

SUPPLEMENTARY GENERAL CONDITIONS

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PART 1 GENERAL

For the purpose of this Contract, the OPS Volume 7 - Ontario Provincial Standards, General Conditions of Contract and General & Construction Specifications (OPSS.MUNI 100 November 2018) shall be amended as set out herein.

Where any article, paragraph or subparagraph in the OPS Volume 7 - Ontario Provincial Standards, General Conditions of Contract and General & Construction Specifications (OPSS.MUNI 100 November 2018) is supplemented by one of the paragraphs in these Supplementary General Conditions, the provisions of such article, paragraph, or subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto.

Where any article, paragraph or subparagraph in the OPS Volume 7 - Ontario Provincial Standards, General Conditions of Contract and General & Construction Specifications (OPSS.MUNI 100 November 2018) is amended, voided or superseded by any of the paragraphs in these Supplementary General Conditions, the provisions of such article, paragraph or subparagraph not so amended, voided or superseded shall remain in effect.

PART 2 AMENDMENTS TO GENERAL CONDITIONS OF THE CONTRACT

SECTION GC 1.0 - INTERPRETATION

SC 1 GC 1.04 Definitions

- 1.1 Amend the definition of “**Abnormal Weather**” by adding the words “as determined in accordance with GC 3.07.04a)” to the end of the sentence.
- 1.2 Delete the definition of “**Change Directive**”
- “**Change Directive** means any written instruction signed by the Owner, or by the Contract Administrator where so authorized, and acknowledged and agreed by the Contractor’s signature directing that a Change in the Work or Extra Work be performed.”
- 1.3 Delete the definition of “**Completion**” and replace it with the following:
- “**Completion** means that the Work performed under the Contract has passed all required inspections and testing to the satisfaction of the Owner and has satisfied the requirements for deemed completion in accordance with Section 2(3) of the *Construction Act*, R.S.O. 1990, c. C.30.”
- 1.4 Amend the definition of “**Contract**” by adding the words, “and represents the entire agreement between the Owner and the Contract” to the end of the sentence.
- 1.5 Delete the definition of “**Contract Administrator**” and replace it with the following:
- “**Contract Administrator** means the General Manager of Finance and Infrastructure Services of the Town of Caledon or their authorized representative.”
- 1.6 Delete the definition of “**Contract Time**” and replace it with the following:
- “**Contract Time** means the time stipulated in the Contract Documents for achieving Substantial Performance or Completion of the Work, as the case may be, including any extension of the Contract Time approved in accordance with the Contract Documents.”

1.7 Amend the definition of “**Contractor**” by adding the following to the end of the definition:

“The term “Contractor” includes the Contractor or the Contractor’s authorized representative, as may be designated by the Contractor to the Owner in writing.”

1.8 Amend the definition of “**Owner**” by adding to the end of the definition: “or the Owner’s authorized agent or representative, as designated to the Contractor, in writing, by the Owner or Contract Administrator”.

1.9 Delete the definition of “**Cut-Off Date**”.

1.10 Add the definition of “**Construction Act**” as follows:

“**Construction Act**” means the *Construction Act*, R.S.O. 1990, c. C.30, as amended.”

1.11 Add the definition of “**Confidential Information**” as follows:

“**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 and move-lists) 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:

- a) 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;
- b) 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;
- c) 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
- d) is independently developed by the Contractor without use of any Confidential Information.

1.12 Add the definition of “**Construction Schedule** or “**construction schedule**” as follows:

“**Construction Schedule** or “**construction schedule**” means the schedule referred to GC 7.01.07 – Schedule.”

1.13 Add the definition of “**Finishing Holdback**” as follows:

“**Finishing Holdback** means the separate holdback for finishing work as defined and required by the Construction Act.”

1.14 Add the definition of “**Guaranteed Maintenance Period**” as follows:

“**Guaranteed Maintenance Period** means the required maintenance period prescribed in the Contract Documents”

1.15 Add the definition of “**Inclement Weather**” as follows:

“**Inclement Weather**” or “**inclement weather**” means Abnormal Weather.”

- 1.16 Amend the definition of “**Owner**” by adding to words, “or the Owner’s authorized agent or representative, as designated to the Contractor, in writing, by the Owner or Contract Administrator” to the end of the sentence.
- 1.17 Add the definition of “**Milestone Deadline**” as follows:
“**Milestone Deadline** means the date for completion of separate portions of the Work, as may be identified and prescribed in the Contract Documents.”
- 1.18 Add the definition of “**Notice of Non-Payment**” as follows:
“**Notice of Non-Payment** means a notice of non-payment of holdback (Form 6) or a notice of non-payment (Form 1.1) under the Construction Act, as applicable to the circumstances.”
- 1.19 Add the definition of “**Personal Information**” as follows:
“**Personal Information** has the same definition as in subsection 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, and includes an individual’s name, address, age, date of birth, sex, and religion, whether recorded in printed form, on film, by electronic means, or otherwise and disclosed to the Contractor.”
- 1.20 Add the definition of “**Products**” as follows:
“**Product** or **Products** means Material, machinery, appurtenances, and fixtures forming the Work, but does not include Equipment.”
- 1.21 Add the definition of “**Proper Invoice**” as follows:
“**Proper Invoice** means a “proper invoice” as that term is defined in Section 6.1 of the *Construction Act*, with the minimum requirements set out in Exhibit “1” of the Supplementary General Conditions:
- 1.22 Add the definition of “**Restricted Period**” as follows:
“**Restricted Period** means the period of time between December 1 to January 7 (inclusive) of any given calendar year throughout the duration of the Contract.”
- 1.23 Delete the definition of “**Substantial Performance**” and replace it with the following:
“**Substantial Performance** means:
(a) has satisfied the requirements for being substantially performed in accordance with Section 2(1) and Section 2(2) of the *Construction Act*, provided that, for the purposes of Section 2(2) of the *Construction Act*, interruption of Work caused by the winter season shall not be interpreted to mean that the Work cannot be completed expeditiously; and
(b) when the Work to be performed under the Contract has passed all required inspections and testing to the satisfaction of the Owner, including without limitation any site walkthroughs with the governing road authority where such walkthroughs are a requirement of the Contract Documents. .”
- 1.24 Add the definition of “**Supplier**” as follows:
“**Supplier** means a person, firm or corporation having a direct contract or other agreement with the Contractor to supply Products.”

1.25 Add the definition of “**Town**” as follows:

“**Town** means the Owner.”

1.26 Add the definition of “**Toxic or Hazardous Substances**” as follows:

“**Toxic or Hazardous Substances** means, collectively, any contaminant, waste, subject waste, pollutant as defined in the *Environmental Protection Act* (Ontario) and regulations thereunder, toxic substance (as defined in the *Canadian Environmental Protection Act* (Canada)), dangerous goods (as defined in the transportation of *Dangerous Goods Act* (Canada) and regulations thereunder), asbestos (as defined in the *Occupational Health and Safety Act* R.S.O. 1990, c. O.1, as amended and the regulations thereunder), petroleum, its derivatives, by-products or other hydrocarbons as defined in or pursuant to any applicable, laws, regulation, by-laws, guidelines or orders rendered by any governmental authority or any other substance or material which when released to or present in the natural environment is likely to cause in some immediate or foreseeable future time, material harm or degradation of the natural environmental or material risk to human health.”

1.27 Add the definition of “**Warranty Holdback**” as follows:

“**Warranty Holdback** means a holdback amount equal to 2.5% of the gross value of Work completed by the Contractor and certified for payment on a progress payment certificate, including Extra Work or Additional Work, which shall be retained by the Owner from each progress payment to the Contractor for the duration of the Warranty Period.”

1.28 Delete the definition of “**Warranty Period**” and replace it with the following:

“**Warranty Period** means the period of 24 months from the date of Completion of the Work or such longer period as may be specified for certain Material, Products or some or all of the Work.”

1.29 Delete the definition of “**Work**” and replace it with the following:

1.30 “**Work** means all labour, Material, Products, articles, fixtures, services, supplies and acts required to be done, furnished or performed by the Contract Documents, including those reasonably incidental or related thereto.” Delete the definition of “**Working Area**” and replace it with the following:

“**Working Area** means all the lands and easements on, over or under which the Work is undertaken that are owned or acquired by the Owner or lands or easements that the Owner is required and authorized to maintain on behalf of another municipality or other entity.”

1.31 Add the definition of “**Work Directive**” as follows:

“**Work Directive** means If there is a dispute between the Owner and the Contractor as to whether a Change Order is required, and the Contractor does not proceed with the Work, the Owner may issue an Owner’s Work Directive. Upon receipt of a Work Directive, the Contractor shall proceed with the Work. The Contractor may pursue resolution of the dispute according to subsection GC 3.13 – Claims, Negotiation, Mediation and Adjudication.”

SECTION GC 2.0 - CONTRACT DOCUMENTS**SC 2 GC 2.02 Order of Precedence**

2.1 Delete GC 2.02.01 and replace it with the following:

“.01 In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following descending order:

- a) Agreement
- b) Addenda
- c) Supplementary General Conditions
- d) Special Provisions
- e) Contract Drawings
- f) Standard Specifications
- g) Standard Drawings
- h) Instructions to Tenderers
- i) Tender
- j) OPSS.MUNI.100 General Conditions of Contract
- k) Working Drawings

Later dates shall govern within each of the above categories of documents. In the event of any inconsistency or conflict in the contents of referenced standards and standard specifications, noted materials and annotations shall take precedence over graphic indications in the Contract Documents, and otherwise the more stringent requirement shall apply.”

2.2 Amend GC2.02.02(b) by adding the words “of the same date” to the end of the sentence.

2.3 Add new GC 2.02.05 and GC 2.02.06 as follows:

“.05 The Contractor shall not take advantage of any apparent error, omission or issue in the Drawings or specifications. Upon identifying an error, omission or issue in the Drawings or specifications, the Contractor shall promptly inform the Owner or Contract Administrator in writing of any such error(s), omission(s) or issue(s).

.06 Whether in respect of error(s), omission(s) or issues referenced in GC 2.02.05, or otherwise, the Contract Administrator shall be permitted to make such corrections and interpretations as may be necessary in order to fulfil the intent of the Drawings and specifications. The Contract Administrator shall not unfairly refuse compensation for such corrections and interpretation, and the Contract Administrator shall be entitled to set, in its sole discretion, the value of such compensation, if any, subject to approval by the Owner. If such compensation is disputed by the Contractor, the procedures in GC 3.13 shall apply.”

SECTION GC 3.0 - ADMINISTRATION OF THE CONTRACT**SC 3 GC 3.01 Contract Administrator's Authority**

3.1 At the end of GC 3.01.04, add the following:

“The Contract Administrator shall also be responsible for promptly preparing a Notice of Non-Payment where the Contract Administrator identifies an error, omission or discrepancy with respect to the amounts owing to the Contractor and for which the Owner disputes.”

3.2 Amend GC 3.01.13 by deleting the word “deduct” from the second line and replace it with “be entitled to a deduction”.

3.3 In GC 3.01.13 insert the words “in such” before the word “amount” in the fourth line and insert the following at the end of the sentence.:

“The amount to be deducted, as determined by the Contract Administrator shall be deducted from the amount stated in any subsequent Proper Invoice.”

3.4 Add new GC 3.01.18 as follows:

“.18 Whenever the Contract Administrator considers it necessary or advisable, the Contract Administrator will have authority to require inspections or testing of the Work, whether or not such Work is fabricated, installed or completed. The fact of such authority or any decision by the Contract Administrator to exercise or not to exercise such authority shall not give rise to any duty or responsibility of the Contract Administrator to the Contractor, Subcontractors, Suppliers or their agents, employees or other persons performing any of the Work.”

3.5 Add new GC 3.01.19 as follows:

“.19 All certificates issued by the Contract Administrator are understood to be prepared based on the Contract Administrator's reasonable knowledge, information and belief at the time of issuance. By issuing any certificate, the Contract Administrator is not confirming or guaranteeing that the certified Work is completed, correct or free from defects or deficiencies.”

3.6 Add new GC 3.01.20 as follows:

“.20 The Contract Administrator and any inspector(s) appointed or designated by the Contract Administrator are authorized to enforce that the provisions of the Standard Specifications are faithfully adhered to, especially regarding the quality of workmanship and materials, and shall have the powers to:

- a) suspend any worker who is not fit for work, in the sole discretion of the Contract Administrator, including without limitation for incompetency, drunkenness, negligence or disregard of others;
- b) stop the Work, in whole or in part, if there is an insufficient quantity of suitable and approved material on the ground to carry it out properly, or for any other good and sufficient cause, acting reasonably;
- c) require the Contractor to open up any Work done in the absence of the Contract Administrator or an inspector for thorough examination, and such opened Work must be rebuilt or replaced as directed at the Contractor's sole expense, provided that no approval by the Contract Administrator or any inspector shall be taken or construed as an acceptance of defective or improper Work or Materials, which must, in every

case, be removed and properly replaced whenever discovered at any stage of the Work; and

- d) give mandatory orders to the Contractor relating to the quality of workmanship and Materials, which the Contractor must immediately obey and comply with, provided that only the Contract Administrator itself, and not inspectors shall not have the authority to add to or remove from the scope of Work or give any stakes, lines, gauges, levels or grades.

3.7 Add new GC 3.01.21 as follows:

“.21 Under no circumstances will the Contract Administrator:

- a) be or become responsible for or have any control, charge, or supervision of any construction means, methods, techniques, sequences, or procedures, or for any safety precautions and programs required in connection with the Work in accordance with the applicable construction safety legislation, other regulation or general construction practice;
- b) be or become responsible for the Contractor’s failure to carry out the Work in accordance with the Contract Documents;
- c) have any control over, charge of, or responsibility for the acts or omissions of the Contractor, Subcontractors, Suppliers or their agents, employees and any other persons performing portions of the Work.”

SC 4 GC 3.02 Working Drawings

4.1 Amend GC 3.02.07 by adding the words, “and make such set available to the Owner and the Contract Administrator at all times” to the end of the sentence.

SC 5 GC 3.03 Right of the Contract Administrator to Modify Methods and Equipment

5.1 Add new GC 3.03.04 as follows:

“.04 If, in the opinion of the Contract Administrator, the progress of the Work in accordance with the approved Construction Schedule, the Contract Administrator may order the work to proceed on an accelerated basis, as it deems necessary, in order to speed up completion of the Work per the approved Construction Schedule, including without limitation ordering that work be carried out in whole or in part at night. The Contractor shall have no claim for extra compensation in respect of any such acceleration.”

SC 6 GC 3.05 Layout Information

6.1 Delete GC 3.05 in its entirety.

SC 7 GC 3.06 Extension of Contract Time

7.1 Amend GC 3.06.01 by deleting the words “prior to the expiration of the Contract Time” at the end of the first sentence and replacing them with “following the commencement of the event for which reason such extension is requested.”

7.2 Amend GC 3.06.02 by inserting the following as a new first sentence:

“Extensions of Contract Time shall only be considered or granted if involving a Controlling Operation.”

7.3 Add new GC 3.06.06, GC 3.06.07 and GC 3.06.08 as follows:

- “.06 Until and unless an extension of Contract Time is granted in accordance with this GC 3.06, the Contractor is solely responsible for maintaining the approved schedule for the Work and completing all Work within the Contract Time. If necessary, and to the extent required, the Contractor shall operate additional and/or augmented daylight shifts throughout the life of the Contract to ensure that the Work is performed within the specified Contract Time. The Contractor shall have no claim for extra compensation in respect of any additional costs occasioned by compliance with this provision. Such costs are deemed to be included in the bid prices for the various items of the Work.
- .07 GC 3.06.01 to GC 3.06.06 shall also apply, with necessary modification, to applications by the Contractor for extension of any Milestone Deadline, if applicable.
- .08 Time shall be of the essence of this Agreement. Notwithstanding any extension of Contract Time or a Milestone Deadline, if applicable, that may be granted by the Owner, time shall continue to be deemed to be of the essence of this Agreement.”

SC 8 GC 3.07 Delays

8.1 Amend GC 3.07.01 by:

- .1 deleting both references to “abnormal inclement weather” and replacing them with “Inclement Weather”; and
- .2 deleting the words in the first line of the last paragraph “shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay” and replacing them with “may apply for an extension of Contract Time, but under no circumstances shall the Contractor be entitled to any additional compensation or to otherwise be reimbursed for costs associated with such delays”;
- .3 deleting the words in the third line of the last paragraph “with the Contractor’s application, submit evidence from Environment Canada in support of such application” and replacing them with “comply with GC 3.07.05”.

8.2 Add new GC 3.07.05 as follows:

- “.05 The following conditions apply to any claim(s) by the Contractor that a delay has occurred due to Inclement Weather:
 - a) Where the Contractor claims that a delay has occurred due to Inclement Weather, the Contractor shall, on the date such delay occurs, inform the Contract Administrator of the intent to claim for such delay and indicate which work activities have been delayed. The Contractor shall, within five Working Days following the date of the delay occurrence, submit to the Contract Administrator a claim for delay, complete with full supporting documentation from Environment Canada indicating what weather event caused the delay and the hours during which the event occurred, for use by the Contract Administrator in determining if the weather event constitutes Inclement Weather.
 - b) Extension to the Contract Time due to Inclement Weather shall only be granted if the delayed work activity is a Controlling Operation or, in the opinion of the Contract Administrator, is otherwise part of the Work’s critical path according to the latest accepted schedule for the Work at the time of such weather event.

- c) Such delays, if allowed by the Contract Administrator in accordance with this clause, shall only be eligible for an extension of the Contract Time limited to the duration of the Inclement Weather event and documented in a Change Order.”

8.3 Add new GC 3.07.06 as follows:

“.06 The Contactor shall monitor local weather forecasts and take reasonable measures to mitigate delays in the Work and damage to the Work due to weather conditions. If, in the opinion of the Contract Administrator, the Contractor has failed to take reasonable measures to mitigate such delays on account of reasonably anticipated weather conditions, including Inclement Weather, or otherwise, any claim by the Contractor for delay may be denied or reduced.”

8.4 Add new GC 3.07.07 as follows:

“.07 Award of the Contract by Town of Caledon Council is subject to receiving all necessary approvals required by the Owner, including those as may be specified in the Special Provisions of the Contract Documents. Without limiting or modifying GC 3.07.01, the Contractor shall not be entitled to advance any claim for delay relating to construction award or start if there is a delay in obtaining such approvals, but may be entitled to an extension of the Contract Time.”

SC 9 GC 3.08 Assignment of Contract

9.1 Amend GC 3.08.01 by adding the following to the end of the sentence:

“which consent may be arbitrarily withheld by the Owner. Such consent, if granted, shall not release or relieve the Contractor from any of its obligations or liabilities under the Contract.”

SC 10 GC 3.09 Subcontracting by the Contractor

10.1 Amend GC 3.09.02 by deleting the words “in writing in” and replacing them with “in writing at least”.

10.2 Amend GC 3.09.02 by adding the following to the end of the clause:

“In addition to the requirements of GC 3.09, the Contractor will be required to submit to the Owner, for its approval, a list of intended Subcontractors, showing the value of the Work to be sublet to each, prior to such Subcontractor participating in the Work. The total value of all sublet Work shall not exceed 50% of the total tender price.”

10.3 Add new GC 3.09.07 as follows:

“.07 The Contractor shall be responsible for and ensure that all its Subcontractors and Suppliers obtain all necessary permits, fees, licenses, certifications, inspections and all insurance in connection with the Work as may be required by laws, ordinances, rules, regulations and codes relating to the Work and by the Contract Documents.”

SC 11 GC 3.10.01 Changes in the Work

11.1 Amend GC 3.10.01.01 by adding in the third line after the words “receipt of a”, the word “signed”.

11.2 Amend GC 3.10.01.01 by inserting the following sentence at the end of the clause:

“In presenting a claim to the Owner for a cost of a Change in the Work, the Contractor shall include, itemize and separate all direct and indirect costs associated with that change. The

Contractor shall include the agreed upon payment for the Change in the Work on the next Proper Invoice.”

11.3 Add new GC 3.10.01.04 and GC 3.10.01.05 as follows:

.04 The Owner may, in its sole discretion, delete any portion of the Work from the Contract should it be deemed in the interest of the Owner to do so.

.05 Verbal instructions and amendments, regardless of their source, will not be binding to the Contract.”

SC 12 GC 3.10.02 Extra Work

12.1 Amend GC 3.10.02.01 by adding in the third line after the words “receipt of a” the word “signed”.

12.2 Amend GC 3.10.02.02 by inserting the following sentence at the end of the clause:

“In presenting a claim to the Owner for a cost of Extra Work, the Contractor shall include, itemize, and separate all direct and indirect costs associated with that change. Once the Owner and the Contractor have executed a Change Order in respect of the Extra Work, the Contractor may include the agreed upon payment amount for the Change Order on the next Proper Invoice.”

SC 13 GC 3.10.03 Additional Work

13.1 Amend GC 3.10.03.01 by adding in the third line after the words “receipt of a” the word “signed”.

13.2 Amend GC 3.10.03.02 by inserting the following sentence at the end of the clause:

“In presenting a claim to the Owner for a cost of Additional Work, the Contractor shall include, itemize and separate all direct and indirect costs associated with that change. Once the Owner and the Contractor have executed a Change Order in respect of the Additional Work, the Contractor may include the agreed upon payment amount for the Change Order on the next Proper Invoice.”

SC 14 GC 3.10.04 Pre-Approved Changes

14.1 Add new GC 3.10.04 as follows:

“GC 3.10.04 Pre-Approved Changes

.01 The Owner or Contract Administrator may, in their sole discretion, request that the Contractor submit a cost quotation in advance for any Change in the Work, Extra Work or Additional Work.

.02 Where the Contractor’s cost quotation for a Change in the Work, Extra Work or Additional Work is approved by the Contract Administrator, as submitted by the Contractor or as varied by agreement of the Contractor and the Contract Administrator and/or Owner, a Change Order shall be issued and payment shall be based on the approved quoted cost.

.03 For greater certainty, the requirements of GC 3.13 and GC 8.02.05 shall not apply to any Change in the Work, Extra Work or Additional Work quoted and approved in accordance with this GC 3.10.04.”

SC 15 GC 3.13 Claims, Negotiations, Mediation and Adjudication

15.1 Amend GC 3.13 by adding at the end of the heading “and Adjudication”

SC 16 GC 3.13.01 Continuance of the Work

16.1 Add new GC 3.13.01.02 as follows:

“.02 The Contractor shall give written notification of his intent to submit any claim for extra Work prior to the commencement of that Work. If such notice is not provided, claims for such for extra Work will not be considered.”

SC 17 GC 3.13.03 Claims Procedure

Delete GC 3.13.03.01, 3.13.03.02 and 3.13.03.03 and replace them with the following: “.01 The Contractor shall promptly, and within no later than 24 hours, provide verbal notice to the Owner and the Contract Administrator of any situation or circumstance that may result in a claim by the Contractor for additional payment for the Work.

.02 Within 7 Days following the Contractor having provided verbal notice to the Owner and the Contract Administrator as required under 3.13.03.01, the Contractor shall provide written notice to the Owner’s designated representative, the Owner’s Legal and Purchasing Department, and Contract Administrator of the portion(s) of the Work that may be affected by such situation or circumstance and prior to the issuance of any Proper Invoice for such Work. By providing notice under GC 3.13.03.01 and GC 3.13.03.02, subject to the issuance of a Notice of Non-Payment, the Contractor shall not be entitled to any additional payment until approved by the Owner or until a resolution has been made under this GC 3.13 – Claims, Negotiations, Mediation and Adjudication and subject to GC 3.10 – Changes.

.03 the Contractor shall, within 5 Days of delivering the written notice under GC 3.13.03.02 to the Owner and the Contract Administrator, provide a written detailed claim outlining the situation or circumstance that may result in a claim for additional payment by the Contractor, the resulting effects to the Work and include such other details as:

- a) identify the portion(s) of the Work in which a claim arises and which was the subject of the verbal and written notices provided to the Owner and Contract Administrator;
- b) state the grounds, contractual or otherwise, upon which the claim is made; and
- c) include the Records maintained by the Contractor supporting such claim

17.1 Amend GC 3.13.03.04 by deleting both references to “30 Days” and replacing them with “5 Days”.

17.2 Amend GC 3.13.03.05 by deleting the reference to “90 Days” and replacing it with “10 Days”.

SC 18 GC 3.13.04 Negotiations

18.1 Amend GC 3.13.04.01 by deleting from the first line, the word “their” and replacing it with the word “any”.

18.2 Amend GC 3.13.04.01 by adding the following to the end of the paragraph:

“All negotiations shall first be conducted through and with the assistance of the Contract Administrator, who shall act as a neutral arbiter to the parties in accordance with GC 3.01.09.”

18.3 Delete GC 3.13.04.02 and replace it with the following:

“.02 Should either party disagree with an opinion rendered by the Contract Administrator, the party may refer the unresolved dispute to a court of competent jurisdiction or to any other form of dispute resolution, including Adjudication, mediation or arbitration, which they have agreed to use or, where there is no such agreement, a party may commence a proceeding in a court of competent jurisdiction.”

18.4 Delete GC 3.13.04.03 in its entirety and replace it with “[Intentionally left blank].”

SC 19 GC 3.13.05 Mediation

19.1 Delete GC 3.13.05 in its entirety and replace it with the following:

“GC 3.13.05 Adjudication

.01 Where either party has delivered a notice of Adjudication in a form prescribed by the Construction Act, the procedures and rules set out under the *Construction Act* and the regulations thereto shall govern the Adjudication.

.02 The following procedures shall apply to any Adjudications the parties engage in under the *Construction Act*:

(a) any hearings shall be held in the municipal/head offices of the Owner or such other venue as the parties may agree and which is acceptable to the adjudicator;

(b) the Adjudication shall be conducted in English;

(c) each party may be represented by counsel throughout an Adjudication;

(d) there shall not be any oral communications with respect to issues in dispute that are the subject of an adjudication between a party and the adjudicator unless it is made in the presence of both parties or their legal representatives; and

(e) a copy of all written communications between the adjudicator and a party shall be given to the other party at the same time.

.03 In respect of any claim or dispute, if the Contractor fails to comply with any of the notice requirements set out in the Contract Documents then the Contractor shall be barred from advancing such claim(s) or dispute(s) and shall have no entitlement whatsoever in respect of such claim(s) or dispute(s) (including to an increase in payment under the Contract, or an extension of Contract Time) and by failing to comply with the notice requirements waives the right to make any such claim(s) or dispute(s) in an Adjudication or in any other form of dispute resolution available under this Contract or at law. This GC 3.15.04 shall operate conclusively as an estoppel and bar in the event such claims or disputes are brought in an Adjudication or other form of dispute resolution and the Owner may rely on this GC 3.16.04 as a complete defence to any such claims or disputes.

.04 The parties agree that, subject to the requirements under the Construction Act, neither party shall commence an Adjudication during the Restricted Period.”

SC 20 GC3.13.06 Payment

20.1 Delete GC 3.13.06.01 and replace it with the following:

- “.01 Whether the claim or dispute is resolved by way of the claims procedure or negotiations described under this GC 3.13 – Claims, Negotiations, Mediation and Adjudication, payment of the agreed upon amount or the amount determined to be outstanding, if applicable, shall be made by either party no later than 10 Days after the resolution of the claim or dispute. Any payment made will be subject to the holdback obligations prescribed by the Construction Act and the Contract Documents.”

SC 21 GC 3.13.07 Rights of Both Parties

21.1 Amend GC 3.13.07.01 by deleting the words "provided that the requirements set out in this subsection are fulfilled".

SC 22 GC 3.14 Arbitration

22.1 Delete GC 3.14 in its entirety.

SECTION GC 4.0 - OWNER'S RESPONSIBILITIES AND RIGHTS**SC 23 GC 4.01 Working Area**

23.1 Delete GC 4.01.02 in its entirety.

SC 24 GC 4.02 Approvals and Permits

24.1 Delete GC 4.02 in its entirety.

SC 25 GC 4.03 Management and Disposition of Materials

25.1 Add new GC 4.03.09 and GC 4.03.10 as follows:

- “.07 The Contractor shall provide a list of all controlled hazardous Materials or Products containing hazardous Materials, all physical agents or devices or equipment producing or omitting physical agent and any substance, compound, product or physical agent that is deemed to be or contains a designated substance in accordance with the Workplace Hazardous Materials Information System (WHMIS) as defined under the OHS Act and shall provide appropriate Material Health and Safety Data Sheets for these substances used for the performance of the required Work, all prior to the performance of the Work.
- .08 When hazardous Material, physical agents and/or designated substances are used in the performance of the Work, and without limiting GC 7.20, Compliance with Laws and Safety Regulations, the Contractor shall ensure compliance with all requirements of the OHS Act and associated regulations.

SC 26 GC 4.05 Default by Contractor

26.1 Delete GC 4.05.02 and replace it with the following:

- “.02 Upon the occurrence of any of the events of default outlined in GC 4.05.03, and subject to the Owner giving the Contractor (or any receiver or trustee) notice in writing to correct the

default in the 5 Working Days immediately following the receipt of such notice, the Owner may, without prejudice to any other right or remedy the Owner may have, suspend or terminate any portion of the Work or terminate the Contract.”

26.2 Add new GC 4.05.03, GC 4.05.04 and GC 4.05.05 as follows:

“.03 For the purposes of GC 4.05.02, the following are events of default by the Contractor:

- a) if the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Contractor's insolvency or if a receiver is appointed because of the Contractor's insolvency; or
- c) if the Contractor fails to comply with any municipal laws and regulations as they pertain to the operations of the Contractor's business or the Contractor is convicted of a statutory offence relating to the Owner or relevant local municipalities which has not been cured; or
- d) if the Contractor fails to comply with any federal and provincial laws in respect of the performance of the Work; or
- e) if the Contractor, or any of its Subcontractors or Suppliers, is a party in judicial or arbitral proceedings or any claim against the Owner, other than in respect of this Contract and the Work; or
- f) if the Contractor, or any of its Subcontractors or Suppliers, is controlled by or related to another person or entity to whom or to which, as applicable, subparagraph c), d), or e) above applies; or
- g) the Contractor neglects to prosecute the Work properly or otherwise fails to comply with the requirements of the Contract to a substantial degree, in the opinion of the Owner or the Contract Administrator; or
- h) the Contractor fails to correct any defect or deficiency in the Work in accordance with GC 7.16 as and when required.

.04 The Owner may, at any time, suspend or terminate any part of the Work, including all remaining Work, for any reason whatsoever effective immediately upon notice to the Contractor. The Contractor shall continue to execute any part of the Work not suspended or terminated.

.05 In the event that the Owner elects to terminate all remaining Work or terminates the Contract, then the Contractor is entitled to full payment for the part of the Work done by it up to the effective date of such termination, unless such termination arises from an event of default by the Contractor pursuant to GC 4.05.02. The Owner shall in no event be liable to the Contractor for loss of anticipated profit on the terminated portion or portions of the Work or for any claims for loss of opportunity or for any consequential, indirect or special damages resulting from such termination.”

SC 27 GC 4.06 Contractor's Right to Correct a Default

27.1 Amend GC 4.06.01 by inserting the words "in a manner acceptable to the Contract Administrator" after the words "correct a default" in the second line.

27.2 Amend GC 4.06.02(b) by inserting the words "and the Contract Administrator" after the words "to the Owner".

27.3 Amend GC 4.06.02(c) by inserting the words "to the satisfaction of the Contract Administrator" at the end of the sentence.

SC 28 GC 4.07 Owner's Right to Correct Default

28.1 Amend GC 4.07.01 by deleting the word "deduct" from the third line and replace it with "be entitled to a deduction of".

SC 29 GC 4.08 Termination of Contractor's Right to Continue the Work

29.1 Amend GC 4.08.01 by adding the following to the end of that paragraph:

"Within 5 Working Days of providing written notice of termination, the Owner shall publish a notice of termination (Form 8) in accordance with the Construction Act."

29.2 Add new GC 4.08.03 as follows:

".03 The Contractor's obligation under the Contract as to quality, correction and warranty of the Work performed by the Contractor up to the time of termination shall continue in force after such termination."

SC 30 GC 4.10 Termination of the Contract

30.1 Amend GC 4.10.01 by adding the following to the end of that paragraph:

"Within 5 Working Days of providing the written notice of termination, the Owner shall publish a notice of termination (Form 8) in accordance with the Construction Act."

30.2 Add new GC 4.10.03 as follows:

".03 Without in any way limiting the rights of the Owner upon termination of the Contract, the Owner shall be entitled to exercise the rights and options outlined in GC 4.08.02."

SECTION GC 5.0 - MATERIAL**SC 31 GC 5.02 Quality of Material**

31.1 Delete GC 5.02.02 and replace it with the following:

".02 Material supplied by the Contractor shall conform to the Ministry of Transportation list of designated sources for materials (latest edition) and shall further conform to the requirements of the Contract. Material that has not been approved by the Owner shall not be incorporated in the Work."

31.2 Amend GC 5.02.04 by inserting the following at the end of the clause:

"Inspection, sampling and testing of Material will be carried out as follows:

- a) Inspection, sampling and testing of Material delivered to the site for incorporation in the Work, and workmanship of such incorporation into the Work, will be conducted by the Owner under the direction of the Contract Administrator; and
- b) Any inspection, sampling and testing of previously inspected, sampled or tested Material and/or workmanship shall be carried out at the Contract Administrator's discretion at the Contractor's expense."

31.3 Add new GC 5.02.10 as follows:

- “.10 The following provisions shall apply to the inspection, sampling and testing of Material and, as applicable, Equipment; however nothing in this GC 5.02.10 shall relieve the Contractor from its obligation to test or inspect the Work to ensure compliance with the specifications and standard industry practice:
- a) The cost of all testing and inspection of Material delivered to the site will be borne by the Owner, and arranged by the Contract Administrator, unless otherwise specified in the Contract Documents. Any re-testing to verify either the quality of Material or Work or previous test results shall be carried out at the sole expense of the Contractor.
 - b) The Contractor shall provide to the Contract Administrator assistance and use of tools and Equipment as may be required to procure, package and ship all test samples.
 - c) The Contractor shall make known to the Contract Administrator the source of Material at least one week prior to the time the Contractor proposes to use such Material, unless otherwise specified in the Contract Documents.
 - d) Where required by the Contract Administrator, or where otherwise specified in the Contract Documents, the Contractor shall supply certified copies of all tests upon all Material and Equipment to be used in the construction of the Work, indicating that Material comply with the applicable specifications. Such tests shall be made by an approved testing company and shall be at the Contractor’s sole expense.”

SC 32 GC 5.04 Substitutions32.1 Delete GC 5.04.03 and replace it with the following:

- “.03 If the proposed substitution is approved by the Contract Administrator, the Contract Administrator and the Contractor shall negotiate an appropriate price adjustment, which agreed price adjustment shall be subject to agreement and approval by the Owner.”

32.2 Add new GC 5.06, Existing Material as follows:**“GC 5.06 Existing Material**

- .01 All existing material removed from the Work in the course of construction that is deemed salvageable by the Contract Administrator shall be delivered to a storage site designed by the Contract Administrator. Salvaged materials shall remain the property of the Owner.
- .02 Materials that, in the opinion of the Contract Administrator, cannot be salvaged shall be disposed of outside the limits of the right-of-way, as directed by the Contract Administrator, or at locations arranged for by the Contractor at his own expense.”

32.3 Add new GC 5.07, Weighing Material as follows:**“GC 5.07 Weighing Material**

- .01 Weigh tickets shall be supplied by the Contractor showing the date, source of material, type of material, truck number, gross, tare and net weights, place of dumping, and provide spaces for the signature of the weighman and the Contract Administrator.
- .02 Two (2) copies of the weigh tickets, filled in by the weighman, shall be delivered Owner’s agents will then fill in the place of dumping and sign both copies, keep one and return the other to the scales by the driver.

- .03 Tickets shall be kept separate for each day and for each type of material weighed. Tickets not signed by the Owner's agent, by the days end, will not be accepted for payment.
- .04 The Contract Administrator will spot check vehicles throughout the Contract at a conveniently located weigh scale. If the check weight is found to be less than that indicated on the weigh ticket, this difference in tonnage will be applied to all the loads delivered to the project on that one day. All costs herein involved are to be borne by the Contractor."

32.4 Add new GC 5.08, Disposal of Material as follows:

"GC 5.08 Disposal of Material

- .01 Any material gained from stripping and excavating operations carried out under this Contract, which are unsuitable for or which are excess to the requirements, shall be disposed of outside the right-of-way at locations arranged for by the Contractor at his expense. The Contractor shall provide the Contract Administrator with a release form for each disposal site signed by the owner of the site prior to the Contractor removing any material from the site.
- .02 Under no circumstances shall any material be disposed of on lands under the control of any conservation authority unless prior written approval from such conservation authority has been obtained.
- .03 The price bid for the Contract items requiring excavation and stripping operations shall be full compensation for hauling and placing the unsuitable or surplus materials at the disposal areas.
- .04 OPSS Specification 180 shall apply to the management and disposal of all excess material.
- .05 The Owner reserves the right to withhold payment of monies due the Contractor until the Contractor has provided the Owner with a copy of the release form signed by the property owner of each disposal area used by the Contractor."

SECTION GC 6.0 - INSURANCE, PROTECTION AND DAMAGE

SC 33 GC 6.01 Protection of Work, Persons & Property

- 33.1 Amend GC 6.01.02 following the words "restore such damage" in the fourth line by adding the words ", if the Contract Administrator so directs" .
- 33.2 Amend GC 6.01.04 by deleting the word "or" at the end of subparagraph c) and inserting the word "or" at the end of subparagraph b).
- 33.3 Delete GC 6.01.04 d) in its entirety.

SC 34 GC 6.02 Indemnification

34.1 Delete GC 6.02.01, including all subparagraphs, and replace it with the following:

- “.01 The Contractor shall indemnify and hold harmless the Owner and the Contract Administrator, their elected officials, agents, directors, officers, and employees (each an "Indemnified Party") from and against all claims, demands, losses, expenses, costs, damages, actions, suits, or proceedings by third parties (hereinafter called "claims") directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the Work."

34.2 Delete GC 6.02.02 and replace it with the following:

“.02 Without limiting GC 6.02.01 above, the Contractor shall, at its sole expense:

- a) fully indemnify and hold harmless the Owner from all and every claim for damages, royalties or fees based on allegations that the Work, or any part of the Work, constitutes an infringement of any patent, copyright or other proprietary right, where such claim is occasioned by the Contractor in connection with the Work performed or Material furnished by the Contractor under the Contract, including without limitation payment to the Owner all costs, damages, charges and expenses, including the Owner's lawyers' fees; and
- b) forthwith either secure for the Owner the right to continue using the Work or replace the infringing items with non-infringing Work or modify them so that the Work no longer infringes, at the Contractor's expense, provided the subject Work or any part of that Work is found to constitute infringement by a court of competent jurisdiction or in an arbitral award.”

34.3 Delete GC 6.02.03 and replace it with the following:

“.03 Without limiting the obligations of the Contractor under GC 6.02.01, the following provisions apply to claims by a third party against an Indemnified Party relating to or arising out of the Contract:

- a) Upon receipt of notice of a claim, the Contractor shall immediately forward the notice to the Owner and the Contract Administrator.
- b) Following receipt of notice of a claim by a third party against an Indemnified Party relating to or arising out of the Contract, the Contractor shall:
 - i) within 5 Working Days of receipt, send a letter, copied to the Owner, acknowledging receipt of the claim and providing the claimant with contact information for a representative of the Contractor to whom the claimant can refer questions regarding the claim;
 - ii) conduct an investigation of the claim and make a decision regarding the claim that is based on a proper consideration of the facts; and
 - iii) within 25 Working Days of receiving notice of the claim, or such other time as may be agreed by the Contractor and Contract Administrator or Owner in writing, either provide the claimant with a letter advising of the results of the investigation and clearly explaining the Contractor's decision regarding the claim or, if the Contractor determines that it requires the involvement of its insurance company to resolve the claim, forward the claim to such insurance company and notify the claimant regarding same.
- c) The Contractor shall provide to the Owner and the Contract Administrator contemporaneous copies of all correspondence sent to the claimant by the Contractor or the Contractor's insurer.
- d) The Owner will be entitled to retain from any amounts payable to the Contractor an amount equal to the claim advanced against the Owner and Contract Administrator until such time that the claim is released or withdrawn as against them.
- e) The Contractor must resolve and/or attend to all claims to the satisfaction of the Owner prior to any reduction in Statutory Holdback, Warranty Holdback, or any other holdback provided for in the Contract Documents.”

SC 35 GC 6.03.04 Aircraft and Watercraft Liability Insurance

35.1 Delete GC 6.03.04 in its entirety.

SC 36 GC 6.03.05.03 Use and Occupancy of the Work Prior to Completion

36.1 Delete GC 6.03.05.03.01 and replace it with the following:

“.01 The Owner may make such use or occupy part or all the Work prior to Completion so long as the said use or occupation does not unduly or unreasonably interfere or obstruct the Contractor’s obligations under this Contract.

SC 37 GC 6.03.05.04 Payment for Loss or Damage

37.1 Amend GC 6.03.05.04.03 following the word "others" at the beginning of the second line by adding the words "for whom the Owner is at law responsible".

SC 38 GC 6.03.07 Insurance Requirements and Duration

38.1 Add new GC 6.03.07.08 as follows:

“.08 The insurance requirements provided in this GC 6.3, Contractor’s Insurance shall be subject to the following general requirements:

- a) Coverage in respect to any one accident shall be at least \$ 5,000,000.00, unless otherwise specified in the Bid Form;
- b) All insurance certificates shall include the amount of the deductible, which shall not exceed \$ 5,000.00; and
- c) All liability insurance provided shall, where applicable, name as additional insureds the Owner, The Regional Municipality of Peel and the applicable Conservation Authority.”

SC 39 GC 6.04 Bonding

39.1 Delete GC 6.04.01 and replace it with the following:

“.01 The Contractor shall, prior to execution of the Agreement and within seven (7) days of receiving the award of Contract, furnish a performance bond and a labour and material payment bond, as applicable, in the amount required by the tender documents, issued by a surety company or surety companies as the Owner may approve.”

39.2 Amend GC 6.04.02 by deleting the words “and shall be to the satisfaction of the Owner” in the second line and replacing them with “in a form approved of by the Contract Administrator”.

39.3 Add new GC 6.04.03 and GC 6.04.04 as follows:

“.03 The performance bond shall be applicable to all of the Contractor’s obligations under the Contract, including its obligations under GC 7.16, Warranty. The Contractor represents and warrants that it has provided its surety with a copy of the Contract prior to the issuance of such bonds. In addition, the Contractor shall advise the surety for the performance bond, in writing, with a copy to the Owner, of any Change Orders to the Contract so that the validity of coverage of the performance bond is at no time impaired or in jeopardy. Where required by the Owner, a rider indicating any increase in the penal amount of the bond as a

result of such Change Orders shall be provided to the Owner with the Contractor's application for Substantial Performance of the Work.

- .04 Subcontractor or Supplier default insurance will not be accepted as a substitute to surety bonds."

SC 40 GC 6.05 Workplace Safety and Insurance Board

40.1 Delete GC 6.05.01 and replace it with the following:

- “.01 The Contractor shall provide the Contract Administrator with a copy of a Certificate of Clearance indicating the Contractor's good standing with the Workplace Safety and Insurance Board, as follows:
- a) At the time of the execution of the Contract by the Contractor.
 - b) Prior to the issuance of any payment by the Owner.
 - c) Prior to the expiration of the maintenance period and upon the completion payment.
 - d) At any other time when requested by the Contract Administrator."

SECTION GC 7.0 - CONTRACTOR'S RESPONSIBILITIES AND CONTROL OF THE WORK

SC 41 GC 7.01.03 Control and Responsibility

41.1 Add new GC 7.01.03.06 as follows:

- ".06 The Contractor shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in the above paragraph where required by law or by the Contract Documents and in all cases where such temporary supports, structures and facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results."

SC 42 GC 7.01.04 Compliance with the Occupational Health and Safety Act

42.1 Delete GC 7.01.04 and replace it with the following:

- “.01 The Contractor shall comply with relevant federal, provincial, and municipal statutes, regulations and by-laws pertaining to the Work and its performance, as well as the performance of its Subcontractors and Suppliers. The Contractor is assumed to be familiar with all such laws, regulations and by-laws which in any manner affect those engaged or employed in the Work, the Work itself, facilities or equipment used in the Work, or which in any way affect the conduct or completion of the Work, and further expressly represents and warrants that it is familiar with and understands the requirements of the OHSA. No plea of misunderstanding or ignorance regarding relevant laws, regulations or by-laws will be considered or accepted.
- .02 The Contractor shall be solely responsible for construction safety at the place(s) of the Work and for compliance with the rules, regulations, and practices required by the OHSA, including, but not limited to those of the "constructor", and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. Without limiting the foregoing, the Contractor shall be solely responsible for construction safety in respect of its Subcontractors and Suppliers, the Owner's own forces, and other contractors, subcontractors, and suppliers during the course

of the Work, and the Contractor covenants and agrees to observe strictly and faithfully the provisions of the said OHS Act and all regulations and rules promulgated thereunder.

- .03 Without limiting GC 7.19.02, the Contractor shall:
- a) conform to and enforce strict compliance with the *Occupational Health and Safety Act* (Ontario), and regulations made thereunder, municipal health and safety by-laws in force in the place of the Work, and the Owner's Health and Safety Policy (when working with Owner staff and equipment or when working on Owner property);
 - b) notify the Ministry of Labour in writing of the Work where the total cost of labour and materials is expected to exceed fifty thousand dollars (\$ 50,000.00) or the project meets any of the other criteria outlined in any appropriate regulations made under the *Occupational Health and Safety Act*.
- .04 The Contractor shall at all times maintain records and copies of the Owner's emergency numbers, the Owner's emergency plan, if any, and the Owner's Health and Safety Policy, if applicable. The Contractor shall further allow access to the Working Area to representatives of the Owner, on demand, for the purpose of inspecting Work sites to ensure compliance with the *Occupational Health and Safety Act* (Ontario) and any other governing safety legislation, regulations, by-laws or ordinances.
- .05 Prior to the commencement of the Work, the Contractor shall submit to the Contract Administrator:
- a) a detailed health and safety programme for the Work outlining safe operating procedures, hazard awareness, safety rules, reporting of deviants and to whom, and personal protective equipment requirements;
 - b) evidence of compliance with the workers' compensation legislation;
 - c) copies of the Contractor's certificates of insurance having application to the Project or certificates of insurance, at the option of the Owner;
 - d) prior to site mobilization, 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* (Ontario), or evidence of compliance, to the satisfaction of the Contract Administrator, with the requirement to register with the Ministry of Labour before or within thirty (30) days after first employing a worker in construction in accordance with the *Occupational Health and Safety Act* (Ontario);
 - e) a copy of the Contractor's own current health and safety policy or policies; and
 - f) a list of "designated substances" as defined in the *Occupational Health and Safety Act* (Ontario) that will be brought to the site.
- .06 The health and safety programme submitted pursuant to GC 7.20.04 a) may be reviewed by the Contract Administrator and is subject to approval by the Contract Administrator or, in the alternative, the Owner may require that the Contractor obtain, at the Contractor's sole expense, a review of the programme by an accredited workplace safety consultant.
- .07 Prior to commencement of the Work, the Contractor shall provide to the Contract Administrator a list of those products controlled under the Workplace Hazardous Materials Information System or "WHMIS", which the Contractor expects to use on the Contract. Related Safety Data Sheets shall accompany the submission. All containers used in the application of products controlled under "WHMIS" shall be labelled. The Contractor shall notify the Contract Administrator in writing of changes in the products to be used and provide relevant Safety Data Sheets.

- .08 The Contractor shall indemnify and save harmless the Owner, their agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all health and safety infractions committed directly by the Contractor under the OHS Act, or any other occupational health and safety legislation that may be in force, including without limitation the payment of fines arising from any breach or breaches thereof and legal fees and disbursements on a substantial indemnity basis. For greater certainty, the Owner will be entitled to set-off any losses, damages or fines suffered by the Owner against any monies that may be owing under the Contract or any other contract.
- .09 The Contractor shall be required to take immediate corrective action where the Contract Administrator, the Owner, or a representative of the Owner requests that the Contractor comply with the terms set out in this GC 7.20, Compliance with Laws and Safety Regulation, or any applicable health and safety laws, regulations and by-laws, the *Environmental Protection Act* (Ontario) and associated regulations, or any other applicable laws, regulations and by-laws.
- .10 Where a request is made to the Contractor in accordance with GC 7.20.08, and the Contractor fails to comply with such request to the satisfaction of the Contract Administrator or the Owner, the Owner is entitled to direct that the Contractor immediately stop all Work and that Work not recommence until such time as the corrective action has been taken to the satisfaction of the Owner.
- .11 The Owner shall not be liable to the Contractor for any direct, consequential, indirect or special damages or costs incurred by the Contractor as a result of actions taken or directions given by the Contract Administrator or the Owner pursuant to GC 7.20.08 or GC 7.20.09.
- .12 The Contractor acknowledges and agrees that any breach or breaches of this GC 7.20, Compliance with Laws and Safety Regulation, including non-compliance with the requirements of the OHS Act and the *Environmental Protection Act* (Ontario), whether by the Contractor or any of its Subcontractors, is a material event of default entitling the Owner to immediately terminate the Contract for cause.”

42.2 Amend GC 7.01.05.01 by adding after the first sentence, the following:

“The Contractor’s authorized representative shall be competent and qualified to perform and supervise the Work and shall also be an individual who is able to read, write and speak fluent English.”

42.3 Add new GC 7.01.05.03 as follows:

"0.3 The authorized representative shall not be changed without the approval of the Contract Administrator and only if replaced by a superintendent of similar or better qualifications. Notices and instructions given to the authorized representative by the Contract Administrator shall be held to have been received by the Contractor."

SC 43 GC 7.01.07 Schedule

43.1 Delete GC 7.01.07.01 and replace it with the following:

“01 The Contractor shall prepare and update, as required, a construction schedule of operations, providing sufficient detail of the critical activity as required by the Contract Administrator and indicating the proposed methods of construction and sequence of work and time the Contractor proposes to complete the various items of work within the time specified in the Contract Documents. The schedule shall be submitted to the Contract Administrator within 14 Days from the Contract award and thereafter shall be updated on a bi-monthly basis or as

stipulated by the Contract Documents. The Contractor shall immediately advise the Contract Administrator of any revisions required to the schedule as a result of authorized extensions of the Contract Time or delays. If the Contractor's schedule is materially affected by a Change in the Work, Extra Work or Additional Work, the Contractor shall submit an updated construction schedule, if requested by the Contract Administrator, within 7 Days of the request. This updated schedule shall show how the Contractor proposes to perform the balance of the Work so as to complete the Work within the time specified in the Contract Documents."

SC 44 GC 7.01.09 Utilities

44.1 Amend GC 7.01.09.01 by deleting the words "The Contractor shall arrange" in the first line and replacing them with "The Contractor shall assume full responsibility for the location, coordination and protection of all under and aboveground utilities, such as water mains, sewers, gas mains, house connections, utility poles, wires and conduits, etc., whether they are shown on the plan or not."

44.2 Add new GC 7.01.09.03, 7.01.09.04, 7.01.09.05, 7.01.09.06, and 7.01.09.07 as follows:

"GC 7.01.09.03 Relocation of Utilities

.01 The Owner will be responsible for any necessary permanent relocation of utilities along the streets, unless otherwise stated in the Contract.

GC 7.01.09.04 Pole Lines

.01 The Contractor will be responsible for the protection of all "Bell" and "Hydro" poles during the time of construction and will be held liable for any damage to same.

.02 In the event that all poles have not been relocated prior to the time when the Contractor commences the Work, the Contractor will be required to co-operate with the utility companies and work around the utilities such that the existing services are protected, until such time as they can be removed from the area of construction. No claims for extra payment or extension of completion time will be allowed for this requirement.

GC 7.01.09.05 Underground Utilities

.01 The Contractor should note that the location of underground utilities, as shown on the Drawings, where applicable, is approximate only, and that all utilities may not be shown.

.02 The Contractor will be solely responsible for locating and protecting all buried utility services and will be held liable for any damage to same. Where trenching under existing watermains, gas mains, and hydro and telephone conduits, the Contractor will be required to support these mains or conduits in accordance with the requirements of the Owner or the applicable utility company.

.03 In the event that any underground utility must be relocated, the Contractor will be required to co-operate with the utility companies and will be expected to alter his construction schedule as necessary, to permit relocation of utilities. No extra payment or extension of completion time will be allowed for these requirements.

GC 7.01.09.06 Protection of Service Connections

.01 The Contractor will be required to locate and protect all existing water, storm, sanitary and gas service connections at his own expense, and any damage caused to these connections by construction operations shall be repaired at the Contractor's expense.

GC 7.01.09.07 Abandoned Utilities

- .01 The Contractor shall, as directed by the Contract Administrator, remove abandoned underground utilities that have not been removed by their owners and which interfere with the construction operations. It is the Contractor's responsibility to contact the municipalities or other authorities or utility companies to verify that the underground utilities are, in fact, abandoned.
- .02 All abandoned underground utilities removed by the Contractor shall become the property of the Contractor, unless otherwise specified, and shall be disposed of in locations arranged for by the Contractor outside the right-of-way. No separate payment for removal or disposal of abandoned utilities shall be made, as compensation for such Work shall be included in the Contract prices for the Work requiring the utility removal

44.3 Add new GC 7.01.10 – Other Contractor Responsibilities as follows:

“GC 7.01.10 Other Contractor Responsibilities

- .01 The Contractor shall not be permitted to use blasting operations of any kind in executing the Work, absent the express written consent of the Owner.
- .02 The Contractor, all of the Subcontractors, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers 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 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.
- .03 In performing its services and obligations under the Contract, the Contractor shall exercise the degree of care, skill and diligence that would normally be exercised by an experienced, skilled and prudent contractor supplying similar services for similar projects in a first class, expeditious and workmanlike manner. The Contractor acknowledges and agrees that, throughout this Contract, the Contractor's obligations, duties and responsibilities shall be judged, evaluated and interpreted in accordance with this standard. The Contractor shall exercise the same standard of care in respect of any Products, personnel or procedures that it may recommend to the Owner or employ on the Project.
- .04 Without limiting GC 7.01.10.03, the Contractor shall take all reasonable precautions necessary to ensure the safety of all persons supplying labour, services or materials as part of the Work and the general public, particularly any children who may play in the Working Area.”

SC 45 GC 7.02 Monuments and Layout

45.1 Amend GC 7.02.01 by deleting the words “the Contract Administrator and” in the first line.

45.2 Delete GC 7.02.07 and replace it with the following:

- “.07 The Contractor shall employ an Ontario Land Surveyor or its designate, or a certified survey technician or technologist, to perform all layout required pursuant to the Contract Documents, which cost shall be deemed to be included in the Contract price. The Contractor shall notify the Contract Administrator of any layout work carried out, so that the same may be checked by the Contract Administrator.”

45.3 Add new GC 7.02.12 and GC 7.02.13 as follows:

- “.09 For road locations, layout shall include, but not be limited to, providing offset stakes and grading at sufficiently frequent intervals to accurately re-instate the geometry and alignment of the existing roadway to the satisfaction of the Contract Administrator, in its reasonable discretion.
- .10 The Contract Administrator may direct that the alignment, location or grade of the existing road be altered from the existing alignment or grade in order to allow greater lane width, additional gravel depth or correct minor variations of the alignment.”

SC 46 GC 7.03 Working Area

46.1 Amend GC 7.03.01 by inserting the words "waste products and" prior to the word "debris" in the second line

46.2 Add new GC 7.03.06 as follows:

- “.06 Where required by the Owner, the Contractor shall supply and set up one construction field office for the sole use of the Contract Administrator. The following provisions shall apply to such field office:
- a) The field office shall have a minimum floor area of 27 square metres and shall be equipped with two desks, four chairs and a plan table of 1.4 square metres minimum area and a two drawer lockable filing cabinet;
 - b) One half of the field office shall be equipped with two rectangular tables each having a minimum area of 1.5 square metres, one chair and two stools, with those two working areas separated by a wall with a door;
 - c) The field office unit shall be complete with lighting, air conditioning and heating;
 - d) The Contractor shall supply and maintain cleaning drinking water and toilet facilities adjacent to the field office for use by the Contract Administrator and representatives of the Owner, in accordance with the OHS/A;
 - e) The Contractor shall service, maintain and carry insurance on the field office and its contents without deductible amounts and provide evidence of insurance to the Contract Administrator before Work commences;
 - f) The field office area shall be reserved for use only by the Contract Administrator and the Owner’s representatives and shall not be used or occupied by any part of the Contractor’s site office operation or as a material storage facility;
 - g) The Contractor shall supply a telephone land line, fax machine and a mobile phone for the sole use by the Contract Administrator. The telephone land line shall be a separate line from any telephone lines used for the Contractor’s operations and shall be provided with a call answer service; and
 - h) The Contractor shall supply and maintain in good working condition one photocopy machine for the sole use of the Contract Administrator.”

SC 47 GC 7.04 Damage by Vehicles or Other Equipment

47.1 Amend GC 7.04.01 by:

- .1 deleting the words “outside the Working Area” in the second line and replacing them with the words “other than such portions as are part of the Work”; and

- .2 adding the words “at the Contractor’s sole expense and” before the words “at no extra cost to the Owner” in the fourth line.

SC 48 GC 7.06 Maintaining Roads and Detours

48.1 Amend GC 7.06.11 by deleting the words “foregoing provisions” and replacing them with “provisions of this GC 7.06, Maintaining Roads and Detours”.

48.2 Add new GC 7.06.12 to 7.06.15 as follows:

- .12 Where it is the Contractor’s responsibility to maintain a Roadway during the Work, the Contractor shall take such steps as may be required to prevent dust nuisance resulting from the Work, either within the right-of-way or elsewhere or by public traffic.
- .13 Where the Work requires the sawing of asphalt or the sawing or grinding of concrete, blades and grinders of the wet type shall be used together with sufficient water to prevent the incidence of dust, wherever dust would affect traffic or wherever dust would be a nuisance to residents of the area where the Work is being carried out.
- .14 The cost of all preventative measures described in this GC 7.06 and elsewhere in the Contract Documents shall be borne by the Contractor, except where water or calcium chloride are included as tender items and are used to reduce the dust caused by traffic on a roadway. It is the Contractor’s responsibility to maintain public traffic, and the cost of such quantities of water and calcium chloride, as are authorized by the Contract Administrator to restrict dust to acceptable levels, shall be paid for by the Owner at the Contract prices for the appropriate tender items for water for dust control or calcium.
- .15 The Contractor shall be responsible for all dirt and mud that is tracked onto the roadways from vehicles entering or leaving the job site. The Contractor shall, upon request from the Contract Administrator, immediately proceed with clean up operation at his expense, or if in the opinion of the Contract Administrator, the Contractor has not or cannot sufficiently remove the mud from the road, the Contract Administrator will proceed with the necessary clean up with all costs being charged to the Contractor.

SC 49 GC 7.08 Approvals and Permits

49.1 Amend GC 7.08.01 by:

- .1 adding the words "and shall ensure its Subcontractors" after the words "the Contractor shall" in the first line; and
- .2 adding the words “from all required municipalities, agencies or authorities” after the words “any permits, licences, and certificates”.

49.2 Delete GC 7.08.02 and replace it with the following:

- “.02 Without limiting GC 7.08.01, the Contractor shall be responsible for obtaining the following permits, as may be required:
- a) road occupancy permits from applicable road authorities; and
- b) fill or alteration or disposal permits, as applicable, from the relevant local municipalities in respect of disposal of material from the Project lands.”

49.3 Add new GC 7.08.03 and GC 7.08.04 as follows:

- .03 Completion of the Work, including all operations connected therewith, is subject to approvals, inspections, by-laws and regulations of all municipal, provincial and federal and other authorities having jurisdiction in respect of any of the Work. The Contractor shall arrange for all necessary inspections required by the approvals and permits specified in this GC 7.08.
- .04 All fees payable in respect of permits, licences, certificates, approvals or inspections required by this GC 7.08 shall be at the Contractor's sole expense. Where road occupancy permits are within the jurisdiction of the Owner as the applicable road authority, the Owner shall cooperate in securing waiver of applicable permit fees, to the extent possible."

SC 50 GC 7.10 Contractor's Right to Stop the Work or Terminate the Contract

50.1 Delete GC 7.10.02 in its entirety.

50.2 Amend GC 7.10.03(b) by deleting the words "30 days of an award by an arbitrator or court" and replacing them with the words "within a reasonable time following any award by a court of competent jurisdiction".

50.3 Amend GC 7.10.03(c) by inserting the words "to a substantial degree and the Contract Administrator confirms by written statement to the Contractor that such cause exists" at the end of the clause.

50.4 Amend GC 7.10.04 by deleting the words "7 days" and replacing them with "15 Working Days".

50.5 Amend GC 7.10.05 by:

- .1 adding the words "direct" prior to the words "losses or damages" in the third line; and
- .2 adding the words ", provided that the Owner shall in no event be liable to the Contractor for loss of anticipated profit, loss of opportunity, or any consequential, indirect or special damages, or for any losses or damages that are not reasonably foreseeable" to the end of the sentence.

50.6 Add new GC 7.10.06 and GC 7.10.07 as follows:

- ".06 Notwithstanding any other provision of this GC 7.10, Contractor's Right to Stop the Work or Terminate the Contract, no termination of the Contract by the Contractor will be valid until and unless the Contractor publishes a notice of termination in accordance with the requirements of the *Construction Act*
- .07 If the Contractor stops the Work or terminates the Contract in accordance with this GC 7.10, Contractor's Right to Stop the Work or Terminate the Contract, then it shall ensure that the site and the Work are left in a safe and secure condition as required by authorities having jurisdiction as well as the Contract Documents."

SC 51 GC 7.14 Limitations of Operations

51.1 Delete GC 7.14.01 and replace it with the following:

- ".01 The Contractor shall maintain the Work in a safe and satisfactory condition, and shall normally carry out the Work during the daylight hours of any week day, providing that the Contractor conducts the Work so as not to create a nuisance or disturb the peace unnecessarily and providing such hours meet with the approval of the Owner and any relevant local municipality. No work shall be permitted on Saturdays, Sundays or statutory holidays observed by the Owner without the written permission of the Contract

Administrator and to such extent as the Contract Administrator may judge to be necessary, in its sole discretion.”

SC 52 GC 7.15 Cleaning Up Before Acceptance

52.1 Amend GC 7.15.01 by:

- .1 adding the words "waste products," immediately following the words "temporary works" in the third line; and
- .2 deleting the words “or others” in the fourth line and replacing them with the words “or others who are not the responsibility of the Contractor”.

52.2 Amend GC 7.15.02 are amended by deleting the words “or others” in the third line and replacing them with the words “or others who are not the responsibility of the Contractor”.

SC 53 GC 7.16 Warranty

53.1 Delete GC 7.16.02 and replace it with the following:

- “.02 Subject to GC 7.16.01, the Contractor shall correct promptly, in a manner acceptable to the Contract Administrator and the Owner, and at no additional cost to the Owner, defects and/or deficiencies in the Work that appear:
 - a) prior to and during the period of 24 months from the date of Completion, as set out in the Completion Certificate, or such longer period as may be specified in the Contract Documents for certain Material, Products or some of the Work, whether or not they are specifically identified by the Contract Administrator or the Owner (the “**Warranty Period**”); or
 - b) prior to and during any Guaranteed Maintenance Period, if greater than the Warranty Period.”

53.2 Add GC 7.16.04, GC 7.16.05, GC 7.16.06, GC 7.16.07, GC 7.16.08 and GC 7.16.09 as follows:

- “.04 Incorrectly fabricated, misplaced or omitted components will be considered defective work to which this GC 7.16 applies.
- .05 The Contractor shall correct any deficiency within 48 hours after receiving a notice from the Owner or Contract Administrator, and complete the Work as expeditiously as possible. Where an identified deficiency prevents or reasonably could prevent maintaining security or keeping operational basic systems essential to the ongoing business of the Owner as designed, all necessary corrections and/or installation of temporary replacements shall be carried out immediately as an emergency service. Should the Contractor fail to provide this emergency service within 8 hours of notice to the Contractor, and notwithstanding any other clause of the Contract Documents, the Owner shall be authorized to carry out all necessary repairs or replacements, which shall be at the Contractor's expense.
- .06 Carrying out any required replacement work and making good any defects or deficiencies in the Work shall be at the sole cost of the Contractor and shall be executed at times convenient to the Owner.
- .07 The Contractor shall ensure that all warranties and guarantees required by the Contract Documents are issued in favour of the Owner. The Contractor shall also ensure that all warranties and guarantees required under this GC 7.16 may be assigned by the Owner, in

its sole discretion, to any other person or entity, and that any such assignment shall in no way limit the warranty or guarantee.

- .08 It will be a condition of any warranty required by the Contract Documents that, should any Work be repaired or replaced during the Warranty Period, the Warranty Period shall recommence for a further 12 months from the date of acceptance by the Owner for the corrected work.
- .09 Neither test results, nor selection or approval by the Owner of testing entities, nor any other item in this GC 7.16, shall have the effect of limiting or shortening or otherwise affecting in any way, whatsoever, the duration, effectiveness or content of any guarantee or warranty set forth in any other document or material forming part of the Contract Documents.”

SC 54 GC 7.19 Provisions for Traffic Control

54.1 Add new GC 7.19, Provisions for Traffic Control, as follows:

“GC 7.19 Provisions for Traffic Control

GC 7.19.01 Construction Signs

- .01 The Contractor shall supply, place and maintain all barricades, warning signs, delineators and flashing lights necessary for the protection of the public and the Work, including warning signs of construction operations maintained at both ends of the Working Areas, for the duration of the Contract, in accordance with Ontario Traffic Manual, Book 7, for all temporary traffic control issues for both short and long term.
- .02 The Contractor shall ensure that the sign face on all signs shall be at a minimum 3M engineering grade reflective sheeting or equal so they may be clearly visible to drivers during the night.
- .03 All signs, flashers, barricades and delineators shall be cleaned and maintained for the duration of the Contract. For delineation, the Contractor shall use flexible drums (TC-54) only. No other material will be accepted.
- .04 The cost of all signs, marking material, barricades, flashers, safety fencing, flagpersons and traffic control shall be at the Contractor’s sole expense, and at no additional cost to the Owner.

GC 7.19.02 Traffic Control

- .01 The Contractor shall perform the Work so as to cause the public the least inconvenience possible. In particular, the Contractor shall not obstruct any street, thoroughfare, or footwalk longer or to a greater extent than necessary.
- .02 It is the Contractor’s obligation to maintain the flow of traffic for the duration of construction as may be specified in the Special Provisions of the Contract Documents.
- .03 Traffic control on this Contract shall be in conformance with the procedure outlined in the pamphlet entitled “Correct Methods for Traffic Control” issued by the Construction Safety Associations of Ontario.
- .04 Each traffic control person shall, while controlling traffic, wear garments in accordance with ss. 69.1(1), (2), (3) and (4) of the *Regulations for Construction Projects* under the *Occupational Health and Safety Act*.

GC 7.19.03 Pedestrian Traffic

- .01 The Contractor shall provide for safe and free pedestrian movement from schools, parks and residences who presently have access along the line of construction.
- .02 Sidewalks that are removed during the course of construction shall be immediately replaced.
- .03 Excavations are to be properly fenced during non-working hours.

GC 7.19.04 Emergency Vehicles

- 0.1 The Contractor shall comply with municipal, fire, ambulance and police regulations relating to notification for lane closures that may be used by emergency vehicles.

GC 7.19.05 Restriction on the Use of Unlicensed Vehicles and Equipment

- .01 Unlicensed vehicles and Equipment will not travel, work or stop within 3.5 metres of a lane carrying traffic, except where construction operations necessitates the Working Area be less than 3.5 metres from the traffic, in which case, the Contractor shall erect delineators along the edge of the travelled lane, in accordance with Ontario Traffic Manual, Book 7. In no case shall the distance between traffic and Working Area be less than 1.2 metres.

GC 7.19.06 Open Excavations

- .01 The Contractor shall plan and schedule the Work so that there will be no open excavation adjacent to a lane carrying traffic overnight or on non-working days, including where new culverts and sewers are being installed.
- .02 Excavations within 4.0 metres of travelled lanes shall be backfilled with the specified material up to profile grade and compacted prior to closing down operations.

GC 7.19.07 Delivery and Trucking

- .01 The Contractor shall plan and schedule the routes of vehicles transporting all materials to, from or within the job site(s) so that vehicular movements are accomplished with minimum interference and interruptions to traffic. This will necessitate vehicles to “slip-off” or “slip-on” in the direction of traffic, in order to merge with and thereby avoid crossing traffic lanes.
- .02 The Contractor shall obtain the Contract Administrator’s prior approval for the location of any “slip-offs” or “slip-ons”. The Contract Administrator shall have the right to alter, reject or close same as considered necessary, in the Contract Administrator’s sole discretion.”

SC 55 GC 7.20 Construction Liens

55.1 Add new GC 7.20, Construction Liens as follows:

“GC 7.20 Construction Liens

- .01 The Contractor shall give the Contract Administrator notice in writing, immediately, of all lien claims or potential lien claims coming to the knowledge of the Contractor or its employees, servants or agents.
- .02 Notwithstanding any other provision in the Contract, the Contract Administrator shall not be obligated to issue a certificate, and the Owner shall not be obligated to make payment to the Contractor, if at the time such certificate or payment was otherwise due:
 - a) a claim for lien has been registered against any of the Project lands that has not been satisfied, vacated or discharged by the Contractor, or

- b) if an owner or mortgagee of any of the Project lands has received a written notice of a lien that has not been satisfied, vacated or discharged by the Contractor, or
 - c) the Owner or Contract Administrator reasonably believe that any party has purported to retain title to Products or materials in respect of which an application for payment has been made.
- .03 In the event a construction lien arising from the performance of the Work is registered or preserved against any of the Project lands, or a written notice of a lien is given in respect of the Project or a construction lien action is commenced against the Owner, then the Contractor shall, at its sole expense:
- a) within ten (10) Days of registration of the construction lien, vacate or discharge the lien from title to the Project lands. If the lien is only vacated, the Contractor shall, if requested, undertake the Owner's defence of any subsequent action commenced in respect of the lien, at the Contractor's sole expense;
 - b) within ten (10) Days of receiving notice of a written notice of a lien, post security with the Ontario Superior Court of Justice so that the written notice of a lien no longer binds the parties upon whom it was served, or otherwise arrange for the withdrawal of the written notice of a lien;
 - c) in the event that a lien action is commenced and a statement of claim is issued and served, the Contractor shall take all reasonable steps to remove the Owner from the action and to indemnify it and hold it harmless for any settlement or judgment in such action, including all legal fees and disbursements on a full indemnity basis, except where the statement of claim makes substantial claims against the Owner beyond the recovery of holdback under the provisions of the *Construction Act* (Ontario); and
 - d) satisfy all judgments and pay all costs arising from such construction liens and actions and fully indemnify the Owner against all costs and expenses arising from same, including legal costs on a full indemnity basis, that the Owner may incur in connection with any claim for lien or subsequent lawsuit brought in connection therewith, or in connection with any other claim or lawsuit brought against the Owner by any person, partnership, corporation, or other entity providing services or materials to the Project.
- .04 If any lien claimant makes a request to the Owner for information under section 39 of the *Construction Act* (Ontario) in respect of the Contract or the Work, or requests production for inspection of the Contract Documents or other documents, the Contractor shall be liable for an administration fee of \$250.00 for each such request, as compensation for preparation of such accounting and/or for preparation of the Contract Documents or other documents.
- .05 If an application or motion is brought to compel production by the Owner of any document(s) to a lien claimant, the Contractor agrees to indemnify the Owner from all legal fees, on a full indemnity basis, incurred in responding to and appearing on such an application or motion. In addition, the Contractor agrees to pay to the Owner its reasonable costs incurred in producing such documents, if ordered to do so.
- .06 In the event that the Contractor fails or refuses to comply with its obligations pursuant to GC 7.20.03, the Owner shall, at its sole option, be entitled to take all steps necessary to address any such construction liens, including without limitation the posting of security with the Ontario Superior Court of Justice to vacate the claim for lien from title to the Project lands, and in so doing will be entitled to a full indemnity from the Contractor for all legal fees, security, disbursements and other costs incurred and will be entitled to deduct same from amounts otherwise owing to the Contractor.
- .07 Notwithstanding the Owner's rights as described in this GC 7.20, no payment shall be required to be made by the Owner to the Contractor under this Contract, until such time as

any and all written notice(s) of lien is/are withdrawn, or registered lien(s) is/are vacated or discharged.

- .08 The Contractor's obligations in this GC 7.20 apply only to written notices of lien and claims for liens from any person or entity for which the Contractor is responsible at law, or any person or entity retained by or on behalf of the Contractor, including Subcontractors and Suppliers, to perform any portion of the Work under this Contract, but does not apply to any claim for lien asserted by the Contractor itself.
- 0.9 The Owner shall be entitled to retain and set-off from monies otherwise payable to the Contractor any and all fees, costs, or expenses of any nature whatsoever for which the Contractor is responsible under this GC 7.20."

SECTION GC 8.0 - MEASUREMENT AND PAYMENT

SC 56 GC 8.01.01 Quantities

- 56.1 In GC 8.01.01.01 delete from the last line the words "within 10 Days of the Cut-Off Date" and replace them with "by the 5th day of every month."

SC 57 GC 8.02.03 Advance Payments for Material

- 57.1 In GC 8.02.03 delete from the end of the first line and beginning of the second line, the words "upon the written request" and replace them with "within 28 Days of receipt by the Owner of a Proper Invoice."

SC 58 GC 8.02.04.01 Progress Payment Certificate

- 58.1 Delete GC 8.02.04.01.01 and replace it with the following:

- “.01 Progress payments shall be made to the Contractor within 28 days of receipt by the Owner of a Proper Invoice. Proper Invoices shall be delivered by the Contractor on the 1st day of every month to the Owner's representative as set out in the Contract Documents.”

- 58.2 Amend GC 8.02.04.01.02 by adding at the beginning of that paragraph the following:

“Upon receiving the Contractor's Proper Invoice for progress payment, the Contract Administrator shall confirm whether all of the criteria for a Proper Invoice are satisfied. If not, the Proper Invoice will be returned to the Contractor with reasons from the Owner or the Contract Administrator setting out why the Proper Invoice is not valid.”

- 58.3 Delete GC 8.02.04.03, GC 8.02.04.04 and GC 8.02.04.05 and replace them with the following:

- “.03 No later than 5 Days after the receipt of the Proper Invoice for progress payment, the Contract Administrator:
- a) will issue to the Owner with a copy to the Contractor, a progress payment certificate in the amount applied for, or
 - b) if the Contract Administrator finds that such other amount is properly due under the Proper Invoice or otherwise finds that the Proper Invoice must be amended, it shall notify the Owner and prepare an applicable Notice of Non-Payment (Form 1.1) with reasons for the amendment.”

- .04 Where the Owner has delivered a Notice of Non-Payment, the Owner and the Contractor shall first engage in good faith negotiations to resolve the dispute. If within 10 calendar

days following the issuance of a Notice of Non-Payment, the Owner and the Contractor cannot resolve the dispute, either party may issue a notice of Adjudication in a form prescribed under the Construction Act. The Owner and Contractor will then submit the dispute to Adjudication as set out under GC 3.13.05 Adjudication.

- .05 The amounts disputed and described under the Notice of Non-Payment shall be held by the Owner until all disputed amounts of the Proper Invoice have been resolved pursuant to this GC 3.13. Any portion of the Proper Invoice which is not the subject of the Notice of Non-Payment shall be payable within the time period set out in GC 8.02.04.01.01.

58.4 Add new GC 8.02.04.01.06 to GC 8.02.04.01.08 as follows:

- .06 If the Contractor fails to provide a Proper Invoice, at the interval prescribed in 8.02.04.01.01, the Contractor shall not be entitled to submit its Proper Invoice until the next prescribed interval.
- .07 Proper Invoices for Products manufactured but not yet delivered to the site will not be considered. Subject to GC 8.02.03 – Advance Payments for Material, Proper Invoices for Products delivered to the site but not yet incorporated into the Work, provided such Products are Project-specific and cannot readily be used elsewhere, may be considered for payment on an individual basis and shall be supported by such evidence as the Contract Administrator may reasonably require to establish the value and delivery of the Products.
- .05 All payments made by the Owner are subject to a holdback of 10% on all Work completed prior to or following the date of Substantial Performance and to the Warranty Holdback as provided under GC 8.02.03.13.
- .06 Following Substantial Performance, the Contractor Administrator may retain, which holdback shall be in addition to any other holdback permitted by the Contract Documents. may be retained, in the Contract Administrator's discretion, for up to 120 Days after issuance of the Completion Certificate while the Contractor Administrator finalizes quantities and Change Orders.
- .07 The Owner shall retain from funds owing under the Contract and payable under this GC 8.02, the statutory holdback required under the Construction Act and any other applicable holdbacks including the Warranty Holdback.
- .08 Proper Invoices shall not be delivered by the Contractor or received by the Owner during the Restricted Period.”

SC 59 GC 8.02.04.02 Certification of Subcontract Completion

59.1 Delete GC 8.02.04.02 in its entirety.

SC 60 GC 8.02.04.03 Subcontract Statutory Holdback Release Certificate and Payment

60.1 Delete GC 8.02.04.03 in its entirety.

SC 61 GC 8.02.04.05 Substantial Performance Payment and Substantial Performance Statutory Holdback Release Payment Certificates

61.1 Delete GC 8.02.04.05.03 in its entirety and replace it with “[Intentionally left blank].”

61.2 Add new GC 8.02.04.05.05, 8.02.04.05.06, and 8.02.04.05.07 as follows:

“.05 Prior to the issuance of the Certificate of Substantial Performance and/or the Substantial Performance Statutory Holdback Release Payment Certificate, the Contractor shall:

a) submit a Proper Invoice for the payment of the holdback amount;

b) confirm that the Contractor’s surety has been notified of the intent to claim release of holdback monies as well as evidence satisfactory to the Owner that the Contractor has done or has caused to be done all things necessary to ensure that the bonds contemplated hereunder are and will continue to be in good standing;

c) deliver a completed and current Works Report in a form and with the required detail set out in Schedule A to the Contract; and

d) provide such additional documents as the Contract Administrator may reasonably require.

.06 Where after thirty (30) days following the publication of the Certificate of Substantial Performance, pursuant to GC 8.02.04.05.01, the value of the Work remaining to be complete under the Contract, plus the estimated cost to repair any remaining deficiencies, exceeds the amount of the unpaid balance of the labour and Materials (as determined by the Contract Administrator, acting reasonably), the Owner may publish a notice of non-payment of holdback in accordance with the Construction Act (Form 6) and retain an amount from the holdback to supplement the unpaid value of the labour and Materials to secure the correction of deficiencies and completion of the Work.”

.07 In addition to the Finishing Holdback, the Owner shall retain the Finalization Holdback.”

SC 62 GC 8.02.04.06 Certificate of Completion

62.1 Add new GC 8.02.04.06.03, 8.02.04.06.04 and 8.02.04.06.05 as follows:

“.03 By issuing a Completion Certificate, the Contract Administrator does not assume any responsibility or liability, in whole or in part, for the Contractor’s responsibilities and liabilities at the completion of the Contract, or in the future, to carry out and have carried out all the Work, and any part of it, in accordance with the terms and specifications of this Contract.

.04 The Contract Administrator shall promptly, and no later than 24 hours, inform the Owner of the receipt of the Contractor’s Proper Invoice for final payment pursuant to GC 8.02.04.06.01 and confirm whether all of the criteria for a Proper Invoice are satisfied. If not, the Proper Invoice will be returned to the Contractor with reasons from the Owner or the Contract Administrator setting out why the Proper Invoice is invalid.

.05 Within no later than 5 Days after the receipt of the Proper Invoice, (i) the Contract Administrator will issue to the Owner and copy to the Contractor, a Completion Payment Certificate in the amount applied for, or (ii) if the Contract Administrator finds that such Fguother amount is properly due under the application for final payment or otherwise finds that the Proper Invoice for final payment must be amended, it shall notify the Owner and

prepare an applicable draft Notice of Non-Payment (Form 1.1), with reasons for the amendment.”

SC 63 GC 8.02.04.07 Completion Payment and Completion Statutory Holdback Release Payment Certificates

63.1 In GC 8.02.04.07.01 delete the words “Completion Statutory Holdback Release” and replace them with “Finishing Holdback”.

63.2 In GC 8.02.04.07.03 delete the words “Completion Statutory Holdback Release” and replace them with “Finishing Holdback”.

63.3 In GC 8.02.04.07.03 delete from the second line the words “further statutory holdback” and replace them with “Finishing Holdback”.

63.4 In GC 8.02.04.07.03 delete from the second sentence the words “statutory holdback” and replace them with “Finishing Holdback”

63.5 Amend GC 8.02.04.07.02 by deleting the word “and” at the end of subparagraph b), deleting the period at the end of subparagraph c) and inserting the word “; and”, and adding new subparagraph d) as follows:

“d) a release signed by each property owner upon whose land the Contractor has entered for any purpose in conjunction with the Work.”

63.6 Add GC 8.02.04.07.04 as follows:

“.04 As of the date of the Final Completion Payment, the Contractor expressly waives and releases the Owner from all claims against the Owner including, without limitation, those that may arise from negligence or breach of Contract by the Owner, except for those made in writing prior to the Completion Payment and still remaining unsettled.”

SC 64 GC 8.02.04.08 Interest

64.1 Delete GC 8.02.04.08.01 and replace it with the following:

“.01 Interest due the Contractor is the applicable pre-judgment interest rate set by section 127 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and the regulations thereto”.

SC 65 GC 8.02.04.09 Interest for Late Payment

65.1 Delete GC 8.02.04.09 in its entirety.

SC 66 GC 8.02.04.11 Owner’s Set Off

66.1 Delete GC 8.02.04.11.01 and replace it with the following:

“.01 In addition to any rights the *Owner* has pursuant to the *Construction Act* (Ontario), and without limiting the remedies available to it under this Contract, the Owner may retain from and set-off against monies owing to the Contractor under this or any other contract an amount sufficient to cover any outstanding or disputed liabilities, including the cost to remedy defects and deficiencies or delays in the Work, the reduction in value of substandard portions of the Work, claims for damages by third parties which have not been determined in writing by the Contractor’s insurer, undetermined claims by the Owner

under paragraph a) of GC 8.01.02.01, Variations in Tender Quantities, any assessment due the Workplace Safety and Insurance Board, any monies to be paid to the workers in accordance with clause GC 8.02.06, Payment of Workers, and any liquidated damages assessed by the Owner pursuant to GC 8.02.09. Such reasonable costs and related retention shall be determined by the Contract Administrator in consultation with the Owner.

- .02 Without limiting GC 8.02.03.11.01, if a lien is registered or an action commenced against the Owner in relation to or arising from the Work, the Owner shall have the right to withhold from any money otherwise due to the Contractor the full amount claimed in the lien or action plus an additional amount sufficient to satisfy all of the Owner's expenses relating to such lien action, including legal and consulting costs. These funds, less expenses incurred, shall be released to the Contractor upon the full discharge of all liens and dismissal of all actions against the Owner.
- .03 Any retention made pursuant to this GC 8.02.03.11 shall be in addition to statutory holdback, Warranty Holdback, and any other holdback provided in the Contract Documents.
- .04 If any retention and set-off is asserted pursuant to this GC 8.02.03.11, the Owner will give the Contractor appropriate notice of such action."

SC 67 GC 8.02.04.12 Delay in Payment

67.1 Delete GC 8.02.04.12 in its entirety.

SC 68 GC 8.02.04.13 Warranty Holdback

68.1 Add new GC 8.02.04.13 as follows:

"GC 8.02.04.13 Warranty Holdback

- .01 Where provided in the Contract Documents, Warranty Holdback shall be retained progressively from all payments made to the Contractor and retained by the Owner for the duration of the Warranty Period.
- .02 If the Contractor fails to correct defects or deficiencies in the Work in accordance with GC 7.16 within 15 Days following receipt of a written notice from the Owner identifying a defect or deficiency in the Work, then the Owner may carry out, or have others carry out, correction or rectification work at the Contractor's cost, and draw upon the Warranty Holdback, unless the nature of the defect or deficiency is such that it cannot be corrected within 15 Days and the Owner, acting reasonably, agrees to an extension of such time.
- .03 The Owner shall not be required to release the Warranty Holdback, or any remaining portion thereof, to the Contractor until the later of expiry of the Warranty Period or the date upon which all defects and deficiencies that are the subject of a written notice from the Owner are rectified and approved as satisfactorily complete by the Owner, acting reasonably.
- .04 Upon expiry of the Warranty Period, and subject to all defects and deficiencies being rectified, the Contractor may submit an application for the release of the Warranty Holdback, or any remaining portion thereof."

SC 69 GC 8.02.05.01 Definitions

69.1 Delete the definition of “**Working Time**” in GC 8.02.05.01.01 and replace it with the following:

“**Working Time** means each period of time during which a unit of equipment and/or labour is actively and of necessity engaged on a specific operation.”

SC 70 GC 8.02.05.08 Payment for Work by Subcontractors

70.1 Amend GC 8.02.05.08.01 by deleting the words “on the following basis:” and deleting subparagraphs a), b) and c) in , and inserting the words “at 5% of the Subcontractor’s actual cost”.

SC 71 GC 8.02.05.09 Submission of Invoices

71.1 Delete in GC 8.02.05.09.04 the words “within 60 Days after the completion of the Work on a Time and Material Basis” and replace them with “with its Proper Invoice and in accordance with GC 8.02.04.01.”

SC 72 GC 8.02.06 Final Acceptance Certificate

72.1 Delete GC 8.02.06 in its entirety.

SC 73 GC 8.02.08 Taxes

73.1 Amend GC 8.02.08.03 by deleting the last sentence and replacing it with the following:

“This statement shall be submitted not later than 30 Days after issuance of the Completion Certificate in accordance with GC 8.02.03.06.”

SC 74 GC 8.02.09 Liquidated Damages

74.1 Delete GC 8.02.09.01 and replace it with the following:

.01 It is agreed that one of the reasons that the Owner selected the Contractor for this Contract is the Contractor’s representation and warranty that it will attain completion of each portion of the Work by each Milestone Deadline, if provided in the Contract Documents, and will complete the Work within the Contract Time.

.02 Given the significance of achieving each Milestone Deadline, if applicable, and completing the Work within the Contract Time, which is a material part of this Contract, and should the Contractor fail to complete relevant Work by a Milestone Deadline, and within the Contract Time, the parties understand and agree that damages and losses will be sustained by the Owner and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damages and losses that the Owner will sustain in the event of and by reason of such delay.

.03 It is agreed that the Contractor shall pay to the Owner the sum of \$1,500.00 per Day for liquidated damages for each and every Day that the relevant Work remains incomplete and not ready for final acceptance by the Owner after each Milestone Deadline, whether or not the Contract has been forfeited or abandoned by the Contractor. For greater certainty, given the separate nature of portions of the Work, these liquidated damages shall severally accrue in respect of each Milestone Deadline. Where no Milestone Deadlines are provided, such liquidated damages shall accrue from the deadline for Completion.

- .04 It is mutually agreed between the Owner and the Contractor that the amount stated in GC 8.02.09.02 is a good faith estimate of the actual damage to the Owner which will accrue following the prescribed completion dates, and is not intended to be or include, and is not and does not include, any penalty for late completion.
- .05 The Owner may deduct any amount due under this GC 8.02.09 from any monies that may be due or payable to the Contractor on this or any other contract with the Owner, whether or not specifically identified in any progress payment certificate. The liquidated damages payable under this GC 8.02.09 are in addition to and without prejudice to any other remedy, action or other alternative that may be available to the Owner.
- .06 Notwithstanding the foregoing, the Owner shall be entitled to claim the greater of (i) the liquidated damages as provided in GC 8.02.09.02, or (ii) in the event that the Contractor claims that this liquidated damages provision is invalid or unenforceable and the Contractor prevails in that position, the actual damages suffered by the Owner including, without limitation, consequential, indirect or special damages, as well as costs and expenses, incurred or suffered by the Owner.”

SECTION GC 9.0 - TOXIC AND HAZARDOUS SUBSTANCES

SC 75 GC 9.0 TOXIC AND HAZARDOUS SUBSTANCES

75.1 Add new Section GC 9.0 - TOXIC AND HAZARDOUS SUBSTANCES as follows:

“SECTION GC 9.0 - TOXIC AND HAZARDOUS SUBSTANCES

GC 9.01 Toxic and Hazardous Substances

- .01 If the Contractor encounters Toxic or Hazardous Substances at the site, or has reasonable grounds to believe that Toxic or Hazardous Substances are present at the site, the Contractor shall take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the Toxic or Hazardous Substances, and immediately report the circumstances to the Contract Administrator and the Owner, in writing.
- .02 If the Contractor is delayed in performing the Work or incurs additional costs as a result of taking the steps required by GC 9.01.01, the Contract Time shall be extended by such reasonably foreseeable time as the Contract Administrator may recommend in consultation with the Contractor, and the Contractor shall be reimbursed for reasonable costs incurred as a result of the delay and as a result of taking those steps.
- .03 The Contract Administrator may select and rely upon the advice of an independent expert in any dispute regarding GC 9.01.01 or GC 9.01.02 and, in that case, the expert shall be deemed to have been jointly retained by the Owner and the Contractor and shall be jointly paid by them.
- .04 The Contractor hereby agrees to indemnify and hold harmless the Owner from and against all claims (as defined in GC 6.02.01) whatsoever, including any losses that the Owner may incur, as a result of the Contractor bringing or permitting to be brought onto the site any Toxic or Hazardous Substances.”

SECTION GC 10.0 – ADDITIONAL CONSTRUCTION REQUIREMENTS**SC 76 GC 10.0 ADDITIONAL CONSTRUCTION REQUIREMENTS**

76.1 Add new Section GC 10.0 – ADDITIONAL CONSTRUCTION REQUIREMENTS as follows:

“SECTION GC 10.0 – ADDITIONAL CONSTRUCTION REQUIREMENTS**GC 10.01 Provisional Items**

- .01 All items in the Schedule of Unit Prices marked “Provisional Items” shall be used only where specifically directed by the Contract Administrator. Notwithstanding GC 3.10.01, in the event of any deletions, no adjustment or compensation will be payable to the Contractor by the Owner for loss of revenue or for any other reason.

GC 10.02 Subsurface Investigation

- .01 Any geotechnical reports or borehole logs provided by the Owner to the Contractor are for informational purposes only, and do not relieve the Contractor of its sole responsibility for determining all necessary information relevant to the construction of the Work.
- .02 Information shown in any geotechnical reports or borehole logs provided by the Owner is based on interpretation from borings and other soil investigations, but the accuracy of such information cannot be and is not guaranteed. Any geotechnical report so provided is intended solely for guidance of the design engineer. If comments are made on construction, such comments are provided only in order to highlight aspects of construction which could affect the design of the project.
- .03 The Contractor shall be required to make its own interpretation of subsurface data provided as it affects their proposed construction methods, equipment selection, scheduling and the like, and shall make such further investigation as it deems necessary, at its sole expense.

GC 10.03 Depth of Excavations

- .01 Trenches shall be excavated to the depth required by the foundations of the pipe and appurtenances shown on the Contract Drawings and, where conditions make it necessary, to such additional depth as may be required by the Contract Administrator.
- .02 Bedding shown in the Contract Drawings shall be placed on undisturbed ground
- .03 No adjustments in payment will be made where the depth of excavation varies due to change in pipe elevation not exceeding 300 mm. For grade changes of more than 300 mm, additional payment shall be in accordance with the appropriate tendered unit price in the Form of Tender.

GC 10.04 Granular Backfill

- .01 Where payment for the supply and placing of granular material is included in the unit price for an item of the Work, the placing of granular material under such item shall be performed as a distinctly separate operation from the placing of granular material as a granular base course.

GC 10.05 Other Contractors and Utilities Within or Adjacent to the Working Area

- .01 The Owner may award separate contracts for additional work outside the Contractor’s scope of the Work, which may be in progress within and adjacent to the limits of the Working Area. Where such additional work is proceeding by other contractors, the Contractor shall co-operate with the other contractors, utility companies and the Owner and they shall be allowed free access to the Working Areas at all times. The Contract

Administrator is entitled to direct alteration of the Contractor's method of operations for the Work to avoid interference with other work.

- .02 The Contractor is solely responsible for the coordination and scheduling of all utility Work by the Contractor's own forces, and utility authorities, as may be specified in the Special Provisions of the Contract Documents.
- .03 Any information provided by the Owner regarding utility relocations is based on information from the applicable utility companies. The accuracy of such information cannot be and is not guaranteed by the Owner. The Contractor shall be solely responsible for verifying such information, and shall contact the applicable utility companies for current information on their relocation schedule.
- .04 The Contractor shall attend utility co-ordination meetings and prepare the construction schedule to reflect the following:
 - a) time constraints for relocation of utilities as provided by each utility authority, including distance separation (of at least 60 metres) between active Work and utility crews; and
 - b) avoiding interference of utility crews with the Contractor's progress of the Work.
- .05 Any work required for utility coordination is incidental to the Work. No additional compensation will be paid to the Contractor for changes to schedule, methods of operation, sequence of Work or delays as a result of utility-related work. For greater certainty, the Contractor shall not be entitled to claim, and the Owner shall not be liable, for any losses, damages or costs incurred by the Contractor due to delays in relocations or other required work by applicable utility companies."

SECTION GC 11.0 – OTHER PROVISIONS**SC 77 GC 11.0 Other Provisions**

77.1 Add new GC 11.0 – OTHER PROVISIONS as follows:

“SECTION GC 11.0 Other Provisions**11.01 Reporting**

.01 The Contractor shall continuously monitor the progress of the Work in relation to the Construction Schedule and, within 2 Working Days following the end of each calendar month, from the date of the Contract until the completion of the Contract, the Contractor shall provide to the Owner and the Consultant a works report (each, a “Works Report”) in the form attached hereto as Schedule A, which will include:

- a) an executive summary describing the general status of the Work and progress made over the relevant month;
- b) a detailed updated Construction Schedule;
- c) a narrative description of any disputes related to the Work, including any action that has taken place over the relevant month to resolve such disputes; and
- d) an update, as applicable, on those other matters set out in Schedule A to the Contract.

11.02 No Other Fees or Concessions

.01 The Contractor hereby agrees not to accept for its own account any fees, commissions, reductions, finder’s fees, inducements, or other monetary or value-in-kind concessions from tradesmen, labour, Suppliers, contractors, Subcontractors, insurers or surety for any reason whatsoever in connection with the Contract (collectively “Other Fees”). If any Other Fees are received by the Contractor, they shall be remitted to or credited to the Owner forthwith after receipt.

11.03 Conflict of Interest

.01 For the purposes hereof, a “Conflict of Interest” means that the Contractor’s other commitments, relationships or financial interests (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (b) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

.02 The Contractor shall (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the Owner without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the Owner to resolve any Conflict of Interest.

.03 Notwithstanding any other provision of the Contract and, in addition to all other contractual rights or rights available at law or in equity, the Owner may immediately terminate the Contract upon giving notice to the Contractor where (a) the Contractor fails to disclose an actual or potential Conflict of Interest; (b) the Contractor fails to comply with any requirements prescribed by the Owner to resolve a Conflict of Interest; or (c) the Contractor’s Conflict of Interest cannot be resolved.

- .04 This GC 11.03 – CONFLICT OF INTEREST shall survive any termination or expiry of the Contract.

11.04 Confidentiality and Publicity

- .01 The Contractor shall not divulge any Confidential Information prepared by, obtained by, communicated to or acquired by it in the course of carrying out the Work provided for in the Contract, to any person, corporation or other entity or use such information in any manner whatsoever without first obtaining the Owner's prior written approval. Without limiting the generality of the foregoing, the Contractor acknowledges and agrees that no Confidential Information shall be used by the Contractor on any other project without the prior written approval of the Owner.
- .02 The Contractor may disclose the Confidential Information to those of its employees and Subcontractors and Suppliers to whom disclosure is required for the Contractor's performance of the Work and its services under the Contract but only after each such employee and Subcontractor and Supplier has been advised of the confidential nature of such information and has properly assumed confidentiality obligations identical in principle with those herein.
- .03 The Contractor shall protect the Confidential Information against unauthorized disclosure using the same degree of care, but no less than a reasonable degree of care, as the Contractor uses to protect its own confidential information.
- .04 Upon the termination of the Contract or the Contractor's right to continue with the work being terminated, the Owner may require the Contractor to immediately return to the Owner all Confidential Information, whether the same are in the Contractor's actual possession or under its control.
- .05 The provisions of GC11.04 shall prevail over any inconsistent provisions in the Contract Documents and shall survive any termination or expiry of the Contract.

11.05 MFIPPA

- .01 The Contractor acknowledges and agrees that the Owner is subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M. 56 ("MFIPPA") and that information submitted by the Contractor and in the possession of the Owner is governed by and may be eligible for disclosure in accordance with the requirements of same.
- .02 Prior to disclosing or publishing the Contract, any terms hereof, including any contractual submissions or other records kept in accordance with the Contract, the Owner shall provide to the Contractor a redacted version of the Contract or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to MFIPPA. The information to be redacted shall be mutually agreed to by the Owner and the Contractor.
- .03 Disputes in respect of any of the information not redacted shall be referred for resolution in accordance with GC 13.13 – Claims, Negotiations, Mediation and Adjudication and the information in dispute shall not be disclosed until a determination is made. Any such determination shall be made with reference to the text and principles of MFIPPA, as applicable.
- .04 The Contractor agrees:
- a) to keep records created in connection with the Contract (collectively, "Records") secure;

- b) to provide Records to the Owner within 7 calendar days of being directed to do so for any reason including an access request or privacy issue;
 - c) not to access any Personal Information (as that term is defined in MFIPPA) unless the Owner determines, in its sole discretion, that access is permitted under MFIPPA and access is necessary in order to perform the obligations under the Contract;
 - d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Owner;
 - e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
 - f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers, or Subcontractors who have a need to know it for the purpose of the Project and who have been specifically authorized by the Owner to have such access; and
 - g) to implement other specific security measures that in the reasonable opinion of the Owner would improve the adequacy and effectiveness of the Contractor's measures to ensure the security and integrity of Personal Information and Records generally;
- .05 The provisions of this GC 11.05 shall prevail over any inconsistent provisions in the Contract Documents and survive any termination or expiry of the Contract.

EXHIBIT “1”**PROJECT-SPECIFIC REQUIREMENTS FOR A “PROPER INVOICE”**

To satisfy the requirements for a Proper Invoice, the following criteria, as may be applicable in each case, must be included with the Contractor’s invoices:

- a) the written bill or request for payment must be in writing and mailed to the Owner’s designated official on hardcopy.
- b) the Contractor’s letterhead shall include, but is not necessarily limited to the following:
 - i. company name
 - ii. current company address
 - iii. contact information
 - iv. HST Registration No
 - v. Invoice Number;
 - vi. Contract number and title
 - vii. Town of Caledon designated official contact information
 - viii. The date the Proper Invoice is being issued by the Contractor;
 - ix. the name, title, telephone number and mailing address of the person at the place of business of the Contractor to whom payment is to be directed
 - x. the period of time in which the labour and/or Materials were supplied to the Owner;
 - xi. reference to the provisions of the Contract under which payment is being sought (e.g. GC 8.02.02 for price of labour or Materials, GC 8.02.03.01 for progress payments, etc.)
 - xii. a description, including quantities where appropriate, of the labour and/or Materials, or a portion thereof, that were supplied and form the basis of the Contractor’s request for payment;
 - xiii. the amount the Contractor is requesting to be paid by the Owner set out in a statement identifying the price for the labour and/or Materials in accordance with GC 8.02.02, separating out any statutory or other holdbacks, set offs and HST;
 - xiv. the following statement: “Provided this Proper Invoice complies with the requirements of the Contract and, where applicable, the *Construction Act*, R.S.O. 1990, c. C.30, and provided no Notice of Non-Payment is issued by the Owner, payment is due within 28 days from the date the Proper Invoice is received by the Owner.”
 - xv. **[NTD: Caledon to consider other requirements and insert here, if needed];**
- c) Up-to-date Payment Certificate Checklist (enclosed as Exhibit “2” to the Supplementary Conditions) with Contractor’s firm designated officials signature ensuring completeness of the Contractor’s submission for the relevant payment.
- d) a sworn Statutory Declaration in the form CCDC 9A-2018;

- e) a current Workplace Safety and Insurance Board clearance certificate;
- f) an updated and current Construction Schedule;
- g) an Estimate, as prepared by the Contract Administrator in accordance with GC 8.01.01.01;
- h) a current completed Works Report executed by the Owner in the form set forth in Schedule A to the Contract;
- i) a current and valid certificate(s) of insurance as required under GC 6.03;
- j) in the case of the Contractor's Proper Invoice for final payment, sufficient evidence of the Contractor's compliance with GC 7.15 – Cleaning Up Before Acceptance.

EXHIBIT “2”

Payment Certificate Checklist

(to be filled out by Contract Administrator – If no CA exists for the project, Town’s project manager to complete)

1. All Payment Certificates

- Payment Certificate prepared (Including measured Tender quantities, and authorized change orders), reviewed, and signed by the Contractor and Contract Administrator.

***absence of CA review cannot holdup prompt payment once a Proper Invoice is received*

- Proper Invoice provided which includes:
 - _ Contractor’s invoice on company letterhead
 - _ Contractor’s name and address
 - _ The date of the invoice and the period during the services or materials were supplied
 - _ Information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied
 - _ Invoiced to the Town of Caledon
 - _ Contractor’s H.S.T number shown on the invoice
 - _ Contractor’s invoice number shown on the invoice
 - _ Invoice includes project title and number
 - _ All holdbacks itemized on the invoice
 - _ Statutory 10% holdback applied to the invoice
 - _ Invoice includes itemized breakdown of the quantities and work completed
 - _ Invoice includes the amount payable for the services and materials supplied
 - _ Invoice includes payment terms
 - _ Invoice includes the Town’s project manager’s name, title, telephone number, and Town mailing address

- Certificate of Insurance – includes amounts and coverage stipulated in the contract. Policy coverage date must be valid. Must include The Corporation of the Town of Caledon as additional insured.

- Certificate of Clearance from the Workplace Safety and Insurance Board (reference Town of Caledon Standards Contract Documents), WSIB certificate date must be valid for the period the services or materials were supplied.

- Statutory Declaration re: Liens and Payment of Accounts (Reference Town of Caledon Standard Contract Documents, Section Statutory Declaration)
Note: not required for the first payment certificate.

- Payment Certificate, along with the required documentation and checklist are submitted to the Engineering Department – *Finance and Infrastructure, Town Hall 6311 Old Church Rd w/: Attention to Project Manager*

- Contractor Administrator’s status report and recommendation for payment. If the payment certificate/invoice is deemed improper, [Form 1.1](#) Notice of Non Payment must be completed and sent to the Contractor by registered mail and via e-mail within 14 days of the invoice date.

Notes: _____

2. Partial Payment of an Invoice

- Check all provided items listed under 1. All Payment Certificates
- All undisputed work must be paid within 28 days of invoice date
- [Form 1.1](#) Notice of Non Payment must be completed and sent to the Contractor by registered mail within 14 days of the invoice date.
- Completed [Form 1.1](#) Notice of Non Payment attached

Reason for partial payment of invoice

3. Non Payment of an Invoice

- Check all provided items listed under 1. All Payment Certificates
- [Form 1.1](#) Notice of Non Payment must be completed and sent to the Contractor by registered mail within 14 days of the invoice date.
- Completed [Form 1.1](#) Notice of Non Payment attached

Reason for non payment of invoice

**4. Substantial Performance – Review
(Applies to the Basic and Finishing Holdbacks)**

- Contractor is to submit on company letterhead requesting substantial performance be reviewed
- Updated deficiency list, signed by all parties
- Substantial performance pre-clearance form
- Meets the Construction Act definition of “Substantially Performed”
The improvement is ready for its intended use and the value of the remaining work is not more than
3% of the first \$1,000,000 of the price;
2% of the next \$1,000,000 of the price;
1% of the balance of the contract price.
- Town Letter, and certificate to be issued if substantial performance has been met.
- Contractor Administrator’s status report and recommendation for substantial performance. If substantial performance has not been met, please state why and return notice of non-payment in accordance to the Construction Act.

Notes: _____

**5. Substantial Performance – Release of Holdback
(Applies to the Basic and Finishing Holdbacks)**

- All items listed under 1. All Payment Certificates
- Proof of publication of the certificate of substantial performance [Form 9](#)
- Full and final release letter
- Contractor Administrator’s status report and recommendation for substantial performance holdback release. If substantial performance has not been met, please state why and return notice of non-payment in accordance to the Construction Act

6. Total Completion - Review

- Contractor is to submit on company letterhead requesting total completion be reviewed
- Updated deficiency list, signed by all parties
- Town Final Acceptance Letter/certificate to be issued if total completion has been met.
- Contractor Administrator’s status report and recommendation for total completion. If total completion has not been met, please state why.

7. Warranty Release – Release of Maintenance Holdback

- All items listed under 1. All Payment Certificates
- Letter on company letterhead requesting assessment for Final Completion (Warranty Release), with reference to end of warranty date.
- Final deficiency list, signed by all parties
- Final acceptance certificate
- Town total completion letter
- Contractor Administrator’s status report and recommendation for substantial performance holdback release. If substantial performance has not been met, please state why and return notice of non-payment in accordance to the Construction Act

Contract Administrator (Print)

Date (DD/MM/YYYY)

Contract Administrator (Signature)

SCHEDULE A**WORKS REPORT REQUIREMENTS**

1. Each Works Report shall include the following:
 - (a) an executive summary;
 - (b) Construction Schedule summary, including:
 - (i) permits;
 - (ii) construction progress;
 - (iii) construction milestones;
 - (iv) commissioning, occupancy and completion; and
 - (v) submissions schedule;
 - (c) progress photos;
 - (d) contractual outstanding decisions;
 - (e) quality assurance and quality control;
 - (f) organization/staffing changes and additions for the Contractor;
 - (g) health and safety status updates, including:
 - (h) Subcontract status, including:
 - (i) consultants;
 - (ii) Subcontracts awarded;
 - (iii) tenders;
 - (iv) shop drawing submittals status; and
 - (v) labour report (average workforce);
 - (i) financial status, including:
 - (i) progress and changes;
 - (1) change order log for change orders with description, status, value, total, etc.
 - (ii) insurance summary;
 - (iii) Contractor default status; and
 - (iv) cash flow projection (capital cost components);
 - (j) risk management, including:

- (i) claims;
 - (ii) liens;
 - (iii) environmental issues;
 - (iv) labour;
 - (v) market conditions;
 - (vi) outstanding disputes;
 - (vii) emerging issues;
 - (viii) actions taken in response to emerging issues;
 - (ix) operational risks; and
 - (x) other risks;
- (k) cash allowances financials;
- (i) status schedule
 - (ii) draw schedule
- (l) Equipment status reporting, including:
- (i) pending equipment selections;
 - (ii) financial analysis; and
 - (iii) commissioning and training dates.

END OF SCHEDULE A