findings shall be issued to the bidder in writing within 90 days after filing of its dispute, unless an extension of time is warranted due to extenuating circumstances, in which case the findings will be issued within 135 days after the filing of the dispute.
- d. The town and the bidder shall seek to resolve the dispute through consultations.
- e. Where a bidder provides an appeal, in writing, to the review committee's initial findings, the town will establish an arbitrator independent of the town to receive and review the appeal.
- f. If the arbitrator determines that there has been a breach, compensation to the bidder is limited to the costs of the preparation of the bid submission, or the costs relating to the dispute, or both.
- g. If the town and the bidder cannot agree upon the fair and reasonable amount of such costs defined under item f., their quantum may be referred to the arbitrator for determination. The costs to be borne by the party that is unsuccessful in the dispute.

1.17 MANDATORY SUBMISSION REQUIREMENTS

Bidders shall refer to the instructions attached to the solicitation for the Submission Forms (within the online bidding system) requirements and provide all required information in accordance with the instructions provided in the bidding system.

Each bidder must include the following mandatory Submission Forms and provide all required information:

1. Schedule of Prices
2. Completed Reference Form
3. Completed Subcontractor Form
4. 10% Bid Bond
5. Agreement to bond for 50% Performance and 50% Labour and Materials

SECTION 2 – GENERAL CONDITIONS

2.1 Governing Codes

This Contract shall be subject to any of the following governing codes (latest edition) having jurisdiction over this project, including but not limited to:

- Ontario Building Code
- Fire and Electrical Safety Codes
- Fire Marshal Act
- National Fire Prevention Authority
- Ontario Water Resources Act
- Gas Utilization Code
- Environmental Protection Act
- ESA (Electrical Safety Authority)
- Municipal Bylaws
- Ontario Occupational Health and Safety Regulations

2.2 Owner's Designate

The Project Manager shall inspect and oversee all work included and specified herein to the extent of ensuring that specifications are being followed and the quality of work meets the expectations of the town and shall have authority to stop the work whenever such stoppage, in his/her opinion, may be necessary to ensure the proper execution of the Contract. The Project Manager shall also have authority to reject all work and materials which do not conform to the tender specifications, or which are viewed as substandard, flawed or in any other way deemed not suitable for the town's purposes, and to answer all questions which arise in the execution of the work. The town reserves the right to change the Project Manager upon written notice to the Contractor.

2.3 Order of Precedence

2.3.1 If there is a conflict within the contract documents, the order of priority of documents, from highest to lowest, shall be as follows (the original copy of the issued document and addendums, as posted in the Bidding System shall prevail).

1. Change Orders and/or Change Directives
2. Executed Agreement Between Owner and Contractor - CCDC-2-2008
3. Contractor's Bid Submission Including Schedule of Prices
4. Addenda (as issued)
5. Special Provisions
6. Supplementary Conditions to Contract CCDC-2-2008
7. Definitions in CCDC-2-2008 Stipulated Price Contract
8. General Conditions in CCDC-2-2008 Stipulated Price Contract
9. Specifications
10. Drawings
11. Tender General Conditions, Instructions to Bidders

2.4 Scope of Work / Specifications / Record Drawings

- 2.4.1 It is the intent of the specifications to furnish and install all materials and equipment as hereinafter specified and/or as shown in the drawings.
- 2.4.2 Work area to be restricted to area shown on drawings.
- 2.4.3 In cases where the work necessitates a larger disturbed area, it shall be the responsibility of the Contractor to notify the Project Manager and receive written approval for extending the area of disruption.
- 2.4.4 The specifications are to be considered as an integral part of the plans, which accompany them; neither the plans nor the specifications shall be used alone. Any item or subject omitted from one, but which is mentioned or reasonably implied in the other, shall be considered as properly and sufficiently specified, and must, therefore be provided. Misinterpretations of either the plans or the specifications shall not relieve the Contractor of their responsibility.
- 2.4.5 Construction drawings and specifications required for this project shall be issued by the Owner's representative at the contractor's request. Any additional drawings such as shop drawings, etc., shall be approved by Owner's representative.
- 2.4.6 All Drawings used on the site or in the shop shall bear the signature of the Owner's representative or "Approved for Construction" stamp of the owner.
- 2.4.7 Additional verbal instructions given by the Owner's representative shall be confirmed in writing and shall become part of this specification. Any such addition shall not alter the intent, limit, quality or quantity of the contract.
- 2.4.8 The Contractor shall be responsible for obtaining a list of the shop drawings required by the Owner.
- 2.4.9 Shop drawings shall be processed by the Contractor according to the manufacturer's requirements.
- 2.4.10 The Owner shall require two (2) copies only, of reviewed drawings as processed by the Contractor unless otherwise directed by the Owner.
- 2.4.11 The Owner will not review the drawings for approval, they shall only be required for the intent of installation and general information, unless otherwise directed by the Owner.
- 2.4.12 All shop drawings received by the Owner shall bear the Contractor's approved or reviewed stamp, and shall be received prior to manufacture of the product.

2.5 Permits, Licenses, Laws and Regulations

- 2.5.1 With the exception of the Building Permit, the Contractor shall apply and pay for all necessary permits and licenses, approvals and consents required for the execution of the Work. The Contractor shall give all necessary notices and pay all fees required by law and comply with all laws, by-laws, rules, regulations, and requirements relating to the work and to the preservation of public health. The Contractor shall be responsible for the safety of all workers and equipment on the site in accordance with all applicable safety legislation passed by Federal, Provincial and Local Authorities governing construction safety.

- 2.5.2 The Contractor shall ensure that all persons supplying services or materials to the Project, Work or Supply hold all valid and current licenses required by law with respect to the services or materials to be supplied by them respectively. Any Contractor who is not a registered entity in Ontario shall obtain all necessary approvals, consents, permits, licences, certificates, registrations, and other authorizations prior to execution of the Contract. The Contractor shall ensure that all Subcontractors the Contractor proposes to use for carrying out any of the Work required by the Contract and who are not a registered entity in Ontario have obtained all necessary approvals, consents, permits, certificates, registrations, and other authorizations prior to execution of the subcontract.
- 2.5.3 The Contractor shall comply with all applicable statutes, law, by-laws, regulations, ordinances, notices, and orders of the Federal, Provincial or municipal government from time to time in effect during the course of the Contract, and where the attention of the Contractor is called to any violation thereof by the town or Consultant, the Contractor shall immediately desist from and remedy that violation.
- 2.5.4 At all times the Contractor and all subcontractors engaged in the Work shall comply with all requirements of the town's Corporate Health and Safety Manual and shall confirm compliance as indicated on the bid form provided. The town's Corporate Health and Safety Manual can be found on our website at:
<http://www.oakville.ca/assets/town%20hall%20-%20employee%20resources/hs-hsmanual.pdf>

2.6 Scheduling and Hours of Work

- 2.6.1 The Contractor and all of its employees are required to identify themselves as the Contractor, or employee of the Contractor, and shall be equipped with sufficient identification for that purpose.
- 2.6.2 The estimated starting date for this project is **September 16th, 2024**. The successful bidder agrees to start the work on this project within seven (7) calendar days from the receipt of written notification from the town that construction can start. Start of construction may be dependent upon the receipt of final approvals from various agencies and ministries.
- 2.6.3 The successful bidder shall substantially complete this project to the satisfaction of the Project Manager by **October 28th, 2024**.
- The term of the agreement will be in effect until the completion of the Deliverables.
- 2.6.4 In accordance with the town's Noise By-law 2008-098, Schedule 2, the Contractor shall not carry out operations under this contract:
- after 7:00 p.m. or before 7:00 a.m. Monday to Saturday, and
 - all day Sunday and Statutory Holidays.
- If the Contractor wishes to perform work on Saturdays between 7:00 a.m. and 7:00 p.m., they may do so with the written permission of the Project Manager, some restrictions may apply.
- 2.6.5 The Project Manager may, in writing, require the Contractor to cease operations on any day or days if the work is so located that the Project Manger deems it expedient to do so.

2.7 Code of Conduct and Behaviour

- 2.7.1 Each of the parties agrees to act in a manner that is consistent with the Town's Policy HR-MNG-006 – Employee Code of Conduct and Policy G-GEN-006 – Code of Conduct for Members of Council and Local Board Members in their business dealings with the other. These policies can be found on the Town's website at: <http://oakville.ca/townhall/policies-procedures.html>.
- 2.7.2 The Town of Oakville is committed to maintaining a healthy, safe and supportive workplace for all employees that is free from discrimination and harassment. All employees are to be treated with respect and dignity in keeping with the town's values of accountability, dedication, honesty, innovation, respect and teamwork. The policy applies to all town employees (including but not limited to full-time, part-time, students, volunteers, temporary and interns), councillors, contractors, consultants, workers and every person accessing town property, services, events and programs. Each of the parties agrees to act in a manner that is consistent with the Town's Policy HR-MNG-008 - Respectful Conduct, including the associated procedures. These policies and procedures can be found on the Town's website at: <http://oakville.ca/townhall/policies-procedures.html>.

2.8 Accessibility

- 2.8.1 The Town of Oakville is committed to providing accessible programs, services and facilities to help achieve the town's vision to be the most livable town in Canada and to comply with the Accessibility for Ontarians with Disabilities Act, 2005 (AODA). The goal of the AODA is to make Ontario accessible to people with disabilities by 2025. As required under the AODA, each time the town purchases goods, services and facilities it must incorporate accessibility design, criteria and features unless not practicable to do so.
- 2.8.2 The Act also requires persons who provide goods, services or facilities on behalf of the Town of Oakville to ensure training on the AODA's Integrated Accessibility Standard Regulation and the *Human Rights Code* as they pertain to persons with disabilities.
- 2.8.3 To comply, all suppliers and contractors must provide training in accordance with the legislation to all its employees and must be able to provide proof that training has occurred. By signing the Bid Form, you certify that your firm is compliant and you are able to provide proof of training upon request.

The Province of Ontario has developed training that can be taken online and its website provides convenient tools to ensure your employees are properly trained. The Town of Oakville has also developed training materials which can be found on the town's website at <http://www.oakville.ca/business/tenders-quotes.html>.

- 2.8.4 The Town of Oakville is committed to providing accessible facilities, programs and services and to be the most livable town in Canada. The Oakville Universal Design Standards (OUDS) was developed to help staff realize this commitment and provides an innovative and detailed approach for the design of barrier free and accessible facilities. A made-for Oakville standard, it replaces the town's 2008 Guidelines for the Design of Accessible Facilities and its use is mandatory for all construction projects at town owned facilities or leased premises and includes new construction, additions, renovations and capital replacement.

2.9 Sustainable Purchasing

- 2.9.1 The procurement needs of the town represent a significant level of responsibility to demonstrate leadership and support for greener business practices. Integrating environmental performance and impact into supply chain decisions is a commitment to improvement of the environment and the quality of life of town residents.
- 2.9.2 Green procurement shall be viewed in the context of achieving value for money for the total life-cycle costs. It requires the inclusion of environmental impact considerations into the procurement process, including planning, acquisition, use and disposal. Value for money shall include the consideration of many environmental tangible and intangible factors when determining the total life-cycle costs and environmental impact.
- 2.9.3 For further information about sustainable purchasing initiatives visit the town's website:
<http://www.oakville.ca/townhall/en-gen-001.html>

2.10 Environmental Protection Act

- 2.10.1 No persons shall use any facilities or equipment for the storage, handling, treatment, collection, transportation, processing or disposal of waste that is not part of a waste management system for which a certificate of approval has been issued and accept in accordance with the terms and conditions of such certificate in compliance with the provisions of the EPA and its Regulations. The persons or corporation shall advise the town of any spills in accordance with the Spills Response Program required under the EPA.

2.11 Extent of Work

- 2.11.1 The work to be performed under these specifications shall include the supply of all labour, transport, material services, and equipment necessary, and required to construct the following work as described by; or reasonably inferable from these specifications.
- 2.11.2 Work area to be restricted to area shown on drawings.
- 2.11.3 In cases where the work necessitates a larger disturbed area, it shall be the responsibility of the Contractor to notify the Project Manager and receive written approval for extending the area of disruption.

2.12 Materials

- 2.12.1 The contractor shall be responsible for the supply of all materials required for the complete construction of the work as described herein and specified on the drawings unless otherwise specifically stated in writing.
- 2.12.2 All materials are to be delivered to the site and stored in appropriate locations with manufacturer or distributor's label intact; handled and stored in accordance with manufacturer's requirements.
- 2.12.3 All materials to be used in the work are to be new without defects. Failure of adherence or failure to comply with specifications requirements shall cause rejection of materials or replacement of same, at contractor's expense.

2.13 Site

- 2.13.1 The Contractor is responsible for damage caused to surrounding facilities, and for the protection of the public. Facilities and/or surroundings damaged by the Contractor shall be repaired and paid for in full by the Contractor at no cost to the town.
- 2.13.2 Prior to commencing any excavation work, the contractor shall establish as near as possible, the location and state of use of all utilities or services, and is responsible for damage or relocation incurred during the execution of the project.
- 2.13.3 The setting out of work shall rest solely with the Contractor who will be responsible for the same. It is the Contractor's responsibility to verify all grades, lines, levels, and dimensions as indicated on the drawings and report any errors or discrepancies to the Project Manager before the commencement of work.
- 2.13.4 The Contractor shall stockpile his materials in areas approved by the Project Manager. Perishable, stainable or damageable products shall be placed above grade and adequately protected from the elements of nature.
- 2.13.5 It shall be the responsibility of the Contractor to provide temporary services, i.e., hydro, water and heat.
- 2.13.6 The Town will "NOT" permit the lighting of fires on any project; all waste must be removed from the site.

2.14 Commencement and Completion

- 2.14.1 The Contractor shall commence work no later than seven (7) days from contract execution date or as otherwise directed by the Project Manager. The work shall be completed according to the plans and specifications, within the time limit as established in these documents.

2.15 Assignment of Contract

- 2.15.1 The Contractor shall not assign the whole or any part of the resulting contract without the prior written consent of the Project Manager.

2.16 Subcontractors

- 2.16.1 The subcontractor form included within the Bidding System must be completed in full. If the contractor is not carrying subcontractors, check "**own forces**" on the form. Only those subcontractors listed on the form will be permitted to work on site unless approval in writing is obtained from the Project Manager. If this form is not completed as noted, the bid may be disqualified. The town reserves the right to reject any subcontractor so nominated.
- 2.16.2 The Contractor agrees to preserve and protect the rights of the parties under the Contract with respect to work performed under subcontract, and shall enter into contracts or written agreements with their subcontractors to require them to perform their work in accordance with and subject to, the terms and conditions of the contract. Further, the Contractor shall be fully responsible to the town for acts and omissions of their subcontractors and for any persons directly or indirectly employed by them.
- 2.16.3 The bidder certifies that all workers and subcontractors have received proper training and carry required certifications as necessary by law in the Province of Ontario.

- 2.16.4 Changes made to the list of nominated subcontractors after the closing of the tender, shall have prior written approval of the town's Project Manager.

2.17 Changes

- 2.17.1 No change in the work shall proceed without the written approval of the town's Project Manager.

2.18 Performance Evaluation

- 2.18.1 At project completion, the Project Manager will conduct an evaluation of the contractor's overall performance with input from the town's Inspectors or consultants, if applicable. Recommendations will be put forward as to the contractors overall suitability for future Town of Oakville work. It must also be noted that while overall performance is being evaluated, the Town reserves the right to suspend a bidder for continued and/or repeated inadequate performance on any issues.
- 2.18.2 Vendor performance is governed by the town's Procurement Policy By-law – Section 11 – Supplier Performance Evaluation and the Supplier Performance Program. Both of these documents are available on the Town of Oakville website at:

<http://www.oakville.ca/business/tenders-quotes.html>

2.19 Non-Performance / Contractor's Default

- 2.19.1 In the event the Contractor does not comply with the specifications, terms and conditions of the Contract, or other such act of non-performance, the town shall advise the Contractor to correct such non-performance issue within such period of time as stated.
- 2.19.2 If the Contractor fails to remedy the non-performance issue after being instructed to do so, the town may issue final written notice or terminate the Contract and take corrective action itself.
- 2.19.3 Where an act or event of default by the Contractor occurs, the town may terminate the Contract by giving written notice to that effect. Alternatively, the town may hold back any amount payable (on this or any other contract with the town) as in the opinion of the town is reasonably required to secure timely completion of the work.

Acts or events of default by the Contractor may include but not be limited to the following:

- a. The Contractor fails or neglects to commence or to proceed with the Project, Work or Supply diligently and at a rate of progress that in the opinion of the town will ensure entire completion within the time provided for in the contract documents.
- b. The town determines reasonably that the Contractor has abandoned the work, the determination of which the town shall be the sole judge.
- c. The Contractor is adjudged bankrupt or becomes insolvent, or a petition in bankruptcy is filed against the Contractor, or where the Contractor makes an assignment for the general benefit of creditors or applies for relief under the Companies' Creditors Arrangement Act, or where proceedings of any type are instituted in any jurisdiction in respect of the alleged insolvency or bankruptcy of the Contractor.

- d. Where any formal or informal proceeding for the dissolution of, liquidation of, or winding up of, the affairs of the Contractor is instituted by or against the Contractor, or where a resolution is passed or any other act undertaken for the winding up of the Contractor.
- e. The Contractor ceases or threatens to cease to carry on its business, or the Contractor makes or agrees to make a bulk sale of its assets.
- f. A receiver, manager or trustee is appointed in respect of the business or assets of the Contractor, or any part of thereof, by a court of competent jurisdiction, or under an agreement.
- g. The Contractor defaults in payment of any indebtedness or liability to a bank or other lending institution, or an approved subcontractor or supplier whether secured or not.
- h. The Contractor defaults in the completion of the work or the Contractor fails or refuses to remedy any unsatisfactory or defective work or to remove any unsatisfactory or condemned material when so ordered by the town in writing.
- i. The Contractor persists in any course in violation of any of the provisions of the contract documents after receiving written notice from the town to correct that violation.

Termination may occur subsequent to the town providing notification pursuant to s. 2.19.1 or s. 2.19.2, or may be immediate without notice under either s. 2.19.1 or s. 2.19.2 depending on the severity of the default.

- 2.19.4 The remedies provided in this section are in addition to all other legal, equitable or statutory remedies to which the town is otherwise entitled, and the taking of any one remedy shall not preclude the taking of any other remedy.
- 2.19.5 Where there is a default by the Contractor under the contract, the town may waive that default by written notice to that effect. A waiver of a default shall not extend to, or be taken in any manner whatsoever to affect the rights of the town with respect to any subsequent default, whether similar or not. The failure of the town to insist on strict performance on any provisions of the Contract shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of such provisions on any future occasion.

2.20 Restoration

- 2.20.1 At all times, the Contractor shall keep the site free from accumulations of debris and in orderly condition during construction. Upon completion of each stage of work, remove from the site all equipment, surplus materials and waste resulting from such work.
- 2.20.2 It is the responsibility of the Contractor to restore the site to its original condition to the satisfaction of the owner after work has been completed. All surplus material and garbage of every description, incidental to the work, shall be cleared leaving the project neat and orderly.

2.21 Inspection

- 2.21.1 Inspection shall be carried out by the Project Manager, and the Contractor shall be responsible for notifying the same at least forty-eight (48) hours prior to the proposed inspection, confirmed in writing by the Contractor.

The owner's representative has the right to accept or reject any work and/or materials to be used in the work that he deems to be in the best interests of the town.

2.22 Substantial Performance Publication

2.22.1 The contractor shall publish a copy of the Certification of Substantial Performance of the contract once in a Construction Trade newspaper within seven (7) days of receiving a copy of the Certificate signed by the payment certifier in accordance with the Construction Act, R.S.O. 1990, c. C.30, as amended. Where the bidder fails or refuses to publish the Certificate within twenty (20) days of the date of the Certificate, the Owner may publish a copy of the Certificate in a Construction Trade newspaper and deduct the cost thereof from the amount payable under the contract.

2.23 Application for Payment

2.23.1 Application for payment as the job progresses shall be arranged with the Project Manager.

2.23.2 The town reserves the right to request further evidence of breakdown or documentation to establish a fair and reasonable evaluation of the application. Should such information be required, the receipt date of application shall be adjusted accordingly.

2.23.3 All payments shall be made by the town within twenty-eight days (28) days of the official receipt of a "Proper" invoice. The Proper invoices shall contain the following information, and shall meet any other requirements that the contract and tender document specifies:

- Invoice number;
- The contractor's name and address;
- The date and period during which the services or materials were supplied;
- Information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied;
- A description, including quantity where appropriate, of the services or materials that were supplied;
- The amount payable for the services or materials that were supplied, and the payment terms;
- Schedule of Values;
- The name, title, telephone number, and mailing address of the person to whom payment is to be sent;
- the Purchase Order number issued for the project;
- Any other information that may be prescribed (no additional information is currently prescribed);
- Current Workplace Safety & Insurance Board (WSIB) certificate; and
- Current Statutory declaration.

Where the contractor fails to provide a proper invoice, a notice of non-payment shall be delivered to the contractor within fourteen (14) days and where a contractor submits a proper invoice, the Town has a right to dispute all or parts of the invoice; and shall deliver a notice of non-payment within fourteen (14) days of receiving the proper invoice for disputed amounts.

2.23.4 If the contract requires the submission of invoices for payment, all invoices must show the Purchase Order number issued for the project. Prior to invoicing for work, the town's Project Manager or Designate must provide approval for all amounts to be invoiced. If invoices for payment are received by the town without a purchase order number or without prior approval of the Project Manager, the invoice will not be paid.

and will be returned to the contractor. Continued incidence of non-compliance to this provision will be reflected in the performance evaluation and may affect the ability to work for the town in future.

- 2.23.5 Invoices shall be submitted in PDF or TIF format to the following email address; **accountspayable@oakville.ca**. Unless otherwise specified, terms are to be NET 28 Days. It is the policy of the town that application by a vendor for penalty charges for late payment will not be allowed.

2.24 Progress Certificate Payments (where applicable)

- 2.24.1 Once per month, the contractor and the Project Manager or Designate shall agree on the approximate amount of work done and material furnished and the value thereof according to the terms of the contract. The date of this determination shall be known as the "measurement date". Failing agreement on amount of work done the decision of the Project Manager or Designate shall govern.
- 2.24.2 A progress certificate shall be prepared by the Project Manager or Designate based on the work completed on each measurement date and shall be of the amount, quantity and value of the work done since the contractor commenced the performance of this contract less all stipulated forfeitures and deductions.
- 2.24.3 The Owner will pay to the contractor eighty eight percent (88%) of the amount shown on all such certificates in accordance with the terms and conditions of the Construction Act (unless another form of holdback is negotiated at the time of contract award), and only upon receipt of a Certificate of Clearance from the Workplace Safety & Insurance Board and a Statutory Declaration stating that all subcontractors and suppliers have been paid all amounts due and payable to them as at the measurement date. These payments will be made on Progress Certificates, which shall be approximate only and must not be taken or construed as an acceptance of the work so estimated or as an admission that the Owner is in any way liable to the contractor in respect thereof.
- 2.24.4 The 10% holdback will be dealt with as per the terms and conditions of the Construction Act, R.S.O. 1990, c. C.30, as amended. The remaining 2% will be released subject to rectification of all maintenance deficiencies after the expiration of the maintenance warranty. The maintenance warranty period will expire twelve (12) months following the issuance of the completion certificate.

2.25 Final Payment and Release of Holdbacks

- 2.25.1 Final payment and release of holdback shall be released only when the following documentation, as applicable, has been received from the Contractor:
- Waiver of Lien
 - Certificate of Clearance from the Workplace Safety & Insurance Board
 - Certificates of Guarantees
 - Manuals if Specified
 - Record Drawings
- 2.25.2 Subsequent release of 10% holdback shall be made only when the following documentation, as applicable, has been received from the Contractor:
- Statutory Declaration certifying that all suppliers and trades have been paid in full
 - Certificate of Clearance from the Workplace Safety & Insurance Board
 - Mandatory Construction Lien Act Advertisement

2.25.3 Subsequent release of the 2% holdback shall be made only when the one-year warranty period has expired and there are no outstanding maintenance issues.

2.26 Changes in Government Taxes

2.26.1 Where a change in Canadian Federal or Provincial Taxes occurs after the Tender Closing date for this contract, and this change could not have been anticipated at the time of bidding, the Owner will increase or decrease contract payments to account for the exact amount of change involved. Claims for compensation for additional tax costs shall be submitted within thirty (30) days after the date of acceptance of the work.

2.26.2 Where the contractor benefits from a change in Canadian Federal or Provincial Government taxes, the contractor shall submit to the Project Manager or Designate, a statement of such benefits. This statement shall be submitted not later than thirty (30) days after the date of acceptance of the work.

2.27 Liens

2.27.1 In the event that a construction lien is registered against the Project by or through a Subcontractor or Supplier, the Contractor shall, at its own expense:

- i. within ten (10) Working Days, ensure that any and all construction liens and certificates of action are discharged, released or vacated by the posting of security; and
- ii. in the case of written notices of lien, ensure that such notices are withdrawn, in writing.

2.27.2 In the event that the Contractor fails to conform with the requirements of 2.27.1, the Owner may set off and deduct from any amount owing to the Contractor, all costs and associated expenses, including the costs of borrowing the appropriate cash, letter of credit or bond as security and legal fees and disbursements. If there is no amount owing by the Owner to the Contractor, then the Contractor shall reimburse the Owner for all of the said costs and associated expenses.

2.27.3 Subcontractors, Suppliers and the Contractor agrees to discharge all liabilities incurred by it for labour, materials, services, subcontractors and products, used or reasonably required for use in the performance of the Work, except for amounts withheld by reason of legitimate dispute and which have been identified to the party or parties, from whom payment has been withheld.

2.28 Warranty / Guarantee

2.28.1 The Contractor shall guarantee the quality of workmanship and materials for a period of twelve (12) months from the date of acceptance, and make any repairs or replacements as required by the town.

2.28.2 The Contractor agrees to correct promptly, at his own expense, defects or deficiencies in the work which appear prior to and during the period of twelve (12) months from the date of substantial performance of the work or such longer periods as may be specified for certain products or work.

- 2.28.3 If after seven (7) days' notice, the Contractor fails to carry out any repairs as directed by the town, the town may proceed with such and charge the same against any monies that are outstanding to the Contractor. If no monies are being held by the town, the town reserves the right to bill such repairs back to the Contractor or to make a claim against performance security that is being held for the work in question.
- 2.28.4 The Contractor agrees to correct or pay for damage resulting from corrections made under the requirements of the warranty.
- 2.28.5 The decision of the town shall be final as to the nature and imperfection of guaranteed work, and the necessary remedy of same.

SECTION 3: LIABILITY AND INSURANCE REQUIREMENTS

3.1 Agreement with Terms

- 3.1.1 By submitting a bid the bidder agrees to all the terms and conditions of this Request for Tender and this document or any portion thereof, may not be used for any purpose other than the submission of bids.

3.2 Laws of Ontario

- 3.2.1 Any Contract resulting from this Request for Tender will be governed by and will be construed and interpreted in accordance with the laws of the Province of Ontario. The successful bidder shall abide by all relevant provisions of the Canada Labour Code and the Employment Standards Act of Ontario, as amended.
- 3.2.2 Any bidder awarded a contract must comply with the regulations of Ontario Regulations 213/91 as amended for construction projects, Part 1 Registration and Notices, Sections 5-7 where this regulation is applicable to this project.

3.3 Liability for Errors

- 3.3.1 While the town has used considerable efforts to ensure an accurate representation of information in this Request for Tender, the information contained in this Request for Tender is supplied solely as a guideline for bidders. The information is not guaranteed or warranted to be accurate by the town, nor is it necessarily comprehensive or exhaustive. Nothing in this Request for Tender is intended to relieve bidders from forming their own opinions and conclusions with respect to the matters addressed in this Request for Tender.

3.4 Insurance

- 3.4.1 Upon award and prior to signing of any Contract documents (including the issuance of a purchase order), the successful bidder shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance:

Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily injury and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, broad form property damage, employer's liability and voluntary compensation and contingent employer's liability coverage, having an inclusive limit of not less than **\$5,000,000** per occurrence. Policy shall be endorsed to show the Town of Oakville as additional insured.

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$2,000,000 per occurrence; for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the successful bidder for the provision of services.

Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$2,000,000 per occurrence in respect of vehicles not owned by the bidder, that are used or operated on its behalf for the provision of services under the Contract;

- 3.4.2 This policy may be subject to the approval of the Town Solicitor and shall be kept in full force through the term of the contract and until the date of acceptance and maintenance period of the entire Work.
- 3.4.3 WSIB Certificate: The Town of Oakville requires all Contractors be in full compliance with all requirements imposed upon them by the Workplace Safety Insurance Board. All certificates of training and Safety Policies and Manuals must be available for presentation upon request.
- 3.4.4 At time of award and prior to release of each and every progress draw, the successful bidder will be required to provide a WSIB Certificate to the town. Such certificates shall indicate that the Contractor and any subcontractors have complied with the requirements of the Workplace Safety & Insurance Board and are in good standing with the Board.

3.5 Workplace Hazardous Materials Information System WHMIS

- 3.5.1 No hazardous material is to be stored or used on the town property by the contractor unless the prescribed requirements concerning labeling material safety data sheets (MSDS) and worker instruction and training are met.

3.6 Indemnification

- 3.6.1 The successful bidder, its agents, all workmen and persons employed by it, or under its control, will use due care that no person or persons are injured and that no property is damaged in the prosecution of the work and the successful bidder will be solely responsible for all damages to person or property, including theft, whether the property is owned by the town or any of its employees.
- 3.6.2 Each bidder and the successful bidder shall defend, indemnify and save harmless the town, its officers, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including Workers' Compensation claims, in any way resulting from or arising out of this contract; provided, however, that the bidder need not indemnify or save harmless the town, its officers, agents and employees from damages resulting from the sole negligence of the town's officers, agents and employees.

SECTION 4:

SCOPE OF WORK / SPECIFICATIONS

4.1 Background and Scope

In March 2020, all workplace retrofits were temporarily paused as the organization had just implemented a remote work policy and did not yet have impact information that would inform future accommodation decisions. The capital program was also adjusted with the removal of space retrofit projects. As a result, there have been no significant internal retrofits over the past two years. While the town has been operating a hybrid office model prototype, the physical environment has not been adjusted so there are significant areas of office space that have minimum/or no occupancy for the majority of the business week. Town of Oakville wants to start working on the master accommodation plan (MAP), where it intends to start converting convert all office spaces into a hybrid and collaborative/open workspace

For the detailed scope of work refer to the IFT Drawings and Specification

4.2 Other Submittals Upon Award

- a) Preliminary construction schedule.
- b) Health and Safety Policy.
- c) Contractor to provide their own preliminary security fencing and site hoarding plan, including the location of the temporary washrooms, parking, and loading, to Owner and Consultant for approval prior to construction.

4.3 General

No material storage will be allowed outside of hoarding. Contractor to ensure that all material storage stays within the hoarded area and that areas outside of hoarding are maintained safe and clear of debris, material, and dirt to ensure public and staff safety.

Contractor shall ensure that all surfaces noted as to remain are protected for the duration of construction.

Contractor to provide intermittent /as necessary cleaning during all phases to ensure customer and staff safety. All operational areas to be kept free of dirt and debris. Contractor to include a final, major cleaning of the entire affected area prior to handover.

Contractor to review DSS Report (supplied by Owner under separate cover).

Contractor is responsible to coordinate with the Owner / PM, as necessary to complete this project. This will require the successful contractor to: Section 4 Scope of Work / Specifications

- a) Attend a preconstruction meeting with the Owner to review and verify:

- i. Exact area of work, dimensions and site location.
 - ii. Review and finalize this project-specific health and safety plans to ensure ongoing regular monitoring of compliance with the OHS regulations.
 - iii. Review and finalize the security fencing and site hoarding plan, including the location of the temporary washrooms, parking, and loading prior to mobilizing on-site and start of construction, as applicable.
 - iv. Provide worker certifications and health and safety training records for all workers performing the work on site for all divisions of work, for the contractor, subcontractors, suppliers and vendors, where applicable.
 - v. Confirm the maintenance program in place to ensure ongoing worker certifications and health and safety training records are maintained current throughout the performance of the contract.
- b) Division and the coordination of the Work among other contractors, subcontractors, suppliers or vendors is solely the Contractor's responsibility. Neither the Owner nor Consultant assumes any responsibility to act as an arbiter to establish subcontract terms or disagreements between sectors or disciplines of the Work.

SPECIFICATOINS AND DRAWINGS APPENDIX B, C, D, ARE UPLOADED TO THE ONLINE BIDDING SYSTEM AND FORM PART OF THIS TENDER.

SECTION 5: SCHEDULES

Schedules are posted separately and will need to be **completed online only** through the Bidding System by the bidder as part of your bid submission.

Please note that the Schedules are subject to change/addition/deletion by addendum(s) issued by the town. Following the issuance of each addendum, such changes will be reflected in the electronic Schedules to be completed online only. The revised Schedules (in pdf format) will be uploaded to the Bidding System as a separate document. It is the bidder's responsibility to review all addendums and ensure that the bid is submitted based on the most current requirements.

For greater certainty, the bidder shall submit their bid by completing all Schedules and fields in the online Bidding System. Any bid submitted on the basis of the preview Schedules may, in the town's sole discretion, be disqualified on the basis of being incomplete.

APPENDIX A - Supplementary Conditions to Contract CCDC 2-2008

Revised: April 1, 2019

SC 1. GENERAL

These Supplementary Conditions presuppose the use of the Standard Construction Document CCDC 2-2008 Stipulated Price Contract, English version. These "Supplementary Conditions" void, supersede or amend the "Agreement", "Definitions" and "General Conditions" as hereinafter provided, as the case may be.

Where a Definition, a General Condition or paragraph of the Agreement or a General Condition of the Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining Agreement, Definitions, General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused, unless noted otherwise.

SC 2. ARTICLE A-1 THE WORK

1. After the words "in the year ___" in the last line of the Paragraph 1.3 - add the words:

", and attain *Total Performance of the Work* within thirty (30) calendar days of attaining *Substantial Performance of the Work* or as otherwise stated in the tender document or as agreed in writing between the *Owner, Consultant and Contractor*".

SC 3. ARTICLE A-3 CONTRACT DOCUMENTS

1. Add documents to the existing list of *Contract Documents* in paragraph 3.1 as follows:
 - Addenda, as issued
 - the Special Provisions
 - Supplementary Conditions to Contract CCDC 2-2008
 - *Contractor's Bid Submission Including Schedule of Prices*
 - the *Specifications*
 - *Drawings*

SC 4. ARTICLE A-5 PAYMENT

1. Delete paragraphs 5.2 and 5.3 in their entirety and replace with the following paragraphs 5.2, 5.3 and 5.4:
 - 5.2 As such payments become due, the *Contractor* shall, in accordance with the terms of its agreements with any *Subcontractors, Suppliers* and workers, pay all of its *Subcontractors, Suppliers* and workers in full on account of work properly performed or *Products* properly supplied, as applicable, less any holdback monies retained in compliance with the *Construction Act, R.S.O. 1990, c. C.30 (Ontario)* as amended.
 - 5.3 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Contractor* in accordance with the provisions of GC 11.1 - INSURANCE.
 - 5.4 Interest
 - .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest on such unpaid amounts shall also become due and payable until payment, at the rate as prescribed in the *Construction Act, R.S.O. 1990, c. C.30 (Ontario)* as amended.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.4.1 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.

SC 5. ARTICLE A-9 CONFLICT OF INTEREST

1. Add new Article A-9 CONFLICT OF INTEREST as follows:

- 9.1 The *Contractor*, all of the *Subcontractors*, and any of their respective advisors, partners, directors, officers, employees, and agents shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the Owner) with the provision of the Work pursuant to the Contract. The *Contractor* acknowledges and agrees that a conflict of interest includes the use of *Confidential Information* where the Owner has not specifically authorized such use.
- 9.2 The *Contractor* shall disclose to the *Owner*, in writing, without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.
- 9.3 The *Contractor* covenants and agrees that it will not hire or retain the services of any employee or previous employee of the Town of Oakville where to do so constitutes a breach by such employee or previous employee of the *Owner's* conflict of interest policy, as it may be amended from time to time.
- 9.4 It is of the essence of the Contract that the Owner shall not have direct or indirect liability to any *Subcontractor* or *Supplier*, and that the Owner relies on the maintenance of an arm's-length relationship between the *Contractor* and its *Subcontractors* and *Suppliers*. Consistent with this fundamental term of the Contract, the *Contractor* will not enter into any agreement or understanding with any *Subcontractor* or *Supplier*, whether as part of any contract or any written or oral collateral agreement, pursuant to which the parties thereto agree to cooperate in the presentation of a claim for payment against the Owner, directly or through the *Contractor*, where such claim is, in whole or in part, in respect of a disputed claim by the *Subcontractor* or *Supplier* against the *Contractor*, where the payment to the *Subcontractor* or *Supplier* by the *Contractor* is agreed to be conditional or contingent on the ability to recover those amounts or a portion thereof from the Owner, failing which the *Contractor* shall be saved harmless from all or a portion of those claims. The *Contractor* acknowledges that any such agreement would undermine the required arm's-length relationship and constitute a conflict of interest.
- 9.5 Notwithstanding paragraph 7.1.2 of GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE *CONTRACTOR'S* RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT as amended, a breach of this Article by the *Contractor*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the Owner to terminate the Contract, in addition to any other rights and remedies that the Owner has in the Contract, in law, or in equity.

SC 6. ARTICLE A-10 CONFIDENTIALITY

1. Add new Article A-10 CONFIDENTIALITY as follows:

- 10.1 The *Contractor* agrees to ensure that it shall, both during or following the term of the *Contract*, maintain the confidentiality and security of all *Confidential Information* and *Personal Information*, and that it shall not directly or indirectly disclose, destroy, exploit, or use any *Confidential Information* or *Personal Information*, except where required by law, without first obtaining the written consent of the *Owner*. The *Contractor* may disclose any portion of the *Contract Documents* or any other information provided to the *Contractor* by the *Owner* to any *Subcontractor* or *Supplier* if the *Contractor* discloses only such information as is necessary to fulfill the purposes of the *Contract* and the *Contractor* has included a commensurate confidentiality provision in its contract with the *Subcontractor* or *Supplier*. The *Contractor* acknowledges that it will comply with all requirements of the *Personal Information Protection and Electronic Documents Act*. The *Contractor* acknowledges that the *Owner* is bound by the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (“*MFIPPA*”). The *Contractor* further acknowledges that the *Owner* may be required to disclose any or all of the *Confidential Information* and *Personal Information* in the event that it is compelled to do so by law, through a request under *MFIPPA*, or by the rules of any applicable regulatory authority.

SC 7. ARTICLE A-11 SEVERABILITY

1. Add new Article A-11 SEVERABILITY as follows:

- 11.1 If any provision of this Contract is found to be invalid or unenforceable in any circumstances, the remainder of this Contract, and the application of such provision in any other circumstances, shall not be affected.

SC 8. ARTICLE A-12 TIME IS OF ESSENCE

1. Add new Article A-12 TIME IS OF ESSENCE as follows:

- 12.1 Time shall be of the essence of the *Contract* and under all *Contract Documents*.

SC 9. DEFINITIONS

1. Delete Definitions 6, 8 16 and 25 and replace with new definitions as follows:

- 6. Contract Documents** – the *Contract Documents* consist of those documents listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments agreed upon in writing between the parties.
- 8. Contract Time** – The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement - THE WORK from commencement of the *Work* to the date of *Substantial Performance of the Work*.
- 16. Provide** – *Provide* means to supply and install or supply, install or connect as applicable, complete and in place, including accessories, finishes, tests, services required to render each item so specified complete and ready for use. *Provide* has this meaning whether or not the first letter is capitalized.
- 25. Work** – The *Work* means the total construction, *Product*, installation, *Commissioning*, checkout, start-up testing and related services required by the *Contract Documents*.

2. Add new definitions as follows:

- 27. Applicable Laws – *Applicable Law* and *Applicable Laws*** means all public laws, statutes, regulations, transactions, codes, acts, orders, by-laws, rules, judgments, decrees, treaties, governmental consents, notices, protocols, binding policies and guidelines, and requirements of all *Governmental Authorities*, which now or hereafter, may be applicable to and enforceable against the *Work* or any part thereof, including those relating to employment, zoning, building, life/safety, environment and health, and includes, where appropriate, any interpretation of a rule, statute, regulation, order, decree, treaty or other requirement having the force of law by any person having jurisdiction over it, or charged with its administration or interpretation.
- 28. As-Built Drawings - *As-Built Drawings*** means the *Drawings* and Specifications revised by the *Contractor* during the *Work*, showing any and all changes or variations to the *Work* from the requirements of the *Drawings* and Specifications.
- 29. Authorities Having Jurisdiction -** The phrase *Authorities Having Jurisdiction* or the term *Authorities* means those *Authorities Having Jurisdiction* under *Applicable Laws* over the *Work* or parts thereof.
- 30. Commissioning - *Commissioning*** refers to the procedure which includes checking, balancing, testing, adjusting and measuring *Work* performed by the *Contractor* to demonstrate and verify to the *Owner* and *Consultant*, the satisfactory installation, operation and performance of all components of the *Work* and that the *Project* is ready for use.
- 31. Confidential Information - *Confidential Information*** means all the information or material of the *Owner* that is of a proprietary or confidential nature, whether it is identified as proprietary or confidential or not, including but not limited to information and material of every kind and description such as *Drawings* which is communicated to or comes into the possession or control of the *Contractor* at any time, but *Confidential Information* shall not include information that:
- (1) is or becomes generally available to the public without fault or breach on the part of the *Contractor*, including without limitation breach of any duty of confidentiality owed by the *Contractor* to the *Owner* or to any third party, but only after that information becomes generally available to the public;
 - (2) the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;
 - (3) the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor* at the time of disclosure, free of any obligation of confidence; or
 - (4) is independently developed by the *Contractor* without use of any *Confidential Information*.
- 32. Force Majeure - *Force Majeure*** means a delay in the performance of the services occurring other than as a result of the deliberate act or negligence of either party respectively, or which:
- (1) could not have been reasonably foreseen, and
 - (2) was caused by an event beyond the reasonable control of each party respectively, and
 - (3) for the sake of greater certainty, shall include any one or more of the following:
 - (i) acts of God, the Queen or Her enemies;
 - (ii) civil war, insurrections or riots;

- (iii) fires, floods, explosions, earthquakes, or serious accidents;
- (iv) unusually severe weather, epidemics, or quarantine restrictions;
- (v) governmental priorities or allocation regulations or orders affecting materials, labour, equipment and facilities;
- (vi) fuel shortages or freight embargoes;
- (vii) strikes or labour troubles causing cessation, slowdown, interruption of work or other similar events relating to a person other than the *Contractor* (or any *Subcontractor*) or to the *Owner*.

Financial difficulties experienced by the *Contractor* will not be considered an occurrence of a *Force Majeure* under the *Contract*.

- 33. Make Good** – *Make Good* or *Making Good* means to restore new or existing work that has been rejected by the *Consultant* or the *Owner*, damaged, cut, or patched during the *Work*. In addition, *Make Good* or *Making Good* requires the use of materials identical to the original materials, with visible surfaces matching the appearance of the original surfaces in all details, and with no apparent junctions between restored and original surfaces. Where original materials are not available, the *Contractor* shall propose substitute materials for review by the *Consultant* prior to ordering such materials or commencing *Making Good*. *Making Good* may require replacement of affected work in whole or in part.
- 34. Overhead** - *Overhead* means those costs that cannot be attributed to a single task of *Work* and are exclusive of *Construction Costs*, *Value Added Taxes*, and profit. *Overhead Costs* include both general and administrative costs of the *Contractor* or *Subcontractor* together with any and all *Project* specific and office costs of the *Contractor* or *Subcontractor*.
Without limiting the generality of the foregoing, *Overhead Costs* include costs associated with general conditions, administration, head office, field office, management, supervision, coordination, scheduling, purchasing, security, health and safety, general labour, accommodation, subsistence, travel, storage, inventory, loading and unloading, computers and electronics, software, printing, general tools and equipment, standby costs and charges, vehicles, engineering, drafting, *Shop Drawings*, submittals, surveying, temporary facilities, traffic control, fire safety, sanitation, site clean-up, utilities and services, controls, insurance, bonding, heating, winterization, permits, inspection, regulatory fees, mobilization, demobilization, and other costs of a similar reasonable nature.
- 35. Personal Information** - **Personal Information has the same definition as in** subsection 2(1) of *MFIPPA* and includes an individual's name, address, telephone number, and date of birth, whether recorded in printed form, on film, by electronic means, or otherwise and disclosed to the *Contractor*.
- 36. Request for Information (RFI)** - *Request for Information* ("RFI") means a standard document typically issued by the *Contractor* to the *Consultant*, requesting a clarification of the scope of *Work* provided in the *Contract Documents*. The response to the RFI will result in a formal *Supplemental Instruction* where there is no modification of the original scope of the *Work*, or a *Contemplated Change Order* from which the *Contractor* may provide pricing for the revision to the original scope of the *Work*.
- 37. Substantial Performance Date** - *Substantial Performance Date* means the date by which the *Contractor* shall attain *Substantial Performance of the Work* as specified in Article A-1 – THE WORK.

- 38. Statutory Declaration** - *Statutory Declaration* means the form of the *Statutory Declaration* to be delivered by the *Contractor* upon applications for progress payment, release of holdback and final payment, being CCDC 9A – 2001 *Statutory Declaration* (latest edition available).
- 39. Submittals** – *Submittals* are documents or items required by the *Contract Documents* to be provided by the *Contractor* such as: *Shop Drawings*, samples, models, mock-ups to indicate details or characteristics, before the portion of the Work that they represent can be incorporated into the Work; and, As-Built Drawings and manuals to provide instructions to the operation and maintenance of the Work.
- 40. Total Performance of the Work** – *Total Performance of the Work* means when the entire *Work*, except for those items arising from GC 12.3 – WARRANTY, has been performed in accordance with the requirements of the *Contract Documents* and is so certified by the *Consultant*.

SC 10. GC 1.1 CONTRACT DOCUMENTS

1. Add new sentence to the end of paragraph 1.1.6:

“The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* or as between them and the *Contractor* with respect to such divisions.”
2. Delete subparagraph 1.1.7 in its entirety and replace with the following:
 - 1.1.7 If there is a conflict within the *Contract Documents*, the order of priority of documents, from highest to lowest, shall be:
 - *Change Orders* and/or *Change Directives*
 - The executed Agreement Between *Owner* and *Contractor* CCDC 2-2008
 - *Contractor's* Bid Submission Including Schedule of Prices
 - Addenda, as issued
 - Special Provisions
 - Supplementary Conditions to Contract CCDC 2-2008
 - Definitions in CCDC 2-2008 Stipulated Price Contract
 - the General Conditions in CCDC-2-2008 Stipulated Price Contract
 - the *Specifications*
 - *Drawings*
 - Town's General Conditions, Instructions to Bidders and Liability and Insurance Requirements
 - 1.1.7.1 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
 - 1.1.7.2 Dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
 - 1.1.7.3 Later dated documents shall govern over earlier documents of the same type.
 - 1.1.7.4 In case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the *Contract Documents*.
 - 1.1.7.5 Architectural *Drawings* shall have precedence over structural, plumbing, mechanical, electrical and landscape *Drawings* insofar as outlining, determining and interpreting conflicts over the required design intent of all architectural layouts and architectural elements of construction, it being understood that the integrity and installation of the systems designed by the

Consultant or its sub- *Consultants* are to remain with each of the applicable drawing disciplines.

3. Delete paragraph 1.1.8 and 1.1.9 in their entirety and replace with the following:
 - 1.1.8 The *Owner* shall provide the *Contractor*, without charge, a maximum of six (6) copies of the *Contract Documents* to perform the *Work*. The *Contractor* is responsible for the provision of any additional sets required in order to complete the *Work*, at no cost to the *Owner*.
 - 1.1.9 *Specifications, Drawings*, models, and copies thereof furnished by the *Consultant* are not the *Contractor'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*. *Contracts, Drawings, Specifications*, models, documents and copies thereof furnished by the *Contractor* or the *Owner* are and shall remain the property of the *Owner*, with the exception of the signed contract set belonging to the *Contractor*. Such documents and models are to be used by the *Contractor* only with respect to the *Work* and are not to be used on any other work. Such documents and models are not to be copied or revised in any manner without the written authorization of the *Owner*.

4. Add new paragraphs 1.1.11 and 1.1.12 as follows:
 - 1.1.11 All *Products*, materials and equipment shall be in compliance with, but not limited to, current *Occupational Health and Safety Act*, Revised Statutes of Ontario, 1990 Chapter 01, as amended and Ontario Regulation 213/91, as amended and other relevant and current legislation pertaining to health and safety work practices on a work site.
 - 1.1.12 Throughout the *Contract Documents* reference to the "General Conditions of the Contract" shall imply the inclusion of these "Supplementary Conditions".

SC 11. GC 1.2 LAW OF THE CONTRACT

1. Add new paragraphs 1.2.2, 1.2.3 and 1.2.4 as follows:
 - 1.2.2 The *Contractor* agrees that:
 - .1 any action or proceeding relating to the *Contract* shall be brought in a court of competent jurisdiction in the Region of Halton and for that purpose each party irrevocably and unconditionally attorns and submits to the jurisdiction of that court;
 - .2 it irrevocably waives any right to and will not oppose any action or proceeding relating to the *Contract* on any jurisdictional basis, including forum non conveniens; and
 - .3 it will not oppose in any other jurisdiction, the enforcement against it, of any judgment or order duly obtained from a Region of Halton court as set out above.
 - 1.2.3 The *Owner* and the *Contractor* acknowledge and agree that:
 - (i) this Agreement resulted from a procurement process (within the meaning set out in Section 87.3 of the *Construction Act, R.S.O. 1990, c. C.30* (Ontario) as amended) that was commenced, and the Agreement was signed, on or after July 1, 2018, but before October 1, 2019; and

(ii) amendments to the *Construction Act, R.S.O. 1990, c. C.30* (Ontario) that are to be proclaimed and come into force on July 1, 2018 are applicable to this Agreement, but amendments to the *Construction Act, R.S.O. 1990, c. C.30* (Ontario) that are to be proclaimed and come into force on October 1, 2019 are not applicable to this Agreement; and

(iii) the *Contractor* will incorporate into its contracts with *Subcontractors* and *Suppliers*, and ensure that all *Subcontractors* and *Suppliers* are made aware of, these acknowledgements and agreements.

- 1.2.4 The *Contractor* shall comply with all municipal by-laws as they pertain to the Town of Oakville in respect of the operation of the *Contractor's* business and the *Work*. Further, the *Contractor* shall, at all times that the Contract is in effect and upon request of the *Owner*, provide proof of compliance satisfactory to the *Owner*, at the *Contractor's* own cost. If the *Contractor* fails to do any of the foregoing, the *Contractor* shall be considered to be in default of the *Contract* in accordance with GC 7.1 and the *Owner* shall be entitled at its sole discretion to terminate the *Contract* and to pursue any other legal recourse the *Owner* deems appropriate:

SC 12. GC 1.3 RIGHTS AND REMEDIES

1. Add to the beginning of paragraph 1.3.2, the following:

“Except with respect to the notice requirements set out in paragraphs 6.4.1, 6.5.4, and 6.6.1,”

2. Add new paragraph 1.3.3 as follows:

1.3.3 All rights and remedies of the parties for any breach by the other party of its obligations under the *Contract* shall be cumulative and not exclusive or mutually exclusive alternatives, may be exercised singularly, jointly or in combination and shall not be deemed to be in exclusion of any other rights or remedies available to the non-breaching party under the *Contract* or otherwise at law or in equity or by statute.

SC 13. GC 1.4 ASSIGNMENT

1. Delete paragraph 1.4.1 in its entirety and replace with the following:

1.4.1 The *Contractor* shall not assign the *Contract*, or any portion thereof, without the prior written consent of the *Owner*, which consent may not be unreasonably withheld. The *Owner* shall be entitled to assign the *Contract* to any person or other entity (the “Assignee”). Upon the assumption by the Assignee of the *Owner's* obligations under the *Contract*, the *Owner* shall be released from its obligations arising under the *Contract*.

2. Add new paragraph 1.4.2 as follows:

1.4.2 Neither the use of one or more *Subcontractors* to carry out part of the *Work*, nor the assignment of the whole or of any part of the *Contract* or the *Work* to be done under it shall relieve the *Contractor* of its obligations and liability to the *Owner*.

SC 14. GC 1.5 EXAMINATION OF DOCUMENTS AND SITE

1. Add new general condition GC 1.5 EXAMINATION OF DOCUMENTS AND SITE as follows:

1.5.1 The *Contractor* declares and represents that before tendering for the *Work* (if applicable), and in entering into the *Contract* with the *Owner* for the performance of

the *Work*, it has either investigated for itself the character of the *Work* to be done and all local conditions that would reasonably be discoverable, or that, not having so investigated, the *Contractor* has assumed and does hereby assume all risk of conditions reasonably discoverable, that are now existing or arising in the course of the *Work* which might or could make the *Work*, or any items thereof more expensive in character, or more onerous to fulfil, than was contemplated or known when the tender was made or the *Contract* signed.

SC 15. GC 1.6 ENTIRE CONTRACT, AMENDMENTS TO BE IN WRITING

1. Add new general condition GC 1.6 ENTIRE CONTRACT, AMENDMENTS TO BE IN WRITING as follows:

The *Contract Documents* (including all properly authorized *Change Directives* and *Change Orders*) constitute the entire *Contract* between the parties. Each of the parties,

- .1 acknowledges that it is not relying upon any representation, warranty, promise, instruction, advice or information received from the other party or from any employee or agent of the other party, except as set out in the *Contract Documents*;
- .2 shall not rely at any time in the future on any representations, warranty, instruction, advice or information purportedly received from the other party or any employee or agent of the other party, except as set out in a properly authorized *Change Order*, *Change Directive* or in an amendment as provided under this section.

1.6.2 The *Contract* shall not be deemed to be or construed as having been amended as a result of any oral communication between the parties or as a result of any practice of the parties, but all amendments to the *Contract* shall be in writing.

SC 16. GC 1.7 NON-DISCLOSURE AND NO COMMENT

1. Add new general condition GC 1.7 NON-DISCLOSURE AND NO COMMENT as follows:

1.7.1 The *Contractor* shall not disclose details relating to the *Contract*, *Work* or *Project* to any outside person not engaged in activities relating to the *Contract*, *Work* or *Project*, and shall restrain its employees from giving unauthorized information with respect thereto.

1.7.2 The *Contractor* shall refer all inquiries from whatever source relating to the works to be undertaken within the scope of the *Contract* to the *Consultant*.

SC 17. GC 1.8 PATENTS AND OTHER INTELLECTUAL PROPERTY

1. Add new general condition GC 1.8 PATENTS AND OTHER INTELLECTUAL PROPERTY as follows:

1.8.1 Where the *Work* or *Project* to be carried out requires the installation or use of any patented or other protected intellectual property,

- .1 belonging to the *Contractor*, the *Contract Price* shall be deemed to include the grant of a perpetual license from the *Contractor* to the *Owner* to make use of that intellectual property;
- .2 belonging to any other person, the *Contractor* shall obtain and assign to the *Owner* a perpetual license from the *Owner* thereof entitling the *Owner* to make use of that intellectual property, and the cost thereof shall be deemed to be included in the *Contract Price*.

SC 18. GC 2.1 AUTHORITY OF THE CONSULTANT

1. Delete from the end of paragraph 2.1.2, the following:
“, the *Contractor*”
2. Delete from paragraph 2.1.3, the following:
“against whom the *Contractor* makes no reasonable objection and”

SC 19. GC 2.2 ROLE OF THE CONSULTANT

1. Add new sentence to the end of paragraph 2.2.2:
“The *Contractor* shall not be entitled to rely on such visits as a limitation of its obligations under the *Contract Documents*.”
2. Delete from the beginning of paragraph 2.2.7, the following:
“Except with respect to GC5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER,”
3. Add to the end of paragraph 2.2.10, the following:
“and not more than five (5) *Working Days* after receipt of the written query unless otherwise agreed to by the parties.”
4. Delete paragraph 2.2.13 in its entirety and replace with the following:
2.2.13 During the progress of the *Work*, the *Consultant* will furnish *Supplemental Instructions* to the *Contractor* with reasonable promptness, but not more than five (5) *Working Days* after receipt of a written *Request for Information* from the *Contractor*, or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Contractor*. If, in the opinion of the *Contractor*, performance of the *Supplemental Instruction* will result in an increase in the *Contract Price* or to the *Contract Time*, the *Contractor* shall, within five (5) *Working Days* of receipt of the *Supplemental Instruction*, provide the *Consultant* with *Notice in Writing* that there will be an increase in *Contract Price* and/or *Contract Time*. Failure to provide the *Notice in Writing* shall be a deemed acceptance of the *Supplemental Instruction* by the *Contractor* without adjustment in the *Contract Price* or *Contract Time* for which a *Change Directive* will be issued.
5. Delete 2.2.14 in its entirety and replace with the following:
2.2.14 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Contractor's Submittals* which are provided in accordance with the *Contract Documents*.
6. In paragraph 2.2.17, in the second sentence of the paragraph, add after “, the *Consultant* does not guarantee”, the following:
“to the *Contractor*”
7. Add to the end of paragraph 2.2.18, the following:

“The *Consultant* shall ensure that all such warranties and documents submitted for approval and for the *Owner’s* records are in accordance with the *Contract Documents* prior to the documents being forwarded”.

8. Add new paragraph 2.2.19 as follows:

2.2.19 The *Consultant* or the *Owner*, acting reasonably, may require the *Contractor* to remove from the *Project* any personnel of the *Contractor*, including *Project* managers and superintendents. Such persons shall be replaced by the *Contractor* in a timely fashion to the satisfaction of the *Consultant* or the *Owner*, as the case may be, at no cost to the *Owner*.

SC 20. GC 2.3 REVIEW AND INSPECTION OF THE WORK

1. Delete paragraph 2.3.2 in its entirety and replace with the following:

2.3.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the *Consultant’s* instructions, or by the laws or ordinances of the *Place of the Work*, the *Contractor* shall give the *Consultant* and *Owner* reasonable notification of when the work will be ready for review and inspection. The *Contractor* shall arrange for and shall give the *Consultant* and *Owner* two (2) *Working Days* of the date and time of inspections by other authorities.

2. Delete paragraph 2.3.3 in its entirety and replace with the following:

2.3.3 The *Contractor* shall furnish promptly two (2) copies to the *Consultant* and one (1) copy to the *Owner* of all certificates and inspection reports relating to the *Work*, and in any event no later than two (2) *Working Days* from the date of the inspection.

3. Add new paragraph 2.3.8, 2.3.9, 2.3.10 and 2.3.11 as follows:

2.3.8 The *Contractor* shall immediately inform the *Owner* and the *Consultant* of any notices, warnings or asserted violations issued by any regulatory or government agencies having jurisdiction relating to the *Work*.

2.3.9 No review of the *Work* by the *Owner* or the *Consultant* shall relieve the *Contractor* from its responsibility to perform the *Work* in accordance with the *Contract Documents*.

2.3.10 Where standards of performance are specified in the *Contract Documents* and the *Work* does not comply with the performance specified, such deficiency shall be corrected as directed by the *Consultant*. Any testing of work identified as defective in accordance with GC 2.4, including retesting required by the *Owner* to verify performance, shall be done at the *Contractor’s* expense.

2.3.11 The *Consultant* may conduct periodic reviews of the *Work* in progress, to determine general conformance with the requirements of the *Contract Documents*. Such reviews, or lack thereof, shall not give rise to any claims by the *Contractor* in connection with construction means, methods, techniques, sequences and procedures, nor in connection with construction safety at the *Place of Work*, responsibility for which belongs exclusively to the *Contractor*. The undertaking of periodic site review by the *Consultant* or *Owner* and their employees and agents shall not be construed as supervision of actual construction, nor make them responsible for providing a safe place for work.

SC 21. GC 2.4 DEFECTIVE WORK

1. Delete paragraph 2.4.1 in its entirety and replace with the following:
 - 2.4.1 The *Contractor* shall promptly correct defective work that has been rejected by the *Consultant* or the *Owner* as failing to conform to the *Contract Documents* at the *Contractor's* expense, whether or not the defective work has been incorporated in the *Work* and whether or not 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. Add new paragraphs 2.4.1.1, 2.4.1.2 as follows:
 - 2.4.1.1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Owner* or the *Consultant*.
 - 2.4.1.2 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* or which, in the sole discretion of the *Consultant*, adversely affects the progress of the *Work*.

3. Delete paragraph 2.4.2 in its entirety and replace with the following:
 - 2.4.2 The *Contractor* shall promptly, at its expense, *Make Good* the work of the *Owner's* own forces or of any other *contractors* destroyed or damaged by, and make any alterations necessitated by, the *Contractor's* removal, replacement or re-execution of defective work.

If in the opinion of the *Consultant* or *Owner* 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 value of such work as is necessary to correct any non-compliance with 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 determination.

4. Add new paragraph 2.4.4 as follows:
 - 2.4.4 Neither acceptance of the *Work* by the *Consultant* or the *Owner*, nor any failure by the *Consultant* or the *Owner* to identify, observe or warn of defective *Work* or any deficiency in the *Work* shall relieve the *Contractor* from the sole responsibility for rectifying such defect or deficiency at the *Contractor's* sole cost.

SC 22. GC 3.1 CONTROL OF THE WORK

1. In paragraph 3.2.1, after “construction means, methods, techniques,” add the following:
“schedules,”
2. Add new paragraphs 3.1.3 and 3.1.4, as follows:
 - 3.1.3 Prior to commencing the *Work* and individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for the proper fabrication, assembly, installation and completion of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent in the *Contract Documents*, the *Contractor* shall immediately notify the *Consultant* in writing and obtain *Supplemental Instructions* from the *Consultant* before proceeding with any part of the affected work.
 - 3.1.4 Notwithstanding the provisions of paragraphs 3.1.1 and 3.1.2, the *Owner* shall have access to the site at all times to observe all aspects of construction. Such access shall in no circumstances affect the obligations of the *Contractor* to fulfill its contractual obligations. All work, means, methods, techniques and procedures shall be performed in strict compliance with current *Occupational Health and Safety Act*, Revised Statutes of Ontario, 1990 Chapter 01, as amended and Ontario Regulation 213/91, as amended and other applicable legislation as it relates to health and safety of work site, personnel, occupants, and public.

SC 23. GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

1. Delete subparagraphs 3.2.1 and replace with the following:
 - 3.2.1 The *Owner* may require the *Contractor* to enter into further contracts for work outside the scope of the *Contract* and for which a *Change Order* will be provide and a cash allowance allocated.
2. Delete subparagraph 3.2.2.1 in its entirety and replace with the following:
 - 3.2.2.1 Take all reasonable, practical and prudent steps to not interfere with the co-ordination of the activities and work of other *contractors* and *Owner's* own forces so as to not conflict with the *Work* of the *Contract*;
3. Delete subparagraph 3.2.2.2 in its entirety.
4. Add new subparagraph 3.2.3.4 as follows:
 - 3.2.3.4 Subject to General Condition 6.1.1 Owners Right to Make Changes and GC 9.4 - CONSTRUCTION SAFETY, where paragraph 3.2.4 of GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS applies, for the *Owner's* own forces and for other *contractors* performing work **within the construction site limits identified in the *Contract Documents***, the *Contractor* will assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in the *Place of the Work*, including all of the responsibilities of the constructor as that term is defined in the *Occupational Health and Safety Act*.

SC 24. GC 3.3 TEMPORARY WORK

1. Amend paragraph 3.3.2, in the second line after the words “where required by law”, add “or the *Consultant*”.

SC 25. GC 3.4 DOCUMENT REVIEW

1. Delete paragraph 3.4.1 in its entirety and replace with the following:
 - 3.4.1. The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall comply with the standard of care described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.
2. Add new paragraphs 3.4.2, 3.4.3, 3.4.4 and 3.4.5 as follows:
 - 3.4.2 The *Contractor* shall follow the procedures as set forth in the *Contract Documents*. All requests are to be formal, written, and tracked, beginning with a *Request for Information* from the *Contractor*. If the *Request for Information* results in a change to the *Work* as specified in the *Contract Documents*, the *Consultant* will then issue a written request for *Change Order*, as set forth in GC 6 - CHANGES IN THE WORK.
 - 3.4.3 The issuance of Requests for Information by the *Contractor* shall not entitle the *Contractor* to any increases to the *Contract Price* or *Contract Time*.
 - 3.4.4 If, at any time, the *Contractor* finds errors, inconsistencies, or omissions in the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, the *Contractor* shall immediately notify the *Consultant*, through a *Request for Information*. The *Contractor* shall not proceed with the work until the *Consultant* has responded to the *Request for Information*, and in dealing with such error, inconsistency or omission the *Contractor* shall co-operate with the *Owner* and the *Consultant* in good faith to resolve such errors, inconsistency or omission so as to avoid any increase in the *Contract Price* or delay in the progress of the *Work*. Neither the *Owner* nor the *Consultant* will be responsible for the consequences of any action of the *Contractor* based on oral instructions.
 - 3.4.5 The lack of reference on a drawing or in a specification to labour or *Products* that are required or normally recognized within the applicable trade practice as being necessary for the complete execution of the *Work* shall not constitute an error, inconsistency or omission.

SC 26. GC 3.5 CONSTRUCTION SCHEDULE

1. Delete paragraph 3.5.1 in its entirety and replace with the following:
 - 3.5.1 The *Contractor* shall:

- .1 within ten (10) *Working Days* following the notice of award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review, a construction schedule that indicates the timing of the 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* and in accordance with the *Contract Documents*. The *Contractor* shall employ construction scheduling software that permits the progress of the *Work* to be monitored in relation to the critical path established in the schedule. The *Contractor* shall provide the schedule and any successor or revised schedules in both electronic format and paper copy. Once accepted by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline construction schedule.
 - .2 If the construction schedule submitted by the *Contractor* is not accepted by the *Owner* and the *Consultant*, the *Contractor* shall, within five (5) *Working Days*, make revisions to the construction schedule until it is accepted by the *Owner* and the *Consultant*. Notwithstanding any other terms of this *Contract*, the *Contractor* shall not be entitled to receive any payment from the *Owner* until a construction schedule has been submitted by the *Contractor* and accepted by the *Owner* and the *Consultant*,
 - .3 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline construction schedule or any successor or revised schedule accepted by the *Owner* pursuant to GC 3.5 - CONSTRUCTION SCHEDULE;
 - .4 monitor the progress of the *Work* on a weekly basis relative to the baseline construction schedule, or any successor or revised schedule accepted by the *Owner* pursuant to GC 3.5 - CONSTRUCTION SCHEDULE, update the schedule on a monthly basis and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the schedule; and
 - .5 if, after applying the expertise and resources required under subparagraph 3.5.1.3, the *Contractor* forms the opinion that the variation or slippage in schedule reported pursuant to subparagraph 3.5.1.4 cannot be recovered by the *Contractor*, it shall, in the same notice, indicate to the *Consultant* and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 of the General Conditions - CHANGES IN THE WORK.
2. Add new paragraphs 3.5.2, 3.5.3, 3.5.4, 3.5.5 and 3.5.6 as follows:
- 3.5.2 If, at any time, it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.5.1.4, the *Contractor* shall within five (5) *Working Days* take appropriate steps to cause the actual progress of the *Work* to conform to the schedule or minimize the resulting delay and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the schedule. If the *Contractor* intends to apply for a change in the *Contract Price* in relation to a schedule recovery plan, then the *Contractor* shall proceed in accordance with GC 6.5 – DELAYS.
 - 3.5.3 An application for an extension of time as herein provided shall be made in writing by the *Contractor* to the *Consultant* through the *Change Order* process.
 - 3.5.4 Any additional time granted for the completion of the *Contract* will be conditional upon the *Contractor* providing the *Owner* with evidence that all insurance, bonds or other securities, furnished to the *Owner* by the *Contractor*, have been increased and, if necessary, extended beyond the limit of the time extension.

- 3.5.5 Any extension of time that may be granted to the *Contractor* shall be so granted and accepted without prejudice to any rights of the *Owner* whatsoever under the *Contract* and all of such rights shall continue in full force and effect after the time limited in the *Contract* for the completion of the *Work*, and whenever in the *Contract* power and authority is given to the *Owner* or the *Consultant* or any person to take any action consequent upon the act, default, breach, neglect, delay, non-observance or non-performance by the *Contractor* in respect of the *Work* or *Contract*, or any portion thereof, such powers or authorities may be exercised from time to time and not only in the event of the happening of such contingencies before the time limited in the *Contract* for the completion of the *Work* but also in the event of the same happening after the time so limited in the case of the *Contractor* being permitted to proceed with the execution of the *Work* under an extension of time granted by the *Consultant*. In the event of the *Consultant* granting an extension of time, time shall continue to be deemed of the essence with respect to that extension.
- 3.5.6 Due to the time constraints regarding the *Project*, the *Contractor* shall maintain rigorous control of all elements of the *Work* for which the deadlines are indicated in the *Contract Documents*.

SC 27. GC 3.6 SUPERVISION

1. Delete paragraph 3.6.1 in its entirety and replace with the following:
 - 3.6.1 The *Contractor* shall furnish a competent, qualified and adequate staff, who shall be in attendance at the *Place of the Work* at all times, as necessary, for the proper administration, co-ordination, supervision and superintendence of the *Work*; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the *Work*, and keep an adequate force of skilled workmen on the job to complete the *Work* in accordance with all requirements of the *Contract Documents*. The appointed representatives shall not be changed except for valid reasons, at no additional cost to the *Owner*, and upon the *Contractor* obtaining the *Owner's* written consent, which consent will not be unreasonably withheld. Further, the *Contractor* shall not employ or continue to employ on the *Work* anyone to whom the *Owner* may reasonably object.
2. Add new paragraphs 3.6.3, 3.6.4, 3.6.5, 3.6.6, 3.6.7 and 3.6.8 as follows:
 - 3.6.3 The *Contractor* shall provide all necessary supervision and shall at all times have at the *Place of Work*, a full-time and competent construction superintendent who shall be capable of reading and thoroughly understanding plans and *Specifications* and of adequately communicating with the *Consultant* and its representatives and who also must be thoroughly experienced in the type of *Work* being performed, and who shall be the recipient of all instructions from the *Consultant* or its authorized representatives. No work of any kind shall be carried out by the *Contractor* or its *Subcontractors* during the absence of the construction superintendent. The *Contractor* shall be responsible for the *Place of Work* at all times.
 - 3.6.4 The construction superintendent shall have full authority to execute the orders or directions of the *Consultant* without delay, and to promptly provide such materials, equipment, tools, labour and incidentals as may be required. The *Contractor* shall provide a superintendent regardless of the amount of *Work* subcontracted.
 - 3.6.5 The *Contractor* shall provide the *Consultant* and the *Owner* with the telephone and the email address of its appointed representative(s), who could be contacted on matters relating to the *Contract*, (e.g. urgent messages or emergencies), and who

shall be available within reasonable notice, twenty-four (24) hours a day, seven (7) days a week, on matters relating to the *Contract*.

- 3.6.6 The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed representative(s), where the grounds for the request involve incompetent or disorderly conduct or conduct which jeopardizes the safety and security of the site or the *Owner's* operations. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an acceptable replacement at no additional cost to the *Owner*.
- 3.6.7 The superintendent shall not be employed in any other capacity at the *Place of Work*.
- 3.6.8 The *Contractor* acknowledges that the replacement of the construction superintendent or *Project* team members may have significant impacts on the *Project* schedule and quality of the *Work*; therefore, all measures will be taken by the *Contractor* in order to maintain the original team assigned to the *Project*. If replacement of any team members results in a possible delay to the *Project*, it will be the responsibility of the *Contractor* to make-up any such delays, at no cost to the *Owner*.

SC 28. GC 3.7 SUBCONTRACTORS AND SUPPLIERS

1. Add to the end of paragraph 3.7.2,
"Failure on the part of the *Contractor* to indicate in writing such *Subcontractors* and *Suppliers* to the *Owner*, shall be deemed to be a failure or refusal to enter into the *Contract*."
2. Add to the end of paragraph 3.7.4, the following:
"through a *Change Order*."
3. Add new paragraph 3.7.7 as follows:

3.7.7 The *Contractor* shall not change any of the *Subcontractors* or *Suppliers* proposed by the *Contractor* in writing and accepted by the *Owner* at the signing of the *Contract* without the *Owner's* written consent or execute any subcontracts for the performance of the *Work* without the *Owner's* prior written consent.

SC 29. GC 3.8 LABOUR AND PRODUCTS

1. Delete paragraph 3.8.2 in its entirety and replace with the following:
3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new and as specified. The *Contractor* shall not provide substitutions for specified *Products* without the express written consent of the *Consultant* or the *Owner*.
2. Add new paragraphs 3.8.4, 3.8.5, 3.8.6, 3.8.7, 3.8.8, 3.8.9, 3.8.10, 3.8.11, 3.8.12 and 3.8.13 as follows:

3.8.4 The cost for overtime required beyond the normal *Working Day* to complete individual construction operations of a continuous nature, or work that the *Contractor* elects to perform at overtime rates without the *Owner* or the *Consultant* requesting it shall not be chargeable to the *Owner* and shall be at the sole cost and expense of the *Contractor*.

- 3.8.5 The *Contractor* shall neither permit nor allow (a) under aged persons contrary to *Applicable Laws*, nor (b) the introduction or use of alcoholic beverages, cannabis or illegal narcotics on or about the *Place of the Work*.
- 3.8.6 At the request of the *Owner* or *Consultant*, the *Contractor* shall remove from the *Place of the Work*, any person (whether employed on the *Work* or not) who, in the opinion of the *Owner* or *Consultant*, is incompetent, intoxicated or otherwise impaired, or who is conducting himself (or herself) improperly, and the *Contractor* shall not permit any such person to remain on the *Place of the Work*, nor to return to the *Place of the Work* without the written approval of the *Owner* or *Consultant* as the case may be.
- 3.8.7 The *Contractor* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and other contractors to be installed under the *Contract*) in such ways as to avoid dangerous conditions or contamination of the *Products* or other person or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner* within the *Contract Documents*.
- 3.8.8 Where required by the *Consultant* or the *Owner*, the *Contractor* shall furnish a complete written statement of the origin, composition and manufacture of all materials to be supplied by them, and shall furnish samples thereof for testing purposes, if so instructed by the *Consultant*.
- 3.8.9 The *Consultant's* or *Owner's* approval of changed materials shall not be considered as waiver of objection to the *Work* or materials at any subsequent time due to their failure to conform to the *Specifications*.
- 3.8.10 The *Contractor* shall furnish for the *Consultant's* approval, such material tests, mock-ups, mix designs and tests of items and/or materials manufactured or fabricated off the *Place of the Work* as the *Consultant* may reasonably request.
- 3.8.11 Specified *Product* by name, trade or company is regarded as the standard of quality required by the *Specifications*. No substitution shall be made by the *Contractor* without the prior written approval of the *Consultant*.
- 3.8.12 Specified trade contractors working in Oakville are required to have a valid business licence. Visit the Business Licensing page to review the requirements and find out how to apply for a licence.
<https://www.oakville.ca/townhall/licensed-contractors.html>
- 3.8.13 The *Contractor* represents and warrants that the *Products* provided for in accordance with the *Contract* are not subject to any conditional sales contract and are not subject to any security rights obtained by any third party which may subject any of the *Products* to seizure and/or removal from the *Place of the Work*.

SC 30. GC 3.11 USE OF THE WORK

1. Add to the end of paragraph 3.11.2 the following:
“or impact the structural or future material use of the *Work*”.
2. Add new paragraph 3.11.3 as follows:
3.11.3 The *Contractor* shall abide by and enforce directives and policies regarding signs, advertisements, safety procedures, fires and smoking at the *Place of the Work* as directed by the *Owner*.

SC 31. GC 3.13 CLEANUP

1. Add new paragraphs 3.13.4, 3.13.5 and 3.13.6 as follows:
3.13.4 All cleanup performed under items 3.13.1, 3.13.2 and 3.13.3 shall be to the satisfaction of the *Consultant* and the *Owner*.
3.13.5 *Owner* shall have the right perform the cleaning and to set-off the cost of cleaning to the *Contractor*, where items 3.13.1, 3.13.2 and 3.13.3 are not carried out after the *Owner* has provided two (2) *Working Days* written notice to do so.
3.13.6 The *Contractor* shall legally dispose forthwith of any debris and surplus material accumulated at the *Place of the Work*, and where requested, the *Contractor* shall provide to the *Consultant* a true copy of the original certificate approval from a waste management system and a true copy of the original certificate of approval from the place of disposal for all debris and surplus material disposed of by the *Contractor* under the *Contract*.

SC 32. GC 3.14 STANDARD OF CARE

1. Add new general condition GC 3.14 PERFORMANCE BY CONTRACTOR as follows:
3.14.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract*, the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of due care and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.
3.14.2 The *Contractor* further represents, covenants and warrants to the *Owner* that:
 - .1 the personnel it assigns to the *Project* are appropriately experienced;
 - .2 it has a sufficient staff of qualified and competent personnel to replace any vacancy, subject to the *Owner's* approval, resulting from death, incapacity, removal or resignation; and
 - .3 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*.

SC 33. GC 3.15 SECURITY

1. Add new general condition GC 3.15 SECURITY as follows:

- 3.15.1 The *Contractor* is responsible to provide and maintain the *Place of the Work* in a secure manner, free from public access, trespassing, or vandalism. This provision is to be maintained on a twenty-four (24) hours per day, seven (7) days per week basis and shall include fencing and/or hoarding and may require other measures as required.

SC 34. GC 3.16 INTERFERENCE

1. Add new general condition GC 3.16 INTERFERENCE as follows:

- 3.16.1 If the *Work*, in whole or in part, involves the renovation of, or addition to, existing and occupied premises:
- .1 the *Contractor* shall maintain normal business operations and traffic flow, with a minimum of inconvenience to the tenants and occupants of the *Place of the Work*;
 - .2 subject to the provisions of the *Contract Documents*, the *Contractor* shall ensure that no essential services such as electric power, water supply or other public utilities are interrupted;
 - .3 in every case where an interruption to existing services or utilities is to occur during execution of the *Work*, the *Contractor* shall give the *Owner* five (5) *Working Days*' prior written notice. The *Contractor* shall reschedule any such interruption, at no additional cost to the *Owner*, if requested to do so in writing by the *Owner*;
 - .4 subject to work restrictions set out elsewhere in the *Contract Documents*, any work that generates excessive or prolonged noise or percussion sounds shall not be carried out by the *Contractor* between the hours of 7:00 p.m. and 7:00 a.m. or on Sundays or holidays subject to applicable by-laws; and
 - .5 subject to work restrictions set out elsewhere in the *Contract Documents*, any work that generates excessive dust or odours shall be carried out by the *Contractor* between the hours of 7:00 p.m. and 7:00 a.m. or on Sundays or holidays as may be agreed upon between the *Contractor* and the *Owner*, subject to applicable by-laws. Lump Sum bid must include all costs associated with such work.

SC 35. GC 4.1 CASH ALLOWANCES

1. Delete paragraph 4.1.4 in its entirety and replace with the following:
- 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*.
2. Delete paragraph 4.1.5 in its entirety and replace with the following:
- 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.
3. Add new paragraph 4.1.8 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 from cash allowances.

SC 36. GC 4.2 CONTINGENCY ALLOWANCES

1. Add new paragraph 4.2.5:

4.2.5 Any contingency allowance specified in the *Contract Documents*, the *Owner's* Council resolution with respect to the *Contract*, or elsewhere, shall be deemed to be solely a budgetary authorization by the *Owner*. The *Contractor* shall have no right to draw upon any such contingency allowance for payment unless specifically authorized to do so by way of *Change Order*.

2. Add new paragraph 4.2.6:

4.2.6 In the absence of a contingency allowance being shown on the *Contract Documents*, the *Contractor* is not to assume that there is one in place. The disclosure of any contingency allowances is at the discretion of the *Owner*.

SC 37. GC 4.3 PROVISIONAL AMOUNTS

1. Add new general condition GC 4.3 PROVISIONAL AMOUNTS as follows:

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

SC 38. GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

1. Revise the heading to read, "**GC 5.1 FINANCING INFORMATION REQUIRED**".

2. Delete paragraph 5.1.1 in its entirety in its entirety and replace with the following:

5.1.1 The *Owner* and *Contractor* shall provide each other with timely *Notice in Writing* of any material change in their financial ability to fulfil their respective obligations under the *Contract*.

3. Delete paragraph 5.1.2 in its entirety.

SC 39. GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

1. Add to the end of paragraph 5.2.3, the following:

"The *Contractor* shall review with the *Consultant* and the *Owner*, at a scheduled time, the percentage of work completed for each item indicated in the schedule of values. This procedure shall be complied with for each application for payment prior to submitting the formal application for payment."

2. Add to the end of paragraph 5.2.6, the following:

"The statement shall include the *Contract* number, *Project* name and purchase order number."

3. Add to the end of paragraph 5.2.7, the following:

“Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor*.”

4. Add new paragraphs 5.2.8, 5.2.9, 5.2.10, 5.2.11, 5.2.12, 5.2.13 and 5.2.14, as follows:
 - 5.2.8 The *Contractor* must provide with each application after the first, a *Statutory Declaration*, certifying that all accounts for all subcontract, construction machinery and equipment, materials, *Products*, labour and other indebtedness which may have been incurred by the *Contractor* and for which the *Owner* might in any way be held responsible have been paid in full or will be paid with the proceeds from such application for payment, except for amounts properly retained as holdback or as an identified amount in dispute.
 - 5.2.9 After the first application for payment and with each subsequent application for payment the *Contractor* shall submit evidence of compliance with the applicable worker’s compensation legislation at the *Place of the Work*, including payments due thereunder.
 - 5.2.10 Subject to the *Construction Act* and all other *Applicable Laws*, the *Owner* will pay to the *Contractor* ninety percent (90%) of the amount shown on such certificates, less previous payments, less the amount of any liens or any written notice of a lien of which the *Owner* has notice, plus 25% for security for costs, less the maintenance security referred to in GC 12.3 – WARRANTY, and less any amounts that the *Owner* deems necessary to retain for its protection against claims or liabilities or for any claim or claims the *Owner* may have against the *Contractor* under the *Contract*, other contracts, or otherwise, and such payments shall not in any way be construed as, nor shall it constitute, an acceptance of all or any part of the *Work* or material under the *Contract*.
Once the reason for the *Owner* being entitled to withhold payment of any amount has been rectified, the amount withheld due to that reason will be paid by the *Owner* to the *Contractor*.
 - 5.2.11 The *Contractor* shall submit its formal applications for payment, including a breakdown of approved *Change Orders* and percentage completed of each and all other required *Submittals* as stated in the *Contract Documents*, to the *Consultant* in a form satisfactory to the *Owner*. Deviation or incomplete submissions with respect to the approved breakdown will require resubmission of the application for payment
 - 5.2.12 If any *Work* or item under the *Contract* is included by the *Contractor* in its progress claims as partially or fully completed, but it is not completed in accordance with *Drawings* or *Specifications*, or is not completed to the *Consultant’s* satisfaction, the *Consultant* shall omit the partial or total cost of such items from the certificates of payment and shall notify the *Contractor* in writing of its action and the reason for same, and shall withhold payments for such items, over, above and distinct from applicable construction lien holdbacks, until they are completed or corrected to its full satisfaction.
 - 5.2.13 The *Consultant* and/or the *Owner* shall not be held responsible for any delays in payment due to a disagreement in the amounts shown by the *Contractor* on their payment application as submitted to the *Consultant* for review.
 - 5.2.14 The *Contractor* shall prepare current *As-Built Drawings* in electronic format during the course of the *Work*, which current *As-Built Drawings* shall be maintained by the *Contractor* and made available to the *Consultant* for review with each application for

progress payment. The *Consultant* shall retain a reasonable amount from any progress payment for the value of the *As-Built Drawings* not presented for review.

SC 40. GC 5.3 PROGRESS PAYMENT

1. Delete from the first line of subparagraph 5.3.1.2 the words "calendar days" and substitute the words:

"Working Days".

2. Delete subparagraph 5.3.1.3 in its entirety and replace with the following:

5.3.1.3 The *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement - PAYMENT on or before twenty (20) *Working Days* after the date of a certificate of payment issued by the *Consultant*.

3. Add new paragraph 5.3.2, 5.3.3 and 5.3.4 as follows:

5.3.2 If the *Contractor* fails to comply with GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT or GC 10.4 – WORKERS' COMPENSATION, the *Owner* shall not be required to make payments to the *Contractor* until the obligation has been complied with.

5.3.3 All progress payments are not conclusive as to the value or quality of *Work* performed, and are subject to reopening and readjustment, until and including the date that the *Owner* releases the holdback for finishing work under the *Construction Act*.

5.3.4 Certificates for payment may provide for retention of amounts as determined by the *Consultant* to ensure correction of deficient work done or unacceptable *Products* provided.

SC 41. GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

1. Delete paragraph 5.4.3 in its entirety and replace with the following:

5.4.3 Immediately prior to the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish the dates for finishing the *Work* and correcting deficiencies.

- .2 Add new paragraphs 5.4.4, 5.4.5, 5.4.6, and 5.4.7:

5.4.4 Within seven (7) calendar days of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Contractor* shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Construction Act*) and shall provide to the *Consultant* and the *Owner* a copy of the published notice, the date of publication and the name of the construction trade newspaper in which the publication occurred. If the *Contractor* fails to comply with this provision, the *Owner* may publish a copy of the certificate and charge the *Contractor* with the costs so incurred.

5.4.5 Prior to submitting its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* all:

- .1 guarantees;
- .2 warranties;

- .3 certificates;
 - .4 testing and balancing reports;
 - .5 distribution system diagrams;
 - .6 spare parts;
 - .7 maintenance manuals;
 - .8 samples;
 - .9 existing reports and correspondence from *Authorities Having Jurisdiction* in the *Place of the Work*;
 - .10 *As-Built Drawings*; and
 - .11 other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, governmental, and utility *Authorities Having Jurisdiction* in the *Place of the Work*.
- 5.4.6 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.5, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, the failure to deliver shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*. If the *Contractor* fails to deliver any of the materials required in subparagraphs 5.4.5.7 or 5.4.5.8, the *Consultant* may retain a reasonable amount or, where applicable, the amount specified in the Project Specific Supplementary Conditions from the payment of holdback under General Condition 5.5 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK. Should any documents or materials not be delivered in accordance with paragraph 5.4.5 by the earlier of sixty (60) days following publication of the certificate of *Substantial Performance of the Work* and the submission of the *Contractor's* application for final payment under paragraph 5.7.1 of General Condition 5.7 – FINAL PAYMENT, then the amount previously retained pursuant to this provision shall be forfeit to the *Owner* as compensation for the damages deemed to have been incurred by the *Owner*, and not as a penalty, arising from the failure to deliver the documents or materials, and the *Contract Price* shall be reduced accordingly.
- 5.4.7 Together with the submission of its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* and to the *Owner* a *Statutory Declaration* setting forth in reasonable detail any then outstanding and unresolved disputes or claims between the *Contractor* and any *Subcontractor* or *Supplier*, including any claims allegedly arising from delay, which are, directly or indirectly, related to any then outstanding or anticipated disputes or claims between the *Contractor* and the *Owner*, and this disclosure shall, at a minimum:
- .1 identify the parties involved;
 - .2 identify the amount in dispute;
 - .3 provide a brief statement summarizing the position of each party;
 - .4 include copies of any correspondence or documents in support of either party's position;
 - .5 include copies of any documents of any court or arbitration process related to the matter;
 - .6 identify the dispute or claim between the *Contractor* and the *Owner* to which the matter relates; and
 - .7 include a copy of any written agreement or a summary of any oral agreement between the parties related to resolution of the matter.

The disclosure requirements detailed herein are of a continuing nature and survive completion of the *Work*. Accordingly, the *Contractor* shall supplement the information provided with the original *Statutory Declaration* with additional materials pertaining to new or existing disputes or claims, as they become available. The *Contractor* shall not be entitled to recover from the *Owner* any amount pertaining to any claim or dispute referred to in this paragraph, if the provisions of this paragraph have not been fully complied with. For greater certainty, the *Contractor* is not obliged to make the aforementioned disclosure with respect to any dispute or claim that is not related to or does not touch upon any then outstanding and unresolved dispute or claim between the *Contractor* and the *Owner*.

SC 42. GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

1. Add new subparagraph 5.5.1.3 as follows:

5.5.1.3 Submit a statement that no written notices of lien have been received by it.

2. Delete “statement” from paragraph 5.5.2 and replace with the following:

“documents”

3. Delete paragraphs 5.5.3, 5.5.4 and 5.5.5 in their entirety.

SC 43. GC 5.7 FINAL PAYMENT

1. Delete paragraph 5.7.1 in its entirety and replace with the following:

5.7.1 When the *Contractor* considers that the *Work* has been totally performed, the *Contractor* shall submit an application for final payment, together with a written application for review by the *Consultant* to establish *Total Performance of the Work*. The *Contractor’s* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.5 and, for purposes of the Construction Act, the remaining *Work* is valued at less than \$5,000.

Should the *Contractor* fail to deliver any of the foregoing documents, the *Owner* shall be at liberty to withhold from amounts otherwise payable to the *Contractor* as security for the obligation of the *Contractor* to deliver the undelivered documents. The *Contractor* shall have no right to receive payment of the amount so withheld until such time as all required documents and materials referenced in paragraph 5.4.5 have been delivered.

2. Delete paragraph 5.7.2 in its entirety and replace with the following:

5.7.2 The *Consultant* will, no later than ten (10) *Working Days* after the receipt of an application from the *Contractor* for final payment, review the *Work* to verify the validity of the application and:

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

3. Delete “5 calendar days” in paragraph 5.7.4 and replace with:

“twenty (20) *Working Days*”.

4. Add new paragraph 5.7.5 as follows:

5.7.5 Prior to the release of the holdback for finishing work under the *Construction Act*, the *Contractor* shall submit:

- .1 *Contractor's* written request for release of the holdback, including a statement that no written notices of lien have been received by it;
- .2 a *Statutory Declaration*; and
- .3 a final Workplace Safety & Insurance Board Clearance Certificate.

SC 44. GC 5.10 LIENS

1. Add new general condition GC 5.10 LIENS as follows:

5.10.1 In the event that a construction lien arising from the performance of the *Work* is registered against the *Project* lands, the *Contractor* shall, within ten (10) calendar days, at its sole expense, vacate or discharge the lien from title to the premises. If the lien is merely vacated, the *Contractor* shall, if requested, undertake the *Owner's* defence of any subsequent lawsuit commenced in respect of the lien at the *Contractor's* sole expense.

5.10.2 In the event that 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 and expenses incurred by the *Owner* in so doing (including, without limitation, 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 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 *Construction Act* (Ontario) if the lien had not been vacated.

5.10.3 Without limiting any of the foregoing, the *Contractor* shall indemnify the *Owner* for all costs (including, without limitation, legal fees on a solicitor and client basis) it may incur in connection with the claim for lien or subsequent lawsuit brought in connection with the lien, or in connection with any other claim or lawsuit brought against the *Owner* by any person that provided services or materials to the *Project* lands which constituted a part of the *Work*.

5.10.4 This GC 5.10 does not apply to construction liens claimed by the *Contractor*.

SC 45. GC 6.2 CHANGE ORDER

1. Add new paragraph 6.2.3 as follows:

6.2.3 The value of a change shall be determined in one or more of the following methods as directed by the *Owner*:

- .1 by quotation and acceptance of a lump sum, and all quotations must contain an itemized and complete breakdown of costs, including hours and hourly rates of labour, payroll burden, itemized costs of materials, quantity of materials, *Products*, invoices from subtrades and other receipts and all other costs to perform the change in the *Work*, including the mark-up disclosed below, such that the quotations are capable of being evaluated by the *Consultant*. The *Contractor* shall require *Subcontractors* and *Suppliers* to supply similar information to the *Consultant*.
- .2 by unit prices set out in the Bid Form or subsequently agreed upon by the parties. Unit prices shall include materials, labour, equipment, delivery, freight, handling, disposal, statutory charges, supervisions, testing, all applicable duties, brokerage charges, import charges, HST, bonding, *Overhead*, profit and all relative charges and expenses including, but not limited to, office administration charges such as disbursements, travel costs, printing and incidentals to the *Contractor*, and shall be the total cost to the *Owner*. Adjustment to the *Contract Price* shall be based on a net quantity difference from the original quantity.
- .3 by the amount, net of all credits, of time, materials, *Construction Equipment* and *Products* expended:
 - .1 by a *Subcontractor* applying its labour charge out rates, together with the actual costs, without mark-up, of materials, *Construction Equipment* and *Products* utilized in the change, plus the *Subcontractor's* mark-up at 5% which applies to materials, *Construction Equipment* and *Product* costs only;
 - .2 by the *Contractor* applying its labour charge out rates, together with the actual costs, without mark-up, of materials, *Construction Equipment* and *Products* plus the mark-up at 5% which applies to material, *Construction Equipment* and *Product* costs only;
 - .3 the *Contractor* shall be entitled to the *Contractor* mark-up of 5% on both *Contractor's* Own Forces the value of *Subcontractor Work* even where the *Subcontractor* is not entitled to a mark-up on its labour charge out rates pursuant to paragraph 6.2.3.3(1).
- .4 the mark-ups described in paragraphs 6.2.3.1 and 6.2.3.3 include all necessary supervision, general account items, general clean-up, small tools, *As-Built Drawings* and job safety necessary to perform the change. Additional bonding cost is excluded from the mark-ups but may be included as a cost, using the value declared for bonding by the *Contractor* in its bid to the *Owner*, unless otherwise agreed by the parties.

SC 46. GC 6.3 CHANGE DIRECTIVE

1. Delete subparagraph 6.3.6.3 in its entirety and replace with the following:

6.3.6.3 The *Contractor's* fee shall be as specified in GC 6.7 - EXTRA WORK, CLAIMS PAYMENT FROM CONTINGENCY or as otherwise agreed by the parties.
2. Delete subparagraph 6.3.7.1 in its entirety and replace with the following:

6.3.7.1 salaries, wages and benefits paid to personnel in the direct employ of the *Contractor* while directly engaged in the *Work* attributable to the change under a salary or wage schedule agreed upon by the *Owner* and the *Contractor*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining

agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Contractor* while directly engaged in the *Work* attributable to the change, for personnel

- .1 stationed at the *Contractor's* field office, in whatever capacity employed;
 - .2 engaged in the preparation or review of *Shop Drawings*, fabrication *Drawings*, and coordination *Drawings*; or
 - .3 engaged in the processing of changes in the *Work*.
3. Delete “and hand tools not owned by the workers” from subparagraph 6.3.7.5 and replace with the following:
“exclusive of hand tools”
 4. Add to the end of subparagraph 6.3.7.9, the following:
“, provided however that the cost included in such amounts shall be limited to the actual costs of the items described in this paragraph 6.3.7 changing “*Contractor*” to “*Subcontractor*” as necessary”
 5. Add to the end of subparagraph 6.3.7.17, the following:
“not caused by the *Contractor* or anyone for whom it is responsible”
 6. Delete “thereof when requested” from paragraph 6.3.9 and replace with the following:
“upon submission of any claim for costs related to the *Change Directive*”
 7. Add to the end of paragraph 6.3.10, the following:
“The *Contractor* shall include all pertinent documentation as back-up with any claims for additional *Contract Time* and/or increase in *Contract Price* to the *Consultant* for review and approval.”
 8. Add after “proposed adjustment in the *Contract Time* from paragraph 6.3.12, the following:
“and/or *Contract Price*”

SC 47. GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

1. Add new paragraph 6.4.5, 6.4.6 and 6.4.7 as follows:
 - 6.4.5 If the *Contractor* was given access to the *Place of the Work* prior to the submission of the bid on which the *Contract* was awarded, then the *Contractor* confirms that it carefully investigated the *Place of the Work* and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.14.1. In those circumstances, notwithstanding the provisions of paragraph 6.4.1, the *Contractor* is not entitled to an adjustment to the *Contract Price* or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation, or which could have been reasonably inferred from the material provided with the *Contract Documents*.

In those circumstances, should a claim arise, the *Contractor* will have the burden of establishing that it could not have discovered the materially different conditions from a careful investigation, because of restrictions placed on its access or inferred the existence of the conditions from the material provided with the *Contract Documents*.

- 6.4.6 To the extent the *Contractor* has not investigated as referenced in paragraph 6.4.5, the *Contractor* willingly assumes responsibility for all losses, damages, costs, expenses (including all legal costs on a full indemnity basis), liabilities, claims, actions, and demands, whether arising under statute, contract or at common law, which such investigations might have avoided or reduced and shall indemnify and save harmless the *Owner* from all risk which might make it more onerous and more expensive to fulfill or perform the *Work* than was contemplated or known when the *Contract* was signed, and for any and all liability, responsibility and obligations which the *Owner* may have to any third parties resulting from any failure to investigate.
- 6.4.7 If the finding made pursuant to paragraph 6.4.2 is that the subsurface or otherwise concealed physical conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, and if the said conditions were otherwise discoverable by the *Contractor* in the proper performance of its duties and obligations under the *Contract*, all costs and expenses resulting from any delay (excluding, for clarity, the direct cost of remediating the said conditions) in the completion of the *Work* that is caused, or contributed to, as a result of the said conditions, will be borne by the *Contractor*.

SC 48. GC 6.5 DELAYS

1. Delete paragraph 6.5.1 in its entirety and replace with the following:
 - 6.5.1 Subject to the next sentence, if the *Contractor* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by the *Owner* directly except for the town's regulatory function and acting as authority having jurisdiction and the action or omission is contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* and *Owner* may recommend in consultation with the *Contractor*. Any delay resulting from the *Contractor* not obtaining or being delayed in obtaining a permit from the *Owner* acting as a regulator authority shall not be considered an action or omission of the *Owner* or anyone employed or engaged by the *Owner* directly. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay, provided that the *Owner* shall not be liable for any other costs or damages whatsoever including, without limitation, any indirect, consequential, or special damages, such as loss of profits, loss of opportunity or loss of productivity resulting from such delay.
2. Add to the end of paragraph 6.5.2, the following:

“, provided that the *Owner* shall not be liable for any other costs or damages whatsoever including, without limitation, any indirect, consequential, or special damages, such as loss of profits, loss of opportunity or loss of productivity resulting from such delay.”
3. Delete paragraph 6.5.3 in its entirety and replace with the following:
 - 6.5.3 If the *Contractor* is delayed in the performance of *Work* by *Force Majeure* 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*, *Consultant* or anyone employed or engaged by them directly, provided that the *Owner* shall in such instance, only be liable for reasonable costs incurred by the *Contractor* and shall not be liable for any other costs or damages whatsoever including, without limitation, any indirect, consequential, or special damages, such as loss of profits, loss of opportunity or loss of productivity resulting from such delay. Notwithstanding the foregoing, the *Contractor* shall use its best efforts to minimize the impact of such event upon the performance of the *Work* and *Contract Time*.

- .1 Subject to the foregoing, each party shall be excused from performance so long as the *Force Majeure* persists, and shall not be considered to be in default under this section, if and to the extent that its failure of, or delay in performance is due to that *Force Majeure*.
- .2 Where a *Force Majeure* remains in effect for more than ninety (90) calendar days, either party may terminate the *Contract* upon thirty (30) calendar days written notice to the other party, provided at the time when that notice is given the *Force Majeure* is then continuing.
- .3 While a *Force Majeure* subsists which prevents the *Contractor* from proceeding with the *Work* under the *Contract*, the *Owner* may engage an alternate contractor on an interim basis, and the *Work* and the *Contract Price* will be adjusted accordingly.

2. Add new paragraph 6.5.6 as follows:

6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor*, any *Subcontractor* or *Supplier*, or anyone employed or engaged by them, directly or indirectly, or by any cause within the *Contractor's* control, the *Contractor* shall devote such additional resources and take all steps necessary, all at the *Contractor's* own cost and expense, to ensure that the dates for attaining *Substantial Performance of the Work* and *Total Performance of the Work* under the *Contract* as may have been amended in accordance with the provisions of Part 6 of the General Conditions – CHANGES IN THE WORK, are met. If the *Contractor* fails to attain *Substantial Performance of the Work* or *Total Performance of the Work* as aforesaid, the *Owner* shall be reimbursed by the *Contractor* for all reasonable costs, damages and expenses incurred by the *Owner* as the result of any such failure, including, but not limited to, the cost of all additional services required by the *Owner* from the *Consultant* or any subconsultants, project managers, or others employed or engaged by the *Owner*.

SC 49. GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

1. Add new paragraph 6.6.7 as follows:

6.6.7 The *Owner* may make claims against the *Contractor* arising out of the costs incurred for additional services provided by the *Consultant* resulting from the *Contractor's* failure to reasonably perform the *Work* in accordance with the terms and conditions of the *Contract*.

SC 50. GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

1. Add before "OR TERMINATE THE CONTRACT" in the title of GC 7.1, the following:
"SUSPEND THE WORK"
2. Delete paragraph 7.1.2 in its entirety and replace with the following.
 - 7.1.2 If the *Contractor* neglects to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract* in a material way and if the *Consultant* and the *Owner* agree that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Contractor Notice in Writing* that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the five (5) *Working Days* immediately following the delivery of such *Notice in Writing*.
3. Delete "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" from subparagraph 7.1.5.3.
4. Delete paragraph 7.1.6 in its entirety and add new paragraphs 7.1.6, 7.1.7, 7.1.8, 7.1.9, 7.1.10 and 7.1.11 as follows:
 - 7.1.6 The *Owner* has the right to terminate the *Contract* for willful or persistent violation by the *Contractor* or its workers or *Subcontractors* it has engaged for the performance of the *Work* for such violations including, but not limited to the following:
 - .1 failure to provide the schedule when due,
 - .2 failure to commence the *Work* by the date provided in the *Agreement* or other such date as agreed between the parties in writing,
 - .3 failure to comply with the terms and conditions of the *Contract* to a material degree,
 - .4 failure to comply with the *Specifications* and *Drawings* as provided,
 - .5 violation of applicable relevant Acts or legislation (e.g. Occupational Health and Safety Act legislation and regulations, Workplace Safety and Insurance Board Act, and Regulation 309 of the Environmental Protection Act), or
 - .6 failure to maintain the critical path established in the schedule.
 - 7.1.7 In addition to its right to terminate the *Contract* set out herein, the *Owner* may terminate the *Contract* at any time for any other reason and without cause upon giving the *Contractor Notice in Writing* to that effect. In such event, 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*, but in no event shall the *Contractor* be entitled to be compensated for any loss of profit on unperformed portions of the *Work*, or indirect, special, or consequential damages incurred.
 - 7.1.8 The *Owner* may suspend *Work* under the *Contract* at any time for any reason and without cause upon giving the *Contractor Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of suspension and be compensated for all actual costs incurred arising from the suspension, including reasonable profit and for loss sustained upon *Products* and *Construction Equipment*, as the *Contractor* may have sustained as a result of the suspension of the *Work*, but in no event shall the *Contractor* be entitled to be compensated for any indirect, special, or consequential damages incurred.

In the event that the suspension continues for more than one hundred and eighty (180) calendar days, the *Contract* shall be deemed to be terminated and the provisions of paragraph 7.1.7 shall apply.

- 7.1.9 In the case of either a termination of the *Contract* or a suspension of the *Work* under GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or GC 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.
- 7.1.10 Upon the resumption of the *Work* following a suspension under GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or GC 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* will endeavour to minimize the delay and financial consequences arising out of the suspension.
- 7.1.11 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 or suspension shall continue after such termination of the *Contract* or suspension of the *Work*.

SC 51. GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

1. Delete paragraph 7.2.2 in its entirety.
2. Delete paragraph 7.2.3 in its entirety and replace with the following:

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 subject to the other terms and conditions of the *Contract* the *Owner* fails to pay the *Contractor* when due the amounts certified by the *Consultant* or awarded by arbitration or court, except where the *Owner* has a bona fide claim for set-off, or
 - .2 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Consultant*, confirms by written statement to the *Contractor* and the *Owner*, that sufficient cause exists.
3. Delete paragraph 7.2.4 in its entirety and replace with the following:

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 twenty (20) *Working Days* following the delivery of the *Notice in Writing*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, suspend the *Work* until the default is corrected, provided, however, that in the event of such suspension, the provisions of paragraph 7.1.10 shall apply. If the *Contractor's Notice in Writing* to the *Owner* was given pursuant to paragraph 7.2.3, then, ninety (90) *Working Days* after the delivery of the *Notice in Writing*, the *Contractor* may terminate the *Contract*, provided, however, that in the event of such termination, the provisions of paragraph 7.1.10 shall apply.
4. Delete paragraph 7.2.5 in its entirety and replace with the following:

7.2.5 If the *Contractor* terminates the *Contract* under the conditions set out above, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination and be compensated for all actual costs incurred arising from the suspension, including reasonable profit and for loss sustained upon *Products* and *Construction Equipment*, as the *Contractor* may have sustained as a result of the termination of the *Work*, but in no event shall the *Contractor* be entitled to be compensated for any indirect, special or consequential damages incurred.

5. Add new paragraph 7.2.6 as follows:

7.2.6 If the *Contractor* stops the *Work* or terminates the *Contract* in accordance with this GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall leave the *Place of the Work* and the *Work* in a secure condition.

SC 52. GC 8.1 AUTHORITY OF THE CONSULTANT

1. Delete last sentence of 8.1.3 “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*” and substitute the following sentence:

“If it is subsequently determined that such instructions were 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 the requirements of the *Contract Documents*, including costs resulting from interruption of the *Work*.”

SC 53. GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

1. Delete paragraphs 8.2.6, 8.2.7 and 8.2.8 in their entirety.

2. Add new paragraph 8.2.6 as follows:

8.2.6 When a dispute has not been resolved through negotiation or mediation, within ten (10) *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may give a *Notice in Writing* to the other party and to the *Consultant* inviting the other party to agree to submit the dispute to be finally resolved by arbitration, pursuant to provisions of the *Arbitration Act, 1991*. If the other party wishes to accept the invitation to submit the dispute to arbitration, it shall so indicate by the delivery of a responding *Notice in Writing* within ten (10) *Working Days* of receipt of the invitation. If, within the required times, no invitation is made or, if made, is not accepted, either party may refer the dispute to the courts or to any other form of dispute resolution, including arbitration, which the parties may agree to use.

SC 54. GC 9.1 PROTECTION OF WORK AND PROPERTY

1. Delete “property adjacent to the *Place of the Work*” in paragraphs 9.1.1 and 9.1.3 and replace with the following:

“property adjacent, in the vicinity of or proximate to the *Place of the Work*”

2. Delete subparagraph 9.1.1.1 in its entirety and replace with the following:

- .1 errors in the *Contract Documents* which the *Contractor* could not have reasonably discovered applying the standard of care described in paragraph 3.14.1;
- 3. Delete paragraph 9.1.2 in its entirety and replace 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 reasonably apparent from the *Contract Documents*, or that are reasonably apparent from an inspection of the *Place of the Work* exercising the degree of care and skill described in paragraph 3.14.1.
- 4. Add new paragraph 9.1.5 as follows:
 - 9.1.5 With respect to any damage to which paragraph 9.1.4 applies, the *Contractor* shall neither undertake to repair or replace any damage whatsoever to the work of other contractors, or to property adjacent, in the vicinity of or proximate to the *Place of the Work*, nor acknowledge that the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. Where, however, there is danger to life, the environment, or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger.
- 4. Add new paragraph 9.1.6 as follows:
 - 9.1.6 The *Contractor* shall be responsible for securing the *Place of the Work* at all times and shall take all reasonable precautions necessary to protect the *Place of the Work*, its contents, materials (including *Owner*-supplied materials) and the public from loss or damage during and after working hours.

SC 55. GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 4. Add new subparagraph 9.2.5.5 as follows:
 - 9.2.5.5 Take all reasonable steps to mitigate the impact on *Contract Time* and *Contract Price* and any further steps it deems necessary to mitigate or stabilize any conditions resulting from encountering toxic or hazardous substances or materials.
- 2. Delete paragraph 9.2.6 in its entirety and replace with the following:
 - 9.2.6 If the *Owner* and *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, or whether any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *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, 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*.
- 2. Delete subparagraph 9.2.7.4 in its entirety and replace with the following:
 - 9.2.7.4 indemnify the *Contractor* from and against claims, demands, losses, costs, damages, actions, suits or proceedings made, suffered or brought by third parties

arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances for which the *Contractor* is not responsible under GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES at the Place of Work. This obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in GC 12.1 – INDEMNIFICATION or that otherwise exist respecting a person or party described in this paragraph.

3. Delete paragraph 9.2.8 in its entirety and replace with the following:

9.2.8 If the *Owner* and *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, that any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *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, 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 as a result of the delay
- .4 indemnify the *Owner* as required by GC 12.1 - INDEMNIFICATION.

SC 56. GC 9.4 CONSTRUCTION SAFETY

1. Delete paragraph 9.4.1 in its entirety and replace with the following:

9.4.1 The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations, and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*.

2. Add new paragraphs 9.4.2, 9.4.3, 9.4.4, 9.4.5, 9.4.6, 9.4.7, 9.4.8, 9.4.9, 9.4.10, 9.4.11, 9.4.12 and 9.4.13 as follows:

9.4.2 Prior to the commencement of the *Work*, the *Contractor* shall submit to the *Owner*:

- .1 documentation setting out the *Contractor's* in-house safety programs; and
- .2 a copy of the Notice of Project filed with the Ministry of Labour naming the *Contractor* as "constructor" under the *Occupational Health and Safety Act*.

9.4.3 The *Contractor* shall indemnify, defend and save harmless the *Owner*, its agents, officers, directors, employees, *Consultants*, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the *Occupational Health and Safety Act*, including the payment of legal fees and disbursements on a solicitor and client basis.

Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

- 9.4.4 The *Owner* undertakes to include in its contracts with other contractors and in its instructions to its own forces the requirement that the other contractor or its own forces, as the case may be, comply with the policies and procedures of and the directions and instructions from the *Contractor* with respect to occupational health and safety and related matters. Prior to admission to the *Place of the Work*, the *Contractor* may, as a condition of admission, require any other contractor or the *Owner's* own forces to sign a written acknowledgement in the following form:

Acknowledgement

The undersigned acknowledges that the *Work* it will perform on behalf of the *Owner* requires it to enter a *Place of the Work* which is under the total control of a *Contractor* that has a contract with the *Owner*, pursuant to which the *Contractor* has assumed overall responsibility for compliance with all aspects of the applicable health and safety legislation, including all the responsibilities of the "constructor" under the *Occupational Health and Safety Act*, as well as responsibility to co-ordinate and schedule the activities of our *Work* with the *Work* of the *Contractor* under its contract. The undersigned agrees to comply with the *Contractor's* directions and instructions with respect to health, safety, co-ordination, and scheduling and acknowledges that its failure to do so will be cause for termination of employment or of the undersigned's contract with the *Owner*, as the case may be. The undersigned also agrees to have the *Contractor* named as an additional insured on any commercial general liability insurance policy, where such insurance is required.

- 9.4.5 Without limiting any of the foregoing, prior to commencement of the *Work*, the *Contractor* shall have both a written occupational health and safety policy and program to implement that policy, and that all of its employees, *Subcontractors* and any other persons performing the *Work* shall be appropriately trained, licensed and certified, as required to perform the *Work*.
- 9.4.6 The *Contractor* and *Subcontractors* shall comply with the *Owner's* Corporate Health and Safety Manual, the *Employment Standards Act*, *Occupational Health and Safety Act* and all regulations thereunder, any other legislation governing construction or workplace safety, and all instructions issued by the *Consultant* or any inspector appointed by the Province of Ontario or Town of Oakville.
- 9.4.7 The *Contractor* shall be responsible for keeping the work free from trespassers and for protection of the *Work* and the public from any loss or injury from commencement of the *Work* to *Total Performance* of the *Work*.
- 9.4.8 The *Contractor* shall comply with all applicable occupational health and safety requirements in force during the time when *Work* is being carried out, and shall provide at the *Place of the Work*, such equipment and medical facilities as are necessary to furnish first aid to anyone who may be injured in connection with the *Work*.
- 9.4.9 Before commencing with any *Work*, the *Contractor*, the *Consultant* and the *Owner's* representative shall meet at the *Place of the Work*, and establish safe routes and routines for material deliveries, material storage locations, construction office location, and all other aspects of the execution of all *Work*.

- 9.4.10 The *Contractor* shall erect and maintain during construction, a dependable temporary fence, barricades, warning lights, and signage around the perimeter of the *Place of the Work*, all hazardous areas and excavations, and the *Consultant* may give reasonable directions to the *Contractor* as to the type and extent of the fence, barriers, warning lights, and signage needed.
- 9.4.11 The *Contractor* shall, at its own expense, shore up or otherwise securely support or protect any buildings, walls, fences, pavement, boulevards or other structures at the *Place of the Work*, and on the adjoining properties which may be endangered or which may cause injury during the *Work*, and in case of damage, disturbance or injuries to any such structures during and attributable, whether directly or indirectly, to any work under the *Contract*, or to any extra work entering into the *Contract*, the *Contractor* shall at its own expense, repair, rebuild or otherwise *Make Good* all damage, injuries or disturbance to said structures and put all such structures in a condition the same as, or equal to, that existing previous to its beginning that work.
- 9.4.12 In the event of an emergency threatening health, life or property, the *Contractor* shall take such action as may be necessary to save lives and protect persons from injury, and done to protect and preserve the property. The *Contractor* shall notify the *Owner* and the *Consultant* of such emergency as promptly as is practical under the circumstances.
- 9.4.13 The *Owner* undertakes to include in its contracts with other contractors and in its instructions to its own forces the requirement that the other contractor or its own forces, as the case may be, comply with the policies and procedures of and the directions and instructions from the *Contractor* with respect to occupational health and safety and related matters.

SC 57. GC 9.5 MOULD

1. Add to the end of subparagraph 9.5.2.3, the following:

“and incurred as a result of the delay.”

2. Delete subparagraph 9.5.3.4 in its entirety and replace with the following:

9.5.3.4 indemnify the *Contractor* from and against claims, demands, losses, costs, damages, actions, suits or proceedings made, suffered or brought by third parties arising out of or resulting from exposure to, or the presence of mould for which the *Contractor* is not responsible under GC 9.5 – MOULD at the Place of Work. This obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in GC 12.1 – INDEMNIFICATION or that otherwise exist respecting a person or party described in this paragraph.

SC 58. GC 10.1 TAXES AND DUTIES

1. Add to the end of paragraph GC 10.1.2 the following:

“The *Contractor* must prove to the satisfaction of the *Owner* that the *Contractor* will not benefit in any way by reason of any increase to the *Contract Price*.”

2. Add new paragraph 10.1.3 as follows:

10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the

Contractor shall, at the request of the *Owner*, assist with application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.

SC 59. GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

1. Delete paragraph 10.2.4 in its entirety and replace with the following:

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 environment, to the preservation of the public health, and to construction safety. The *Contractor* shall provide the *Owner* with copies of all such required notices and related health and safety documents. The *Contractor* shall notify the Chief Building Official or the registered code agency, where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the Ontario Building Code. The *Contractor* shall be present at each site inspection by an inspector or registered code agency. If any laws, ordinances, rules, regulations, or codes conflict, the more stringent shall govern.
2. Add to the beginning of paragraph 10.2.5, the following:

“Subject to paragraph 3.4.1,”
4. Delete paragraph 10.2.5 in its entirety and replace with the following:

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, and no further work on the affected components of the *Contract* shall proceed until these changes to the *Contract Documents* have been obtained by the *Contractor* from the *Consultant*. The *Consultant* will make 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 60. GC 10.3 PATENT FEES

1. Add before “hold the *Owner* harmless” in the second sentence of paragraph 10.3.1, the following:

“indemnify and”
2. Add after “which was supplied to the *Contractor*” in paragraph 10.3.2, the following:

“by the *Owner*”

SC 61. GC 10.4 WORKERS' COMPENSATION

1. Add after the words "Prior to commencing the *Work*," in the first line of paragraph 10.4.1, the following:

"and upon execution of the Agreement, again with each application for progress payment,"

2. Add to the beginning of paragraph 10.4.2, the following:

"The *Contractor* shall ensure that each *Subcontractor* complies with the workers' compensation legislation at the *Place of the Work*."

3. Add new paragraph 10.4.3 as follows:

10.4.3 Where a *Subcontractor* is not required to participate in the insurance plan provided for under the workers' compensation legislation, the *Contractor* shall require the *Subcontractor* to provide a sworn declaration of its exemption as a condition of the *Subcontractor's* admission to the *Place of Work*. When requested by the *Owner*, the *Contractor* shall require the *Subcontractor* to provide a letter of exemption under the workers' compensation legislation.

SC 62. GC 11.1 INSURANCE

- .1 Add new subparagraph 11.1.1.6(4):

11.1.1.6(4) If any loss occurs involving damage to property in an amount greater than \$25,000, bodily injury to any person, or damage to any existing structure, the *Contractor* shall, in addition to the other requirements set out herein, immediately provide a detailed written report to the *Owner*.

- .2 Delete paragraph 11.1.2 in its entirety and substitute with the following:

11.1.2 Each of the policies of insurance shall also contain a provision requiring not less than 30 days' written notice to each named insured prior to cancellation or any change that would reduce coverage. At least 10 calendar days prior to commencement of the *Work* and upon any 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*.

- .3 Add new subparagraph 11.1.9:

11.1.9 The parenthetical reference in CCDC 41 - INSURANCE REQUIREMENTS, paragraph 4 which reads: "(excluding flood and earthquake)" is deleted and replaced with the following: "(including flood, earthquake, testing, and *Commissioning*)".

SC 63. GC 11.2 CONTRACT SECURITY

1. Delete paragraph 11.2.1 in its entirety and replace with the following:

11.2.1 The *Contractor* shall, prior to commencement of the *Work*, provide to the *Owner*.

- .1 a performance bond, in the form and the amount set out in the bid documents, covering the performance of the *Contract*, including the *Contractor's* requirements with respect to the correction of deficiencies and the fulfillment of all warranties; and
 - .2 a labour and material payment bond, in the form and the amount set out in the bid documents, covering payment for labour, *Products*, or both.
2. Delete paragraph 11.2.2 in its entirety and replace with the following:
- 11.2.2 The bonds referred to in paragraph 11.2.1 shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the Province of Ontario, using the prescribed forms set out in the Construction Act, and shall be maintained in good standing until the fulfillment of the *Contract*, including the warranty period.
3. Add new paragraph 11.2.3 as follows:
- 11.2.3 If approved changes pursuant to the *Contract* result in approved increase or cumulative increases to the *Contract Price* the *Contractor* shall, if requested in writing to do so by the *Owner*, promptly acquire additional Performance and Maintenance bonding at the *Owner's* expense.

Where additional Performance and Maintenance bonding premiums are paid by the *Owner*, the *Contractor* shall promptly submit written confirmation that the premiums were paid to the surety and promptly provide the *Owner* with the original revised Performance and Maintenance bond(s).

SC 64. GC 12.1 INDEMNIFICATION

1. Delete GC 12.1 INDEMNIFICATION in its entirety and replace with the following:
- 12.1.1 The *Contractor* shall indemnify and shall defend and save the *Owner*, its elected officials, officers, and employees harmless from and against any claims, proceedings, fines, penalties, expenses and costs (including legal costs on a solicitor and client basis) that are incurred by, or made or instituted against, any of them or to which any of them may be liable by reason of,
- .1 the *Contractor* carrying out or failing to carry out any obligation to which it is subject, or exercising any right to which it is entitled, under the *Contract* except to the extent that the same are caused by the negligence or deliberate wrongdoing of the *Owner* or other person entitled to indemnification under this GC 12.1, or
 - .2 any patent, trademark, copyright infringement or other breach of any intellectual property right of any person, for which the *Contractor* or any *Subcontractor* to the *Contractor* is responsible.
- 12.1.2 The right of indemnification granted to the *Owner* or other person entitled to indemnification under paragraph 12.1.1 shall extend to any amount paid by that person in the settlement of any claim against it, and in entering into any such settlement, that person may exercise its reasonable discretion as to the amount to be paid, but that person shall serve prior notice of any intended settlement on the *Contractor*, at least 5 *Working Days* prior to agreeing to any such settlement.

12.1.3 The *Owner* may enforce the rights of indemnity conferred on the elected officials, officers, and employees of the *Owner* under paragraph 12.1.1 on their behalf and to the same extent as if they were parties to the *Contract*.

12.1.4 The rights to indemnity provided for in this GC 12.1 shall be deemed to be in addition to any rights with respect to insurance in favour of the *Owner*, its elected officials, officers and employees provided under the *Contract Documents*.

12.1.5 The rights to indemnity provided for in this GC 12.1 shall survive the expiration or any termination of the *Contract*.

SC 65. GC 12.2 WAIVER OF CLAIMS

1. Delete GC 12.2 WAIVER OF CLAIMS in its entirety.

SC 66. GC 12.3 WARRANTY

1. Add to the end of paragraph 12.3.1 the following:

“, unless the *Contract Documents* otherwise provide.”

3. Delete “one year” from paragraph 12.3.3.

4. Delete “one year” from paragraph 12.3.4.

5. Delete “one year warranty period as described in paragraph 12.3.1” from paragraph 12.3.6 and replace with the following:

“warranty period”

6. Add new paragraphs 12.3.7, 12.3.8, 12.3.9, 12.3.10, 12.3.11, 12.3.12, 12.3.13, 12.3.14, 12.3.15, 12.3.16, 12.3.17 and 12.3.18 as follows:

12.3.7 Any material or equipment requiring excessive servicing during the warranty period (or free maintenance period, if applicable) shall be considered defective and the warranty shall be deemed to take effect from the time that the defect has been corrected so as to cause excessive servicing to terminate. Where an extended warranty is provided beyond the warranty period, and any material or equipment requires excessive servicing during the first fifteen percent (15%) of the extended warranty period (or free maintenance period, if applicable) the material or equipment shall be considered defective and the extended warranty shall be deemed to take effect from the time that the defect has been corrected so as to cause excessive servicing to terminate.

12.3.8 The final payment certificate shall not relieve the *Contractor* from its responsibility under this GC 12.3 – WARRANTY.

12.3.9 Following *Substantial Performance of the Work*, and without limiting the *Contractor's* warranty under this GC 12.3 WARRANTY, the *Contractor* shall assign to the *Owner*, to the extent assignable the benefit of all warranties and guarantees relating to the *Work*. The assignment shall expressly reserve the right of the *Contractor* to make any claims under such warranties and guarantees and such assignment shall in no way prejudice any rights of or benefits accruing to the *Contractor* pursuant to such warranties and guarantees.

- 12.3.10 Where required by the *Contract Documents*, the *Contractor* shall provide to the *Owner* for the duration of the warranty period, a warranty holdback in the amount stated in the *Contract Documents*.
- 12.3.11 The maintenance security, which is at no time a part of the statutory holdback, shall be retained by the *Owner* in increments from monies that would otherwise be payable to the *Contractor*, commencing so that by the date of *Substantial Performance of the Work* the full value of the required maintenance security has been retained.
- 12.3.12 Except as otherwise provided hereunder, the maintenance security, less any deductions made therefrom as provided for in the *Contract*, shall be paid to the *Contractor* following the issuance by the *Consultant* of a final certificate at the end of the warranty period, provided that all defects and deficiencies in the *Work* have been corrected by the *Contractor*. No interest shall be payable to the *Contractor* on such funds withheld in accordance with 12.3.10.
- 12.3.13 The *Contractor* may apply in writing to the *Owner* at the time of *Substantial Performance of the Work* to substitute for the monies retained as the maintenance security an alternative maintenance security of equivalent or greater value comprising:
- .1 one or more irrevocable letters of credit, or
 - .2 another readily negotiable security.
- 12.3.14 Acceptance of any such alternative shall be at the discretion of the *Owner*.
- 12.3.15 Following receipt and acceptance of any such alternative, the *Owner* shall release to the *Contractor* the monies previously retained for maintenance security purposes.
- 12.3.16 The *Owner* may, in its discretion, allow the total maintenance security to be made up in part of monies retained under the *Contract* and in part of an alternative maintenance security as indicated in paragraph 12.3.13 above provided that the total value of such parts, as determined by the *Owner*, shall be not less than the required value as derived from the table set out in paragraph 12.3.10 above.
- 12.3.17 Such alternative maintenance security or the monies derived therefrom, less any deductions made as provided for in the *Contract*, shall be released to the *Contractor* following the issuance by the *Consultant* of the final certificate at the end of the warranty period.
- 12.3.18 The *Contractor* will be responsible for extended warranty periods on equipment and materials as outlined in the *Specifications*. Warranties shall be provided for all-inclusive replacement including all costs for labour and materials upon failure. Warranties shall be provided irrespective of the standard manufacturers, *Suppliers* and vendors' warranties and are in addition to the standard construction warranty of one year for general construction, materials and equipment.

SC 67. PART 13 MISCELLANEOUS

1. Add new PART 13 MISCELLANEOUS as follows:

GC 13.1 OWNERSHIP OF MATERIALS

- 13.1.1 All Work and *Products* delivered and installed at the *Place of the Work* by the *Contractor* shall be the property of the *Owner*. The *Contractor* shall remove all surplus or rejected materials when notified in writing to do so by the *Consultant*.

GC 13.2 REVIEW BY OWNER AND REVIEW BY CONSULTANT

- 13.2.1 Neither the *Owner's* and/or *Consultant's* receipt, review or approval of any documents of the *Work* nor the failure of the *Owner* and/or *Consultant's* to provide comments shall limit, waive or diminish the *Contractor's* obligations, responsibilities, duties or liabilities under the *Contract*. The review or approval by the *Owner* and/or *Consultant* is intended only to ascertain that the document or the performance of the *Contractor's* duties, liabilities, responsibilities, or obligations under the *Contract* including, without limitation, the *Work* generally meets the intention of the *Contract* and is not an assurance or confirmation of the adequacy, quality, fitness, suitability or correctness of the *Contractor's* obligations, responsibilities, duties and liabilities under the *Contract* including without limitation, the *Work*, for which the *Contractor* is solely responsible in accordance with the *Contract*.

GC 13.3 USE AND/OR OCCUPATION OF COMPLETED PORTIONS OF THE WORK

- 13.3.1 Upon the *Owners'* request, the *Owner* shall, at any time or times, have the right of occupying and/or using any part of parts of the *Work* (including, without limitation, for the purposes of installing and testing fittings and equipment), whether partially performed or entirely complete, or whether completed on schedule or not, before the completion of the *Work*.
- 13.3.2 In the event the *Owner* desires to exercise the privilege of occupancy and/or use of the *Work* as provided above, the *Contractor* shall co-operate with the *Owner* throughout in making available for the *Owners'* use such building services as heating, ventilation, cooling, water, lighting, and telephone for the space or spaces to be occupied and/or used and if the equipment required to furnish such services is not entirely completed at the time the *Owner* desires to occupy and/or use the aforesaid space or spaces, the *Contractor* shall make every reasonable effort to complete same as soon as possible to the extent that the necessary equipment can be put into operation and use. Except where the *Work* was, pursuant to the *Contract Documents*, supposed to have been completed by the time at which the *Owner* desires to occupy and/or use the space or spaces, any extra costs beyond that originally required to complete the *Work* arising from such early occupancy and/or use shall be borne by the *Owner*. If the *Work* was supposed to have been completed by the time of desired occupancy/use, then any extra costs beyond that originally required to complete the *Work* arising from such early occupancy and/or use shall be borne by the *Contractor*.

- 13.3.3 In the event that the *Owner* exercises the privilege of occupancy and/or use of the *Work* as provided above, it agrees to do so, as not to materially interfere with the respective work of the *Contractor*, *Subcontractors* or *Suppliers* and under the understanding that the *Owner* will be occupying premises within a construction site which will require compliance with all normal construction site requirements including, without limitation, health and safety requirements.
- 13.3.4 It shall be understood, however, that the *Owner's* occupancy and/or use of such space or spaces of the *Work* shall not constitute the *Owner's* acceptance of any Work, material or equipment which are not in accordance with the requirements of the *Contract Documents*, nor affect the warranty period under the *Contract* nor relieve the *Contractor* from his obligations, duties, responsibilities and liabilities to complete the *Work*, nor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of, any *Work*, material or equipment, nor from any other unfulfilled duties, liabilities, obligation or responsibilities under the *Contract* nor from any other duty, liability obligation or responsibility under the *Contract* including, without limitation, the *Contractors' warranty* obligation. If however, damage results from any act by the *Owner*, the *Owner* shall assume its share of the responsibility for such damage.

GC 13.4 CONTRACTOR DISCHARGE OF LIABILITIES

- 13.4.1 In addition to the obligations assumed by the *Contractor* pursuant to General Condition 3.7 – SUBCONTRACTORS AND SUPPLIERS, the *Contractor* agrees to discharge all liabilities incurred by it for labour, materials, services, *Subcontractors* and *Products*, used or reasonably required for use in the performance of the *Work*, except for amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld.

GC 13.5 RECORDS/DAILY REPORTS/DAILY LOGS

- 13.5.1 The *Contractor* shall maintain and keep accurate *Project* records (which means all tangible records, documents, computer printouts, electronic information, books, plans, *Drawings*, *Specifications*, accounts or other information relating to the *Work*) in its head office in accordance with requirements of *Applicable Laws*, but in any event for not less than four (4) years from *Substantial Performance of the Work* or until all claims have been settled. During this time, the *Contractor* shall allow the *Owner* access to the *Project* records during normal business hours upon the giving of reasonable notice. The *Contractor* shall ensure that equivalent provisions to those provided herein are made in each subcontract and shall require the *Subcontractors* and *Suppliers* to incorporate them into every level of contract thereunder for any part of the *Work*.

GC13.6 SET-OFF

- 13.6.1 The parties agree that the *Owner* has the contractual right to set-off against any amounts owing by the *Owner* to the *Contractor* under this *Contract*, any amount owed to the *Owner* by the *Contractor*, whether such amount arises from this *Contract* or under any other contract between the *Owner* and the *Contractor*, irrespective of whether or not those contracts are related or arise at equity or law. This right of set-off shall be subject to the Construction Act, as applicable.
- 13.6.2 The costs to the *Owner* of sending or publishing any notice or document required

by the Construction Act shall constitute damages to the *Owner* and may be retained by the *Owner* in accordance with its set-off rights.

GC 13.7 CONTRACTOR USE OF PERMANENT EQUIPMENT OR SYSTEMS

- 13.7.1 With the prior written approval of the *Owner*, the *Contractor* may make use of elements of the mechanical and electrical systems or equipment comprising a permanent part of the *Work* for the purpose of providing heat or power to the *Project* during the final stages of construction. In such event, before making its written application for *Substantial Performance of the Work*, and again, immediately prior to final takeover by the *Owner* of such systems and equipment, the *Contractor* shall clean and *Make Good*, to the satisfaction of the *Consultant* and the *Owner*, such systems and equipment as it had been permitted to use. The *Contractor* shall pay any and all costs associated with such use, cleaning and making good.

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